



Date of Town Council Meeting: June 25, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Renewal of the ESI – Town of Leesburg Contract

Staff contact: William R. Ackman, Jr., P.E., Director of Plan Review

Recommendation: We recommend Town Council authorize the Town Manager to enter into a contract with ESI to continue the ESI program in the Town of Leesburg under the terms and agreements of the attached contract between ESI and the Town of Leesburg.

Issues: Entering into this contract is important to the continued improvements being made to the *plan review process* in the Town of Leesburg. The contract promotes healthy communication between Town Staff and the private sector, provides the Town Staff with a forum to review proposed changes to the Design and Construction Standards Manual (DCSM), the Zoning Ordinance, the Subdivision and land Development Regulations (SLDR) and other Town codes and ordinances before bringing them to public hearing. In addition, it provides the Town with low or no cost opportunities to pursue continuing education and training related to the latest engineering practices, policies and procedures as well as providing information related to the latest engineering technologies and making available industry resources that improve communication and productivity. It is also important to note that the Town's ESI costs have held constant since the "Pay As You Go" program was instituted in 2004. The Town's ESI membership fees have been included in the two year budget recently adopted by the Town Council.

Background: The Engineers and Surveyor's Institute (ESI) has provided a forum for the Town and private sector engineers to cooperatively develop an improved plan review process in the Town of Leesburg. ESI participation arose out of an ESI study of the Town's development review process and design standards. Pursuant to the ESI study, the Council approved a continuing relationship with ESI, and the Town entered into a contract with ESI for Peer Review, Education and Technical Assistance on January 21, 1997. When the terms of that contract expired in 2000, Council voted to authorize the Town Manager to sign a new contract. When the terms of that contract expired in 2004, Council again authorized the Town Manager to sign a new contract with ESI. Under the terms of the 2004 contract, ESI developed a "Pay As You Go" program funded by the private sector in which the Town was no longer required to pay the entire costs of the peer review program in the Town of Leesburg; instead, we had a set cost to be a member of the non-profit ESI organization which continues to provide the Town with the benefits listed above. When the terms of that contract expired in 2008, Council once again voted to authorize the Town Manager to sign a new contract. That contract is set to expire on June 30, 2013. As a governmental member of ESI, the Town is also guaranteed a voting member seat on ESI's board of directors.

Attachments: (1) Copy of the new ESI – Town of Leesburg contract
(2) Copy of a draft resolution for review and consideration.

AGREEMENT BETWEEN
THE ENGINEERS AND SURVEYORS INSTITUTE
AND
THE TOWN OF LEESBURG
FOR PUBLIC/PRIVATE MEMBERSHIP

THIS AGREEMENT entered into this date of July 1, 2013, by and between the Town of Leesburg Virginia, a municipal corporation (hereinafter called “TOL”) and the Engineers and Surveyors Institute, 4455 Brookfield Corporate Drive, Suite 107, Chantilly, Virginia 20151 (hereinafter called “ESI”). ESI is a public/private membership not for Profit Corporation established in the Commonwealth of Virginia to provide programs to improve the submission, review and approval of land development applications and the processes by which they are approved. The objectives of the public/private partnership are to improve communication, establish effective engineering practices, provide enhanced professionalism in its members, and deliver well executed land development plans that can lead to excellent projects for the citizens of Northern Virginia. The purpose of this Agreement is to improve coordination within the public/private partnership that can lead to more accurate predictability in the review and approval of land development applications submitted to the TOL and improved quality of submissions in compliance with current ordinances and standards of the TOL.

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

1. **SERVICES PROVIDED:**

By TOL membership in the public/private partnership, ESI hereby agrees to provide the programs (Communication, Peer Review, Education, Technical Issues Resolution, and Technology Application) established by the public/private partnership and customized to the needs of the TOL as specifically outlined below:

A. **Communication Program:** ESI provides the administrative support for the ESI Leesburg Committee (ESILC) and its Subcommittees that meet regularly in a joint public/private forum. The ESI Leesburg Committee is the primary agent for the public/private partnership to work together to resolve technical, policy and processing problems. The ESILC is co-chaired by a member from both the private and public sectors. These Co-Chairs are usually elected to the ESI Board of Directors in accordance with the By-Laws. The ESILC establishes standing and ad hoc Subcommittees as necessary to conduct its work. ESI also provides electronic and mail distribution of its newsletter InSite, pertinent changes in engineering practice, letters to industry established by the TOL, etc. ESI maintains a website and other web-based information exchange capabilities to enhance communication among its members.

B. **Peer Review Program:** The ESI Peer Review Program is a quality control effort conducted to insure that applications are complete and ready for technical review and to assist with application processing leading to approval. The Peer Review Program elements

are provided by the “pay-as-you-go (PAYG)” method and funded by the applicant. Elements may include: Minimum Submission Review (MSR), Post Submittal Review (PSR), Comment Quality Review (CQR) and Team Peer Review (TPR) for application types determined by the ESI Leesburg Committee in consultation with TOL Staff. The specific elements implemented for the TOL process shall be developed and documented in a future addendum to this agreement which shall be subject to the written approval of the Town Manager. From time to time as TOL processes change, the specific application of Peer Review elements provided by the applicant will require adjustment. These adjustments will be developed in consultation with TOL staff and shall be documented in future addendums to this agreement. As noted above, any and all addendums to this agreement shall be subject to the written approval of the Town Manager. ESI hereby agrees to provide, at a minimum, one (1) permanent ESI Staff engineer and /or additional private sector engineers/planners to assist in the performance of plan review and related elements associated with designated land development applications for the TOL. ESI shall assure that the engineers/planners provided under the terms of this agreement are qualified for the purposes of this agreement. ESI also agrees to utilize the peer review program for those Town CIP projects designated by the Director of Plan Review as part of the Town’s ESI Membership fee as long as the peer review costs for said projects do not exceed \$1,250 per month.

C. Education Program: The ESI Education Program annually evaluates the specific needs of the TOL Program and provides courses, classes, seminars and other education delivery mechanisms, including online instruction. The specifics of the ESI Education Program are determined by a standing Subcommittee of the ESILC. Using “feedback” obtained from the Peer Review Program, current information on policies, procedures and common problems are provided in classes. Industry subject matter experts in standard engineering practice are used as instructors. For classes involving official TOL policy, ordinances, regulations, etc., the TOL agrees to provide subject matter expertise for the education program for those classes agreed upon. All ESI classes conducted in the Education Program are established to meet the State of Virginia Continuing Education requirements for licensed professionals. A small amount (normally \$20 per hour) is retained from the Peer Review Program funded by the private sector to subsidize the attendance of TOL Staff at ESI classes. The TOL agrees to pay for any amounts above the subsidy when staff members enroll in the ESI Education Program.

D. Technical Issues Resolution: The ESI Technical Issues Program is provided as a standing Subcommittee of the ESILC. The Technical Issues Program provides highly qualified public and private sector professionals to review engineering design standards and practices for application to the TOL needs. The Technical Issues Resolution committee reviews TOL regulatory documents such as the Design and Construct Standards Manual (DCSM), the Subdivision and Land Development Regulations (SLDR), the Zoning Ordinance, etc. to insure that regulatory requirements can reasonably be achieved within current standard/acceptable engineering practices. The Technical Issues Subcommittee provides detailed recommendations to the ESILC for further consideration at the TOL Planning Commission and Town Council levels as appropriate.

E. Technology Application Program: ESI provides a Technology Application Program funded by private industry that researches, tests and implements technology enhancements to the processes of submission, review and approval of plans (ESRA). The purpose of the ESI ESRA program is to provide effective technology applications to the TOL process when the public/private partnership deems them to be of use. A small amount (normally \$10 per hour) is retained from the Peer Review Program funded by the private sector to subsidize efforts in the ESRA program that will benefit ESI Members across the public/private partnership.

2. **TOWN OF LEESBURG OBLIGATIONS:**

A. Communication Program: The TOL agrees to designate a staff member to be the co-chair of the ESI Leesburg Committee and grant permission for that person to serve on the ESI Board of Directors.

B. Peer Review Program: The TOL agrees to provide staff members for those MSR, TPR, PSR, and CQR elements that have been determined to be part of the “current” Peer Review Program. Current Peer Review practices will be retained until the public/private partnership jointly develops a new peer review process that is in conformance with any new or revised plan review procedures that are developed by the Director of Plan Review to improve upon or make the TOL plan approval process more efficient. Any final changes to this process must have the written approval of the Town Manager and the Executive Director of ESI and shall require a formal addendum to this agreement before the new Peer Review Process goes into effect. The TOL further agrees to provide the appropriate staff required to accommodate any addendums related to new peer review procedures that have been ratified in writing by ESI and the Town Manager.

C. Education Program: The TOL agrees to provide subject matter experts as instructors at the standard ESI rates for instructors for those classes where “official” policy, procedure or regulation matters are presented. ESI’s compensation for providing these services shall be deposited directly into the ESI’s education fund for the TOL to help subsidize the attendance of TOL Staff at ESI classes. The TOL also agrees to designate one staff member to be on the ESI Leesburg Education Subcommittee. Upon proper invoice submitted by ESI for education opportunities in which TOL staff is enrolled, TOL agrees to pay for those education opportunities consumed above the subsidy provided by the Peer Review Program and instructor compensation as noted above.

D. Technical Issues Resolution: The TOL agrees to provide staff members to serve on ESI/Leesburg Technical Issues Resolution Committee and to conduct research, gather data and provide technical issue documents necessary to assist the Technical Issues Resolution Subcommittee. ESI, where possible, will provide Continuing Education credits for those participating in the Technical Issues Resolution Program.

E. Technology Application Program: The TOL agrees to encourage staff participation in advancing the implementation of technology to improve land development submission, review and approval processes. The TOL also agrees to consider and assist in established “pilot projects” that are designed to provide objective testing of proposed technology improvements provided by the private sector.

3. **PERIOD OF AGREEMENT:**

The period of this agreement shall initially be from June 1, 2013, through June 30, 2014. The parties may by mutual consent expressed in writing extend the period of the agreement for four (4) additional (consecutive) one-year periods. Said consent for contract extensions shall be executed at least thirty days prior to the expiration of the six month initial contract and at least thirty days prior to the expiration of each future one-year extension agreement.

4. **TERMINATION OF AGREEMENT:**

A. Termination for Convenience: Either party may terminate this agreement upon thirty (30) days advanced written notice to the other party.

B. Termination for Cause: Either party may terminate this agreement for caused default or negligence on the part of the other party without written notice and without the payment of any termination costs.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available by the TOL to support continuation of performance in a subsequent fiscal year, the agreement shall be cancelled.

5. **TIME OF PERFORMANCE:**

ESI shall provide services when land development applications are submitted in accordance with this agreement and any future ratified addendums. TOL shall provide application tracking numbers from the TOL adopted system by the end of the next business day (generally within 24 hours) of the ESI Staff Engineer request (requests made by email, FAX, or phone).

6. **COMPENSATION:**

ESI shall not be paid for services unless authorized by the Town Manager or designee. The TOL shall pay ESI an annual sustaining membership fee of \$15,000 to maintain the ESI Leesburg Program paid on a monthly basis at the rate of \$1,250. The total annual charges shall not exceed Fifteen Thousand Dollars (\$15,000) exclusive of enrollment education tuition not covered by the subsidy. However, if services are required which will exceed this amount, the amount may be increased with the prior written authorization by the TOL. As ESI is not a bona fide TOL employee, the parties agree that no deductions for withholding taxes, worker’s compensation, insurance, or other fringe benefits will be made and such will be the sole responsibility of ESI. The remainder of the ESI program’s cost shall be borne by the applicant as defined in ESI implementation documents for the “pay-as-you-go” program.

ESI shall be permitted to charge the applicant directly on an hourly basis for minimum submission and team peer review services for all submissions. Of this rate, an hourly proportion will be set aside as an education fund to subsidize the continuing professional education of Town employees taking classes with ESI. ESI shall apply any education funds so collected against invoices to the Town for education fees and document the application of those funds on the invoices.

7. **METHOD OF PAYMENT:**

TOL shall pay ESI at the rate specified in Paragraph 6 of this Agreement. Such sum shall be paid within 30 days of receipt of a properly completed invoice from ESI. Payment shall be made by check or other pre-agreed upon method from the TOL directly to ESI.

8. **PROHIBITION AGAINST CONTINGENT FEES:**

ESI warrants that it has not employed any company or person other than a bona fide employee working for ESI to solicit or secure this agreement and that it has not paid or agreed to pay any person, company or corporation, individual or firm, other than a bona fide employee working solely for EST any favor, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of breach of this provision, the town shall have the right to terminate this agreement without liability, and at its discretion, to deduct from the agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

9. **PROJECT AUDITS:**

ESI shall maintain adequate records in such a manner that they may be audited in progress by the town and upon completion of the project. A simple ledger sheet showing disbursement by line item is required. ESI shall provide access to the following documents during this audit:

A. All paid vouchers including those for out-of-pocket expenses, and other reimbursements supported by invoices, including ESI copies of Periodic Estimate for Partial Payment:

- (1) Ledgers;
- (2) Cancelled Checks;
- (3) Deposit Slips;
- (4) Bank Statements;
- (5) Journals, if any;
- (6) Copies of all agreements and copies of any agreement amendments or addendums;
- (7) Insurance documents;
- (8) Payrolls;
- (9) Time sheets.

10. INSURANCE:

ESI shall obtain, prior to the start of work, and keep in force, General Liability and Automobile Liability policies as identified in the paragraph below.

ESI shall provide and maintain the following minimum limits of insurance coverage.

A. Commercial General Liability

(1) ESI's insurance shall cover the TOL for those sources of liability, which would be covered by the latest edition of the standard Commercial General Liability Coverage Form as filed for use in the Commonwealth of Virginia by the Insurance Services Office.

(2) The minimum limits to be maintained by ESI (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachments of the Amendment of Limits or Insurance (Designated Project or Premises) endorsement to a Commercial General Liability Policy with the following amounts specified for this project:

General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000
Products-Completed Operations Aggregate Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit	\$ 50,000
Medical Expense Limit	\$ 5,000

(3) ESI shall continue to maintain Products/Completed Operations coverage during the time the agreement is in effect and will endeavor to maintain coverage for a period of five years after the agreement completion date. The insurance shall cover those sources of liability which would be covered by the latest edition of Coverage A of the Commercial General Liability Form or Coverage A of the Products/Completed Operations Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without restrictive endorsements. The minimum limits to be maintained by ESI (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement with the following amounts specified for this project

Products-Completed Operations Aggregate Limits	\$1,000,000
Each Occurrence Limit	\$1,000,000

B. Business Auto Policy:

(1) ESI's insurance shall cover the offeror for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy as filed for us in the Commonwealth of Virginia by the Insurance Service Office, without the attachment of restrictive endorsements Coverage shall include owned, non-owned and hired autos.

(2) The minimum limits to be maintained by ESI (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per accident combined single limits for bodily injury liability and property damage liability.

C. Worker's compensation and employer's liability:

The insurance provided by ESI pursuant to the resulting agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the TOL or the TOL's official, officer, agent or employee, shall be in excess of and not contributing with the insurance provided by or on behalf of the offeror.

The coverage other than Worker's Compensation may be either on an occurrence or a claims-made basis. Provided, however, that claims made coverage for other than the Products/Completed Operations shall respond to claims arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting agreement but before the end of the agreement completion date. Provided further that claims made arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting agreement but before the end of five years after the agreement completion date provided that the claim is made within eight years after the agreement completion date.

Prior of commencing work under this agreement, ESI shall furnish the TOL with a Certificate(s) of Insurance naming the TOL its officers, employees and agents, as additional insured, giving a forty-five (45) day notice of cancellation, non-renewal, or change in the insurance coverage, and/or restrictions.

11. **EMPLOYMENT DISCRIMINATION BY ESI PROHIBITED:**

During the performance of this agreement, ESI shall not discriminate in violation of federal or state law against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability; shall post in conspicuous places, available to employees, and applicants for employment, notices setting forth non-discrimination practices, and shall state, in all solicitations or advertisements for employees placed by or on behalf of the ESI, that ESI is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

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

12. **ETHICS IN PUBLIC CONTRACTING:**

The provisions contained in Sections 11-72 through 11-80 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to this agreement.

13. **LICENSE REQUIREMENTS:**

ESI represents that it understands that all firms doing business in the Town of Leesburg are required to be licensed in accordance with the TOL’s “Business, Professional and Occupational Licensing (BPOL) Tax” Ordinance. The BPOL license number, if applicable, shall be provided prior to the commencement of services.

14. **HOLD HARMLESS CLAUSE:**

During the term of this agreement, ESI shall indemnify, defend and hold harmless the TOL, its officials, employees, agents and representatives thereof, from all suits, actions, or claims, including attorney’s fees, brought on account of any personal injuries, damages or violation of rights, sustained by any person or property in consequence of any act related to this contract or on account of any act or omission by the ESI or its employees, or from any claims or amounts arising from violation of any law, by law, ordinance, regulation or decree. This clause shall include claims involving infringement of patent or copyrights.

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

WITNESS THE FOLLOWING SIGNATURES:

THE TOWN OF LEESBURG

Signature: _____ Date: _____

John Wells
Town Manager

THE ENGINEERS AND SURVEYORS INSTITUTE

Signature: _____ Date: _____

Terrance C. Ryan, PhD, PE
Executive Director

PRESENTED: June 25, 2013

RESOLUTION NO. 2013-

ADOPTED: _____

A RESOLUTION: RE-AUTHORIZING THE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND THE ENGINEERS AND SURVEYORS INSTITUTE (ESI) TO CONTINUE THE LEESBURG ESI PROGRAM

WHEREAS, in January of 1997 the town signed an Agreement with the Engineers and Surveyors Institute (ESI) creating a public/private partnership and a program for improving the Town of Leesburg plan review and approval process; and

WHEREAS, in July of 2000, the Agreement was re-authorized by the adoption of Resolution #2000-137; and

WHEREAS, in December of 2004, the Agreement was re-authorized by the adoption of Resolution #2004-199; and

WHEREAS, in December of 2008, the Agreement was re-authorized by the adoption of Resolution #2008-182; and

WHEREAS, the purpose of the ESI Program is to achieve a reduction in the overall time required to review and approve land development plans submitted to Leesburg as well as to improve the quality of submissions and compliance with current ordinances and standards; and

WHEREAS, the ESI Program includes Peer Review of Plans, Education Classes, and Technical Issue Resolution as well as other benefits noted within the attached agreement; and

WHEREAS, the period of the Agreement for the Leesburg ESI Program is set to expire on June 30, 2013; and

WHEREAS, ESI has requested re-authorization of the Agreement with the initial term of one (1) year starting on July 1, 2013, with four (4) additional one-year renewals starting on July

A RESOLUTION: RE-AUTHORIZING THE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND THE ENGINEERS AND SURVEYORS INSTITUTE (ESI) TO CONTINUE THE LEESBURG ESI PROGRAM

1, 2014 (which will continue to coordinate the Agreement period with the town's fiscal year); and

WHEREAS, the average number of plan submissions to obtain approval has been reduced from over 5 (before ESI's involvement began in 1997) to 3 or less with Leesburg's current Plan Review Process; and

WHEREAS, ESI has conducted over twenty (20) education classes specifically for support of the Leesburg ESI Program; and

WHEREAS, the ESI Peer Review Committee has reviewed over 2000 plan submissions during the past eleven (15) years; and

WHEREAS, multiple chapters of the Town's Design and Construction Standards Manual have been revised based on recommendations and support from the Technical Issue Committee of the Leesburg Program; and

WHEREAS, the ESI Leesburg Program continues to improve communications between town staff and the engineering and surveying community; and

WHEREAS, the continued method of financing the Peer Review Program will be funded by the ESI / private sector's pay as you go program; and

WHEREAS, the Town's complete ESI membership costs shall continue at the existing contract cost of \$1,250 per month (\$15,000 per year) for the new term of the Agreement; and

WHEREAS, the Director of Plan Review recommends approval of the reauthorization of the ESI Agreement.

A RESOLUTION: RE-AUTHORIZING THE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND THE ENGINEERS AND SURVEYORS INSTITUTE (ESI) TO CONTINUE THE LEESBURG ESI PROGRAM

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia as follows:

The Town Manager is authorized to sign a new Agreement with ESI under the terms and conditions of the attached agreement which is in a form that has been approved by the Town Attorney and limits the town's cost to no greater than \$1,250 per month (\$15,000 per year) for an initial one (1) year period starting on July 1, 2013, and for four (4) additional one-year renewals starting on July 1, 2014.

PASSED this _____ day of _____ 2013.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council