

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: JANUARY 24, 2019

AGENDA ITEM NUMBER: 13

SUBJECT: RESOLUTION SELECTING AN ENGINEERING FIRM AND AUTHORIZING EXECUTION OF A CONTRACT FOR ENGINEERING AND CONSULTING SERVICES TO PROVIDE THE NECESSARY DEVELOPMENT AND OVERSIGHT OF A PUBLIC SAFETY RADIO COMMUNICATIONS UPGRADE (INTERAGENCY COMMUNICATIONS DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: _____

f. Dudley Watts, Jr.
COUNTY MANAGER

DATE: January 22, 2019

**RESOLUTION SELECTING AN ENGINEERING FIRM AND AUTHORIZING
EXECUTION OF A CONTRACT FOR ENGINEERING AND CONSULTING SERVICES
TO PROVIDE THE NECESSARY DEVELOPMENT AND OVERSIGHT
OF A PUBLIC SAFETY RADIO COMMUNICATIONS UPGRADE
(INTERAGENCY COMMUNICATIONS DEPARTMENT)**

WHEREAS the Interlocal Cooperation Agreement for Installation, Operation, and Maintenance of an 800 MHz Public Safety Trunked Radio System between the City of Winston-Salem and Forsyth County entered into during 2002 provides that the system operation and management will be employed through a County department and that operational and maintenance costs will be shared equally by the City and County for jointly owned property of the system;

WHEREAS the radio system has been in operation 24 hours a day, 7 days a week for more than 14 years and technical support and parts availability are increasingly limited;

WHEREAS Forsyth County staff submitted a Request for Qualifications in order to identify qualified firms to provide engineering and consulting services including the assessment, design, development, and oversight of the replacement of the radio system, on the basis of demonstrated competence and qualification to provide these professional services without regard to a fee pursuant to N.C.G.S. 143-64.31;

WHEREAS sixteen responses were received in response to the Request for Qualifications, and County staff reviewed and evaluated the proposals and ultimately identified Federal Engineering, Inc., as the best qualified firm for this project; and

WHEREAS Federal Engineering, Inc., will assess needs of both County and City departments for radio communications, develop the technical specifications to assist the Purchasing Department with the RFP for equipment, evaluate the technical responses to proposals for the radio system upgrade, oversee the technical installation of the hardware associated with the radio system upgrade, and assist with the overall upgrade of the Public Safety Radio Communication System that will provide modern and reliable radio communications equipment to help assure the safe and efficient operation of all of our emergency services personnel;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby selects Federal Engineering, Inc., for engineering and consulting services to provide the necessary development and oversight of a public safety radio communications upgrade;

BE IT FURTHER RESOLVED by the Forsyth County Board of Commissioners that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a contract for engineering and consulting services with Federal Engineering, Inc., at a cost of \$259,680.00, split between two fiscal years, beginning upon execution of the agreement and ending upon completion of specified contracted consulting tasks, which cost will be equally shared by the City and the County, subject to a pre-audit certificate

thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The original contract is incorporated herein by reference (Contract Control # 2019-0330-00); and

BE IT FURTHER RESOLVED by the Forsyth County Board of Commissioners that the County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, subsequent contracts for these services and amendments thereto within budgeted appropriations in the current and future fiscal years, if these services remain necessary to Forsyth County.

Adopted this 24th day of January 2019.



**Federal
Engineering®**

Federal Engineering, Inc.

10600 Arrowhead Drive

Fairfax, VA 22030

703-359-8200

BASIC SERVICE AGREEMENT

AGREEMENT made this ____ day of ____ 2018 by and between Federal Engineering, Inc., a Maryland corporation, having offices at 10600 Arrowhead Drive, Suite 160, Fairfax, Virginia 22030, (hereinafter called "**FE**") and the County of Forsyth, NC having offices at 201 Chestnut Street, Winston Salem, NC 27101 (hereinafter called the "**Client**").

The period of performance of this Agreement, for the purpose of issuing task orders hereunder, is from _____ to _____. This agreement may be extended by mutual agreement by both parties, in writing.

Subject to the provisions herein, **FE** shall in accordance with task orders issued hereunder, perform tasks in the general area of telecommunications, information technology, and management consulting services.

1. **STATEMENT OF WORK:** **FE** will complete the initial work as described in its proposal for *Consulting Services for Public Safety Radio Communications* dated April 5, 2018 in response to the Client's *Request for Qualifications and Proposals - Consulting Services for Public Safety Radio Communications*, which is attached and made part of this agreement.

The **Client** may, from time to time, issue additional written Task Orders under this agreement which will specify: (a) the statement of work to be performed; (b) security requirements, if any; (c) ceiling price or amount of the order including all charges and travel authorizations, if any; and (d) any other applicable instructions. Said Task Orders will incorporate this agreement by reference. Where a conflict exists between the terms of any Task Order and the terms of this Agreement the terms of this Agreement shall control.

2. **CLIENT OBLIGATIONS:** Nothing herein shall be construed as an obligation of the **Client** to issue any additional tasks hereunder and the limit of the **Client's** duties shall extend only to the initial work and such additional task orders as it may issue. Additional task Orders, when issued, are subject to review and acceptance by **FE**, which shall accept by signing in the space so provided and returning a copy of the Task Order.

3. **COMPENSATION:** **FE** will be compensated in accordance with the terms and conditions as described in its proposal for *Consulting Services for Public Safety Radio Communications* dated April 5, 2018 in response to the Client's *Request for Qualifications and Proposals - Consulting Services for Public Safety Radio Communications* for Phases I, II, III in Fiscal Year 2019, and accept Phase IV Implementation Support services in Fiscal Year 2020, in accordance with the terms and conditions as described in its proposal for *Consulting Services for Public Safety Radio Communications* dated April 5, 2018 in response to the Client's *Request for Qualifications and Proposals - Consulting Services for Public Safety Radio Communications*.

For any additional fixed price Task Orders, **FE** will submit invoices in accordance with the agreed upon milestone schedule showing the tasks that have been completed. For any additional time and materials Task Orders, **FE** will submit invoices in accordance with the rates and terms indicated in Schedules A of its proposal. Unless stated otherwise in any Task Order, payment of all invoices shall be due within thirty (30) days of the invoice date. Late balances are subject to a finance charge of 1.5 percent per month or fraction thereof. Any and all taxes, except income taxes, imposed or assessed by reason of this Agreement or its performance, including but not limited to sales or use taxes, will be in addition to the invoiced amounts and shall be paid by the Client.

4. **INDEPENDENT CONTRACTOR:** **FE** shall be deemed at all times to be an independent Contractor. Neither **FE** nor its personnel shall at any time, or for any purpose be considered employees or agents of the **Client**. **Client** is hereby contracting with **FE** for the services described in the Task Order and **FE** is not required to perform the services during a fixed hourly or daily time and if the services are performed at the **Client's** premises, then **FE's** time spent at the premises is to be at the discretion of **FE**; subject to the **Client's** normal business hours and security requirements. **FE** hereby confirms to the **Client** that the **Client** will not be required to furnish or provide any training to **FE** to enable **FE** to perform the services required hereunder. The services shall be performed by **FE** and the **Client** shall not be required to hire, supervise or pay any assistants to help **FE** perform the services under this Agreement. The management of the work, including but not limited to the order or sequence in which it is performed, shall be under the control of **FE** subject to compliance with the task order. Except to the extent that **FE's** work must be performed on or with **Client's** computer or **Client's** software, all materials used in providing the services shall be provided by **FE**. **FE** shall provide any insurance coverage that is required in the normal course of business as well as any specialized insurance that is specifically called for in this agreement. The **Client** understands and agrees that as an independent contractor, **FE** does not have any authority to sign contracts, notes, or obligations to make purchases, or to acquire or dispose of any property for or on the behalf of the **Client**.

5. **WARRANTY:** **FE** hereby warrants to the **Client** that the firm is not under any obligation, contract, or agreement, nor has the firm previously executed any documents whatsoever, with any person, firm, association, or corporation that would, in any manner, prevent **FE** from giving, and the **Client** from receiving, the full benefit of the firm's consulting services. **FE** makes no other warranties, whether written, oral or implied, including without limitation warranty of fitness for purpose or merchantability. In no event shall **FE** be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such damages has been disclosed to **FE** in advance or could have been reasonably foreseen by **FE**, and in the event this limitation of damages is held unenforceable, then the parties agree that by reason of the difficulty in foreseeing possible damages, all liability to **Client** shall be limited to One Hundred dollars (\$100.00) as liquidated damages and not as a penalty.

6. **PROPRIETARY INFORMATION:** **FE** hereby agrees that at all times both during the term of this Agreement and three (3) years after termination thereof, **FE** will hold inviolate and keep secret all knowledge, information, data, trade secrets, inventions, and customer lists that have been clearly marked "PROPRIETARY" by the **Client**. **FE** under the terms of this agreement will not disclose such information to any competitor, or other individual, corporation, or firm except when authorized to do so by the **Client**, in

writing. Nothing herein shall be construed as to preclude **FE** in engaging in any occupation or endeavor which will not directly or indirectly involve the proprietary information of the **Client**.

FE's obligations with respect to handling and using proprietary information as set forth in this agreement are not applicable to: (1) Information that at the time of disclosure under this agreement is either known to **FE** or disclosed in existing literature or patents or is in any other way in the public domain; (2) Information that after disclosure under this agreement becomes known to **FE** by independent discovery or by casual observation or analysis of information provided by a third party; (3) Information that after disclosure under this agreement becomes known to **FE** from a source other than the **Client** without breach of any obligation by the disclosing party; (4) Information that is or has been furnished by the disclosing party to the Government with "unlimited" rights, and (5) Information available in the public domain

7. **RELEASE OF INFORMATION:** **FE** shall not make any public release of information in any medium concerning this agreement without prior review and approval by the **Client**. Requests for review of any materials proposed for public release in any medium shall be submitted in writing to an authorized representative of the **Client** for approval, which shall not be unduly withheld.

8. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated by either party at any time, for any reason, by giving written notice of such termination to the other party. Should the **Client** terminate this agreement while work is in progress, **FE**, upon receipt of the notice shall stop all work as quickly as practical. The **Client** shall be responsible for all labor and expenses incurred by **FE** up until work actually terminates.

9. **ASSIGNMENT:** Neither party shall assign or transfer this Agreement without written consent of the other party.

10. **GOVERNING LAW:** This agreement shall be interpreted and the rights of the parties shall be determined under the laws of the Commonwealth of Virginia. The **Client** hereby agrees to pay all legal, court, and collection fees incurred by **FE** to collect any overdue invoices rendered to the **Client**. The **Client** agrees that the venue for any and all disputes shall be in the courts of Fairfax County, Virginia.

11. **COMPLIANCE WITH APPLICABLE LAWS:** **FE** agrees to comply with all applicable laws, statutes, and orders of the United States Government and any State or political subdivisions thereof now in effect or hereafter enacted, and the same shall be deemed to be incorporated by reference. **FE** shall be held harmless by the **Client** for violation of any governmental procurement regulation to which it may be subject but to which specific written reference is not made in this agreement.

12. **SET OFF:** The **Client** agrees that **FE** shall have the right to set off, against any amounts which may become due and payable to the **Client**, any amount which the **Client** may owe to **FE**, whether arising under this Agreement or otherwise.

13. **HOLD HARMLESS:** The **Client** shall indemnify and save **FE** harmless from any losses, claims, demands, suits, judgments, or out-of-pocket expenses incurred as a result of any damage or injury to or claim by the **Client**, its employees, agents, or

property, or for any injury or damage to or claim (including claims of patent or copyright infringement) by any third persons or their property which is directly or indirectly caused in the course of performance of any of the work specified in this agreement. Further, the **Client** shall indemnify and compensate **FE** for any time **FE**, its employees, personnel, agents, consultants, or attorneys spend as a result of any claim, suit, or judgment by a third party arising directly or indirectly out of the work specified in this Agreement.

14. **NON-SOLICITATION:** **Client** hereby agrees that for the term of this Agreement, and for a period of one (1) year thereafter, that the **Client** shall not directly or indirectly, orally, in writing, or by other method of communication, solicit any employee, agent, or consultant of **FE**, nor encourage any employee, agent, or consultant to terminate his or her employment or relationship with **FE**. **Client** further agrees that for the term of this Agreement, and for a period of one (1) year thereafter, should the **Client** hire any employee, agent, or consultant of **FE**, that **FE** is entitled to a finder's fee equal to seventy percent (70%) of the employee, agent, or consultant's first year total compensation package.

15. **WAIVER:** The failure of **FE** to insist on strict performance of any of the terms and conditions hereof shall not constitute a waiver of any other provisions.

16. **FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

17. **ATTORNEYS FEES:** If the **Client** should breach any term, condition or obligation created by this Agreement, then **FE** shall be entitled to be reimbursed for all of its reasonable attorneys' fees, court costs, litigation fees, transcript costs, deposition costs, and other related litigation and non-litigation costs incurred by **FE**.

18. **CONSTRUCTION:** Paragraph numbers and headings are for convenience only and shall not affect the interpretation of this agreement. If any term or condition of this Agreement is in conflict with local, state, or federal law and becomes null and void, the remainder of the Agreement shall survive and remain in effect. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law. This Agreement shall be construed as having been negotiated between the parties and not drafted by a particular party.

19. **ENTIRE AGREEMENT:** This Agreement supersedes all previous agreements both oral and in writing and contains all the terms and conditions of this transaction. All modifications to this agreement must be reduced to writing as amendments and duly executed by both parties hereto.

20. **EFFECTIVE DATE:** This Agreement shall become effective when executed by both parties and shall be binding upon the parties hereto, their successors and permitted assigns.

FEDERAL ENGINEERING, INC.

County of Forsyth, North Carolina

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Title

Title

Date

Date