



# REQUEST FOR PROPOSALS TITLE PAGE

Include This Page as the First Page in Your Proposal Response

## City of Lynchburg, Virginia Procurement Division

Proposal Title: **Food and Beverage Concessions in Parks**

This is the City of Lynchburg’s Request for Proposals No. 2016-064, issued 03/29/2016. Direct inquiries for information to: Lisa Moss; Phone: 434-455-4228; Fax: 434-845-0711. All responses to this solicitation shall be in strict accordance with the requirements set forth in this bid document and the ensuing contract documents.

All requests for clarification of or questions regarding this request for proposal must be made in writing, by facsimile (434) 845-0711 or email to [lisa.moss@lynchburgva.gov](mailto:lisa.moss@lynchburgva.gov) and received by 9:00 a.m. April 19, 2016. Any alteration or changes to this Request for Proposals will be made only by written addendum issued by the City of Lynchburg, Procurement Division.

Sealed proposals will be publicly accepted prior to **4:00 p.m., April 28, 2016**, however only the names of respondents responding will be available for announcement. Proposals received after the stated due date and time shall not be considered. Submit proposals in a sealed, opaque envelope, and put the RFP number, title, due date and time on the lower left front. Offerors are responsible for having their proposal stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. All Offerors are responsible for obtaining issued addenda from the City’s Purchasing Division website: <http://www.lynchburgva.gov/current-solicitations>

Acknowledge receipt of addenda here: No. \_\_\_\_\_ Date: \_\_\_\_\_  
No. \_\_\_\_\_ Date: \_\_\_\_\_

Submit Proposals: **BY MAIL, GROUND DELIVERY, OR HAND DELIVER TO:**  
Procurement Division  
Third Floor City Hall  
900 Church Street  
Lynchburg, Virginia 24504

**Information the Offeror deems Proprietary is included in the proposal response in section(s):** \_\_\_\_\_  
See Paragraph B. on page 2 for guidelines on submitting proprietary information.

In compliance with this Request for Proposals and all the conditions imposed therein, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this Request for Proposals. Sign in ink and type or print requested information.

Full Legal Name of Offeror: \_\_\_\_\_

Fed ID OR SOC. SEC. NO.: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

\_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Signature: \_\_\_\_\_

Typed or Printed Name, Title

\_\_\_\_\_  
Buyer Signature

## I. SUBMISSION OF PROPOSALS

- A. **An original (1), so marked, and (3) copies, so marked, for a total of (4)** of your proposal document are required. In addition, one (1) copy of proposal in an electronic format, CD in Microsoft Word format or PDF file format must also accompany your proposal. City of Lynchburg (known hereafter as the "City") will not assume responsibility for reproduction where an insufficient number of copies have been supplied. In any such case, the City will notify the Offeror of the deficiency and request that the appropriate number of copies be delivered within 24 hours. Failure to comply with this or other requirements of this Request for Proposal shall be grounds for the City to reject such proposals. Telegraphic or facsimile submission of proposals is not acceptable and any such proposals will not be considered. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit proposals.
- B. Submission of Proprietary Information: Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however the Offeror must invoke the protection of this section prior to or upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary (Section 2.2-4342F of the Code of Virginia). **Offerors shall submit, in a separate section of the proposal, any information considered proprietary and any copyrighted material and clearly identify the information as proprietary and/or copyrighted information. Offerors may not declare their entire proposal proprietary nor may they declare proposed pricing to be proprietary.**

References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not in the separate section labeled proprietary shall be considered Public Information.

- C. Proposals having any erasures or corrections must be initialed by the Offeror in ink.
- D. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors. Any contract resulting from this Request for Proposal shall not be exclusive to the Successful respondent. The City reserves the right to contract with respondents not party to the resultant contract for similar work if it determines this to be in their best interest.
- E. By submitting a proposal response, the Offeror agrees that the proposal response will not be withdrawn for a period of 90 days following the due date for proposal responses.
- F. By submitting a proposal response, the Offeror certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated its proposal response for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the City.
- G. By submitting a proposal response, the Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontracting respondent in connection with its proposal; and that it has 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.
- H. The City will not be responsible for any expense incurred by any Offeror in preparing and submitting a proposal response. All proposals submitted will become the property of the City.

## II. GENERAL INFORMATION AND OBJECTIVE

## **SCOPE OF WORK**

For the purpose of securing Food and Beverage Concessions for the Parks and Recreations Department (LPRD), the City is seeking proposals that clearly show offerors are qualified to provide food and beverage service in a consistent and revenue positive manner for one (1) year with the option of up to Four (4) additional One-year periods at the city's discretion. Each Offeror must clearly identify their knowledge of permanent and/or seasonal concession operations, food safety practices, proper licensure, contract relations, adequate staffing levels, and demonstrate financial stability.

- B. LPRD reserves the right to award contracts per site and to multiple vendors , as listed in this document.
- C. Both for-profit and not-for-profit respondents are encouraged to submit proposals for this service.
- D. The successful Offeror will be expected to abide by all City of Lynchburg Ordinances, Park rules, business licensing and Virginia Public Health food service requirements.
- E. Tenant improvement; list any and all desired improvements in the RFP; include items such as, seating, power, water, security, etc. It is to be understood that any modifications or improvements desired by the Offeror shall be installed at the sole expense of the Offeror and requires advance written approval from the LPRD staff. All improvements shall become the property of the City of Lynchburg upon completion of installation; provided that the Offeror shall be entitled to utilize the modifications and improvements in accordance with this Agreement while this Agreement is in effect.
- F. All proposals become the property of the City of Lynchburg.
- G. LPRD reserves the right to offer vending opportunities outside of this award. Offerors are not guaranteed exclusive vending at any park, recreation facility, or trail.

## **III. SCOPE OF SERVICES**

### **1. Miller Park – Pool concessions**

Address: 2100 Park Ave., Lynchburg, VA 24501

Permanent (seasonal) concessions facilities space available; 15'X18' space (270 square feet)

Description: Public swimming pool

Pool operation hours: 12:00 p.m. - 6:00 p.m., Monday-Saturday, and 1:00 p.m. - 5:00 p.m. on Sunday

Desired business hours of operations: Consistent with pool hours.

Utilities available: 10 two plug outlets – 110V (on 3 20 amp circuits); 1 Outlet – 220V (50 amp Circuit), hot and cold water available.

Special events are occasionally scheduled at the pool; LPRD may allow for additional business hours at these events, on a per-event basis.

\*Estimated daily visitor count: 254\*

The Miller Park Pool is often open for private rental parties; vending will NOT be offered for these events.

### **2. Peaks View Park – Main concessions**

Address: 170 Ivy Creek Drive, Lynchburg, VA. 24503

Space or site available for proposal: Permanent concessions facilities available; 20'X9' space (180 square feet)

Description: 2 Playgrounds, 2 Picnic Shelters, Tennis Courts, 2 Tournament Soccer Fields, 2 Restrooms, Greenway, Disc Golf Course, Mountain Bike Trails, Basketball Court, Volleyball, 7 multi-purpose fields, and Open Space.

Park Operation hours: Sunrise – Sunset, Sunday – Saturday

Desired business hours of operations: Consistent with normal park operating house, seven (7) days a week (2<sup>nd</sup> Monday in March to the 2<sup>nd</sup> Monday in November). (hours and days are negotiable)

Utilities Available: 5 two plug outlets – 110V (3 20 amp circuits); 1 outlet – 220V (1 30 amp circuit), hot and cold water available

LPRD reserves the right to authorize additional vending concessions in the parks, recreation facilities, and trails during various special events and/or athletic tournaments.

### **III. SOLICITATION SCHEDULE**

This request for proposal will be governed by the following schedule:

Posting of RFP	March 29, 2016
Deadline for Written Questions	April 19, 2016 9:00 a.m.
Proposals are Due	April 28, 2016 4:00 p.m.

### **IV. PROPOSAL PREPARATION**

The proposal response must address the items included in the Scope of Services and the Criteria for Proposal Evaluation. Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Responses shall be limited to no more than twenty pages excluding the cover by including all other materials. Each copy of the proposal must be bound with all documentation in a single volume where practical. Failure to do so will result in a lowered evaluation. Incomplete proposals may be determined nonresponsive. The City reserves the right to request additional information or clarification if necessary throughout the evaluation process.

Offerors should organize the Proposals using the format described below and in the following order:

Title page

- A. Table of Contents
- B. Brief history of the respondent including:
  - Years in business as an established respondent;
  - Respondent principals;
  - Size of respondent (denote partnerships or subcontractors necessary to facilitate full service scope);
  - The name, position and telephone number of contact person authorized to conduct negotiations and authorize final contracts or otherwise bind the respondent to a contractual relationship; and
  - A specific listing of services the respondent is uniquely qualified to provide.
- C. Specific staff experience, by professional and educational qualifications, as it relates to providing services for the project scope including:
- D. Brief summary as to why the respondent(s) feels qualified to provide the requested services.
- E. List at least three current and/or past work assignments of similar nature that the respondent has directly contracted to provide within the last three years as a reference. For each reference, a brief description of services provided, organizational name, contact person and title, address and telephone number shall be provided.
- F. A qualifying statement as to your respondent's registry status with the Virginia State Corporation Commission.
- G. Provide a Certificate of General Liability meeting requirements as stated in this RFP.
- H. Provide a clear statement of what will be your expectations of the City Staff to support your proposal.
- I. The City reserves the right to check references and other information provided.

**V. EVALUATION CRITERIA FOR PROPOSAL EVALUATION:**

- 1, Days and hours of operation 35 Points  
How many days per week and during what hours do you intend to operate the concession?  
What date would you prefer to open and what date will you close?
2. Products/Services to be offered for sale. 35 Points  
What products do you intend to offer? What size(s)? What Price(s)?  
What nutritional snacks do you intend to offer? Please list all proposed items and unit prices.
3. Concession Experience- Business References 15 Points  
Please list at least three (3) references that will support, document or verify your performance  
in providing concession services and/or operating a business.
4. Compensation 15 Points  
Please propose a weekly fee to be paid to the City for use of our facility(ies)

**VI. METHOD OF AWARD**

Following evaluation of the written proposals as submitted, selection shall be made of three or more Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, and respondents ranked 1, 2, 3 or more. Negotiations shall then be conducted with the respondent ranked number 1 in an attempt to reach an agreement to provide the services. After negotiations have been conducted with the top ranked respondent, an agreement cannot be reached, negotiations will be terminated with that respondent, and negotiations began with the respondent ranked number 2. This procedure will continue until an agreement is reached or negotiations are terminated and the services re-solicited. Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

**VII. TERM OF THE CONTRACT**

The term of the contract will be for one year with the option to renew up to 4 additional one year periods when mutually agreed upon.

**VIII. GENERAL TERMS AND CONDITIONS**

The Contract for Services (“Contract” or “Agreement”) with the successful Offeror will contain the following Terms and Conditions. Offerors taking exception to these terms and conditions or intending to propose additional or alternative language must (a) identify with specificity the City Terms and Conditions to which they take exception or seek to amend or replace; and (b) include any additional or different language with their proposal. Failure to both identify with specificity those terms and conditions Offeror takes exception to or seeks to amend or replace as well as to provide Offeror’s additional or alternate Contract terms may result in rejection of the proposal.

**A. Subcontracting and Assignment of Work**

The Consultant shall not subcontract or assign portions of the work, other than those specifically defined in the contract, without the express written consent of the City. A description of any work the Offeror proposes to subcontract shall be submitted to the City for review and approval along with the name and address of the individual, respondent, or corporation that is the proposed subcontracting respondent. This submittal shall also include a list of the key personnel that the subcontractor will assign to the project. All

work performed by any subcontractor shall be coordinated by the Consultant who shall be responsible to the City for all work performed by any subcontractor or special consultant.

B. Independent Successful Respondent

The Consultant is an independent respondent and nothing contained in a subsequent contract shall constitute or designate such respondent or any of its agents or employees as employees of the City.

C. Notification

Any notice required by the contract shall be effective if given by registered mail, return receipt requested, to the Consultant in the name and at the address given in its proposal submission; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the City shall be given to the City of Lynchburg, Procurement Manager, 900 Church Street, Lynchburg, VA 24504. The Consultant agrees to notify the City immediately of any change of legal status or of address. Any notice provided in accordance with this paragraph shall be deemed to have been completed five calendar days after the date of mailing.

D. Cooperative Procurement

As authorized in § 2.2-4304 of the Code of Virginia, this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Consultant.

E. Termination

Subject to the provisions below, the contract may be terminated by the City upon thirty (30) days advance written notice to the Consultant; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted. All information and materials gathered and/or prepared by or for it under the terms of the contract shall be delivered to, become and remain the property of the City. The City shall have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Consultant.

Termination for Convenience:

The City may terminate this contract for convenience at any time in which the case the parties shall negotiate reasonable termination costs.

Termination for Cause:

In the event of Termination for Cause, the thirty (30) days advance notice is waived and the Consultant shall not be entitled to termination costs.

Termination Due to Unavailability of Funds in Succeeding Fiscal Years:

If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Contract shall be canceled and, to the extent permitted by law, the Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

F. Laws and Regulations

The Successful respondent shall abide by all Federal, State and Local laws and regulations governing the provision of the services called for in the contract. The Successful respondent shall give notice and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

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

This contract shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia. Any legal proceedings arising out of or related to this contract shall be filed

by the parties in the City of Lynchburg General District Court or the Lynchburg Circuit Court.

G. Additional Services

The City may add to the Scope of Services any services of a similar nature to those specified in the Scope of Services of this Request for Proposals as mutually agreed to at a price mutually agreed upon.

H. Severability

Each paragraph and provision of the resultant contract will be severable from the entire contract and if any provision is declared invalid, the remaining provisions shall remain in effect.

I. Licenses and Permits

The successful respondent shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work which are legally required prior to and during the work. The City will not charge for any permits required by the City of Lynchburg.

J. Nondiscrimination

If the resultant contract exceeds \$10,000, during the performance of the contract, the Consultant agrees as follows:

- a. 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
- 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.
- d. The Consultant 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 subcontracted respondent or respondent.

K. Payments to Successful respondents

Payments to the Consultant shall be made within 30 days after receipt of an approved invoice for services provided in the previous month. Backup documentation for each invoice shall be provided in detail satisfactory to the City. The Consultant's records and documentation supporting such invoices shall be made available to the City upon reasonable request. The Consultant agrees to retain all records, documents and support materials relevant to the contract for a period of five years following final payment. Invoices must be prepared in formats as required by funding agencies.

In accordance with Virginia Code Section 2.2-4354 the Consultant agrees that:

1. Should any contractor be employed by the Consultant for the provision of any goods or services under this Contract, the Consultant agrees to the following:
  - (a) The Consultant shall, within seven days after receipt of any payments from the City pursuant to this Contract, either:
    - (1) Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the goods or services provided by the subcontractor; or
    - (2) Notify the City, as applicable, and the subcontractor, in writing, of the intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. Written notice to the City shall be given to: City of Lynchburg Procurement Manager, 900 Church Street, Lynchburg, VA 24504.

- (b) The Consultant shall pay interest to the subcontractors, at the rate of one percent per month on all amounts owed to the subcontractor that remain unpaid after seven days following receipt of payment from the City for goods or services provided under this Contract, except for amounts withheld under subparagraph (a)(2) above.
- (c) The Consultant shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractors respondent.
- (d) The Consultant's obligation to pay an interest charge to a subcontractor shall not be an obligation of the City.
- (e) No contract modification shall be allowed for the purpose of providing reimbursement for these interest charges. No cost reimbursement claim shall include any amount for reimbursement of these interest charges.

L. Contractual Claims

Any claims by a contractor or anyone claiming on the contractor's behalf against the City arising under or relating to a contract shall only be resolved as specified in the City's Procurement Ordinance, Sec. 18.1-7, ensuring timely notice of the claim.

The contractor shall give the City written notice of any claim within ten (10) days of the beginning of the occurrence of the event leading to the claim being made. The written notice shall be a document from the contractor addressed to the City official or employee designated by the contract to receive such notice, or if no one is so designated, to the City Manager. The written notice shall clearly state the contractor's intention to make a claim, shall describe the occurrence involved, and shall be transmitted in a manner to ensure receipt by the City. The contractor shall submit the claim and any supporting data to the City within thirty (30) days after the occurrence giving rise to the claim ends. The burden shall be on the contractor to substantiate that it has given written notice and submitted its claim in accordance with this provision.

M. Taxes

The Consultant shall pay all City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price as the taxes shall be an obligation of the Consultant and not of the City and the City shall be held harmless for same by the Consultant.

N. Indemnification

To the fullest extent permitted by law, the Consultant, for itself, heirs, representatives, successors and assigns agrees to save, defend, keep harmless and indemnify the City and all of its officials, agents and employees (collectively, the "City") from and against any and all claims, loss, damage, injury, costs (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from, arising out of or in any way connected with the Consultant's performance (or nonperformance) of the contract terms or its obligations under this contract.

O. Contract Assignment

The resultant contract may not be assigned, in whole or part, without the written consent of the City. The rights and obligations of the Consultant are personal and may be performed only by the Consultant. Any purported assignment that does not comply with this provision is void. This contract is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

P. Royalty and License Fees and Copyright, Trademark and Patent Protection

The Successful respondent shall pay all royalty and license fees relating to the items covered by the contract. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Offeror shall indemnify and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of such alleged infringement.

Q. Precedence of Documents

The precedence of documents shall be as follows: the CONTRACT, the Request for Proposals and the Offeror's response to the Request for Proposals.

R. Insurance

The Consultant shall be required to maintain in force such insurance, in amounts acceptable to the City, as will protect it and the City from claims which may arise out of or result from the execution of the work, whether such execution be by the respondent, its employees, agents, subcontractors or by anyone for whose acts any of them may be liable. This coverage should include, at a minimum, Worker's Compensation and General Liability (including premises/operations, independent successful respondents, products and completed operations, contractual liability and personal injury liability). All insurance shall be provided by companies authorized to conduct business in the Commonwealth. The Consultant shall furnish the City with an original Certificate of Insurance upon request. The Certificate should name the City as additional insured under their General Liability coverage. The Consultant shall notify the City at least 30 days prior to policy cancellation, non-renewal or reduction of coverage.

S. Administrative Appeals Procedure

- (a) The following are the exclusive procedures for a bidder or offeror to protest the city's award or decision to award a contract.
- (1) Any protest to award a contract shall be in writing and shall be delivered so that it is received by the city manager not later than five (5) business days after announcement of the award or decision to award, whichever comes first. Otherwise any such protest shall be deemed to be waived.
  - (2) Except for a protest of an emergency or sole source procurement, a protest of a city award or decision to award a contract may only be made by a person who submitted a bid or proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the city's decision. In the case of an emergency or sole source procurement, a protest may only be made by a person who can show that he was reasonably likely to have submitted a successful bid or proposal if the procurement had been other than emergency or sole source.
  - (3) Protests shall only be granted if (1) the protester has complied fully with this Sec. 18.1-6 and there has been a violation of law, the Lynchburg public procurement code, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.
  - (4) The city manager shall issue a written decision on a protest within ten (10) days of its receipt by the city manager.
  - (5) If the protest is denied, the protestor may only appeal the denial or otherwise contest or challenge procurement by then filing suit in the Lynchburg circuit court, Lynchburg, Virginia, and serving the city with such suit within ten (10) days of such denial. Otherwise, the city manager's decision shall be final and conclusive, and the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
  - (6) The city should defer award of a contract where the decision to award has been protested unless there is a written determination by the city manager that proceeding without delay is necessary to protect the public interest or unless the bid or offer of the prospective awardee would expire.
  - (7) The validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal is filed.
  - (8) The exclusive relief allowed if a protest is granted is to void the decision being protested. If a contract has already been awarded and performance under the contract has begun, the contract need not be voided if not in the public interest to do so. Under no circumstances will any monetary amount be allowed to the protestor as part of any relief granted.
  - (9) Strictly following these procedures shall be a mandatory prerequisite for protest of the city's award or decision to award a contract. Failure by a bidder to follow these procedures strictly shall preclude that bidder's protest and be deemed to constitute a waiver of any protest.
- (b) A protest may not be based upon the alleged non-responsibility of a person to whom the city awards or makes a decision to award a contract.

T. Drug Free Workplace

In accordance with Sec 2.2-4312 of the Virginia Code, during the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the consultant'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 Consultant'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 consultant that such consultant 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 sub-Consultant or respondent.

Successful respondent shall not use, possess, manufacture, or distribute alcohol or illegal drugs during the performance of the contract or while on City premises or distribute it to City employees.

Successful respondent understands that a violation of these prohibitions constitutes a breach of the contract and that the City has the right cancel the contract.

For the purpose of this section, "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a respondent, the employees of which 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.

U. Certification by Consultant as to Felony Convictions

No one with a felony conviction may be employed under this Contract and by the signature of its authorized official on the response to this solicitation, the Consultant certifies that neither the contracting official nor any of the Consultant's employees, agents or subcontractors who will work under this contract have been convicted of a felony.

V. Confidentiality

1. Consultant Confidentiality

The Consultant acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the City of Lynchburg. Therefore, except as required by law, the Consultant agrees that its employees will not:

- a) Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
- b) Access or attempt to access information beyond their stated authorization.
- c) Disclose to any other person or allow any other person access to any information related to the City or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.

The Consultant understands that the City, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the City may seek legal remedies available to it should such disclosure occur. Further, the Consultant understands that violations of this provision may result in Contract termination.

The Consultant further understands that information and data obtained during the performance of this contract shall be considered confidential, during and following the term of this Contract, and will not be divulged without the Purchasing Agent's written consent and then only in strict accordance with prevailing laws. The Consultant shall hold all information provided by the City as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

2. City Confidentiality

The City understands that certain information provided by the Consultant during the performance of this Contract may also contain confidential or proprietary information. Consultant acknowledges that this Contract and public records (as defined by §2.2-3701 of the Virginia Freedom of Information Act) provided pursuant to this Contract are subject to the Virginia Freedom of Information Act §§2.2-3700 et seq. and the Virginia Public Procurement Act §2.2-4342 of the Code of Virginia.

- W. The Consultant shall devote such part of its time as is reasonably necessary to the operations outlined under the resultant contract. The Consultant may engage in business ventures of a nature and description independent of this Contract with the City. The Consultant is required to disclose immediately any outside activities or interests, as they arise, that conflict or suggest a potential conflict with the declared or stated interests of the City. The Consultant is required to disclose all local government clients and must attest that work for those clients will not conflict with the interests of the City. The City reserves the right to object to such attestations. If such objections arise, the parties will agree to the best course of action to resolve the conflict or potential conflict.
- X. The Consultant shall conduct all transactions under this contract in good faith. The Consultant will employ the highest ethical and professional standards at all times — failure to do so could result in termination of the Contract for cause or convenience.

Y. Sexual Harassment:

The City of Lynchburg does not and will not tolerate any form of sexual harassment, including but not limited to physical, verbal, implied or any other context that shall be interpreted as harassment.

Z. Responsibility for Property

The Successful firm shall be responsible for damages to property caused by work performed under the contract. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Successful firm shall be repaired or replaced by the Successful firm, to the satisfaction of the Owner, at the Successful firm's expense.