



**ENERGY SAVING PERFORMANCE CONTRACT
SERVICES FOR HVAC, ROOFING, AND OTHER ENERGY SAVING
PROJECTS**

**REQUEST FOR QUALIFICATIONS
RFQ 2026-Q1008**

SEALED QUALIFICATIONS DUE DATE
October 20th, 2026 @ 2:00 p.m. ET

Central Services Complex
City of Oak Ridge
100 Woodbury Lane
Oak Ridge, Tennessee 37830

Telephone: (865) 425-5337
Attn: Procurement Specialist
Email: bids@oakridgetn.gov

Date Issued: September 3rd, 2026

1 OVERVIEW AND PURPOSE

1.1 Project Background and Overview

The City of Oak Ridge seeks qualifications from experienced Energy Services Companies (ESCOs) to develop and implement a comprehensive Energy Savings Performance Contract (ESPC) program. The selected firm shall evaluate municipal and school facilities to identify energy conservation measures (ECMs), prepare an Investment Grade Audit (IGA), develop a comprehensive implementation plan, provide guaranteed energy savings, and furnish complete design, construction, commissioning, and measurement and verification services.

The City's objective is to modernize aging HVAC systems, roofing infrastructure, and other energy-saving projects while reducing utility consumption, improving occupant comfort, lowering maintenance costs, and extending facility life through guaranteed energy savings and innovative financing. The selected firm will enter into a multi-year agreement with the City to provide professional and construction services. This project will likely be implemented in phases due to fiscal constraints.

Information related to this solicitation, including any addenda, will be posted to the City's Website at <https://www.oakridgetn.gov/177/Bid-Requests>. For questions related to this RFQ, contact the City's Procurement Specialist via email at bids@oakridgetn.gov.

2 SCOPE OF PROJECT

Below is a preliminary scope of services that will be refined and negotiated with the selected ESCO.

The selected ESCO may provide professional services including, but not limited to:

Project Initiation

- Conduct kickoff meeting.
- Review existing roof and HVAC reports.
- Meet with staff to identify other areas where energy-saving projects may benefit the City and Oak Ridge Schools.
- Validate existing reports and perform additional studies and reporting as needed.
- Develop project schedule.

Investment Grade Audit (IGA)

The selected ESCO shall perform a comprehensive Investment Grade Audit of all facilities identified by the City and Oak Ridge Schools.

The audit shall include:

Facility Assessment

- Review existing building documentation
- Perform site investigations
- Interview maintenance staff

- Review maintenance records
- Review utility consumption for the previous 36 months
- Identify deferred maintenance
- Evaluate building operating schedules
- Assess current Building Automation Systems
- Indoor air quality assessment

HVAC Specific Evaluation

Inventory and evaluate all HVAC equipment including:

- Air handling units
- Rooftop units
- Chillers
- Boilers
- Cooling towers
- Heat pumps
- Variable Refrigerant Flow (VRF) systems
- Pumps
- Exhaust systems
- Unit ventilators
- Controls
- Variable Frequency Drives
- Energy Recovery Units

Document:

- Equipment age
- Remaining useful life
- Reliability
- Maintenance history
- Refrigerant type
- Capacity
- Energy efficiency
- Code compliance
- Indoor air quality impacts
- Operational deficiencies

Roof Specific Assessment

The ESCO shall evaluate every roof system included in the project.

Evaluation shall include:

- Roof type
- Age
- Remaining useful life
- Warranty status
- Drainage
- Moisture intrusion
- Structural observations
- Existing insulation

- Thermal performance
- Roof penetrations
- Flashings
- Membrane condition
- Opportunities to improve energy efficiency

Where appropriate, the ESCO shall perform:

- Infrared roof scans
- Moisture testing
- Core samples
- Insulation analysis
- Thermal imaging

The ESCO shall identify roof deficiencies that adversely affect HVAC performance, building envelope efficiency, or indoor environmental quality.

Energy Conservation Measures (ECMs)

The ESCO shall identify and quantify Energy Conservation Measures including, but not limited to:

Mechanical Systems

- High-efficiency HVAC replacement
- Heat pumps
- Geothermal systems (where feasible)
- Dedicated Outdoor Air Systems
- Chiller optimization
- Boiler replacement
- Variable speed pumping
- Demand-controlled ventilation
- Energy Recovery Ventilation
- Building Automation upgrades
- HVAC recommissioning

Roofing

- Roof replacement
- Increased insulation values
- Reflective roof systems
- Cool roof technologies
- Roof insulation upgrades
- Roof drainage improvements
- Roof systems supporting rooftop mechanical equipment
- Roof modifications necessary for HVAC replacement

Controls

- Advanced Building Automation Systems
- Remote monitoring
- Fault detection diagnostics
- Occupancy scheduling
- Demand response capabilities

Financial Analysis

The ESCO shall prepare a comprehensive financial analysis including:

- Project implementation costs
- Annual utility savings
- Maintenance savings
- Operational savings
- Lifecycle costs
- Cash flow analysis
- Financing options
- Utility incentives
- TVA incentives
- Federal funding opportunities
- State grant opportunities

The ESCO shall clearly identify:

- Guaranteed energy savings
- Annual savings guarantee
- Payback period
- Net Present Value
- Internal Rate of Return
- Twenty-year lifecycle analysis

Capital Prioritization

Develop a comprehensive implementation strategy prioritizing projects based upon:

- Life and safety
- Operational reliability
- Energy savings
- Equipment condition
- Roof condition
- Remaining useful life
- Educational impacts
- Public service impacts
- Occupant comfort
- Indoor Air Quality
- Maintenance costs
- Return on investment

Projects shall be grouped into:

- Immediate
- Phase I
- Phase II
- Future implementation

Develop a replacement schedule for units based on life expectancy including expected yearly costs:

Guaranteed Energy Savings Proposal

Upon completion of the Investment Grade Audit, the ESCO shall prepare a Guaranteed Energy Savings

Proposal including:

- Scope of improvements
- Construction schedule
- Guaranteed annual savings
- Measurement and Verification Plan
- Financing options
- Performance guarantees
- Risk allocation
- Annual reporting requirements

Design and Construction

Provide complete turnkey services including:

- Engineering
- Architectural support as required
- Roof design
- Mechanical design
- Electrical design
- Controls integration
- Construction documents
- Permitting
- Procurement
- Construction management
- Quality assurance
- Commissioning
- Training

Warranty Requirements

The ESCO shall identify all manufacturer and workmanship warranty periods and procedures for warranty service.

- Roofing warranties
- HVAC equipment warranties
- Control warranties
- Workmanship warranties.

Measurement and Verification

Provide Measurement and Verification (M&V) in accordance with the **International Performance Measurement and Verification Protocol (IPMVP)** for the duration negotiated by the City.

Services shall include:

- Utility monitoring
- Annual savings verification
- Performance reporting
- Operational recommendations
- Annual reconciliation of guaranteed savings

Deliverables

The selected ESCO shall provide:

- Investment Grade Audit
- Complete asset inventory
- Roof condition assessment
- Facility Condition Index (FCI) recommendations
- Energy Conservation Measure report
- Building energy models
- Lifecycle cost analyses
- Guaranteed savings proposal
- Financial analysis
- Construction documents
- Commissioning reports
- Measurement and Verification Plan
- Annual M&V reports
- Staff training documentation
- Record drawings

ADDITIONAL SERVICES

We are also seeking qualifications for additional services for energy saving projects that may be required beyond the initial project scope. The City will detail the scope of work for these services as they come up.

2.1 Public Hearings and Presentations

Attendance at public hearings, staff meetings, and one City Council meeting to present or discuss the projects, as requested.

3 TERM OF AWARD

The term of any agreement resulting from this RFQ will be established through negotiations and will be based on the approved project scope, implementation schedule, financing structure, guaranteed-savings period, and measurement and verification requirements. Because the City anticipates that work may be implemented in phases, the agreement may provide for phased authorizations, amendments, or work orders, subject to the following:

- that each phase or project is subject to available funding and written authorization by the City;
- that the scope, schedule, compensation, guaranteed savings, and measurement and verification obligations for each authorized phase will be documented in writing;
- that no work is authorized until the applicable agreement, amendment, work order, or notice to proceed has been fully approved and executed by the City;
- that the City may elect not to proceed with any proposed phase or additional project without creating an entitlement to future work; and
- that any extension, financing period, savings-guarantee period, or measurement and

verification period will be governed by the final negotiated agreement and applicable law.

4 SUBMITTAL REVIEW

4.1 Criteria

Responses to this Request for Qualifications will be evaluated by a panel of City staff and may include elected officials. The following criteria will be used to evaluate submissions:

A. Experience and Qualifications (up to 40 points)

Firm and Personnel: ESPC Experience and qualifications of the firm and key personnel with similar services for similar clients.

Client References: Quality and relevance of client references provided.

Conflicts of Interest: Any conflicts of interest between the firm, key personnel, and the City.

B. Capabilities and Unique Strengths (up to 35 points)

Capabilities: Overall capabilities of the service provider.

Specialties: Range of specialties offered.

Resources: Capacity to deliver services within industry-standard response times.

Value-Added Features: Exceptional features and unique strengths of the firm and its team that differentiate it from competitors.

C. Thoroughness and Quality of Response (up to 25 points)

Responsiveness: Thoroughness and responsiveness to the entire procurement solicitation.

Understanding of Needs: Demonstrated understanding of the City's needs.

Reservation of Right and Evaluation

The City reserves the right to reject any or all proposals, to waive technicalities or informalities, and to accept any proposal deemed to be in the best interest of the City.

4.2 Interviews

The City reserves the right to conduct interviews with some or all proposers based on the submittal review. Interviews will be conducted in the City if practical. The City will use the evaluation criteria above in considering firms invited to interview.

5 REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS

5.1 Communications

All communication of any nature with respect to this RFQ shall be addressed to the City's Procurement Specialist using the contact information identified in this RFQ. With the exception of communications with the Procurement Specialist for this RFQ, prospective firms and their staffs are prohibited from communicating with elected City officials, City staff, and any selection committee member regarding this RFQ or submittals from the time the RFQ was released until the selection results are publicly announced. Violation of this provision may lead to disqualification of the firm's qualification for consideration.

5.2 Duties and Obligations of Firms in the RFQ Process

Interested firms are expected to fully inform themselves as to all conditions, requirements, and specifications of this RFQ before submitting a qualification. Firms must perform their own evaluation and due diligence verification of all information and data provided by the City and their own evaluation and due diligence of any consultants the firm proposes to engage to provide any of the professional services. The City makes no representations or warranties regarding any information or data provided by the City. Firms are expected to promptly notify the City in writing to report any ambiguity, inconsistency, or error in this RFQ. Failure to notify the City accordingly will constitute a waiver of claim of ambiguity, inconsistency, or error.

5.3 Registration to do Business

The Contractor must be registered to do business in the state of Tennessee as evidenced by a Certificate of Existence or equivalent registration from the Secretary of State, and must maintain all required professional and business licenses throughout the term of the Contract.

5.4 Addenda

In order to clarify or modify any part of this RFQ, addenda may be issued and posted at the City's official website at: <https://www.oakridgetn.gov/177/Bid-Requests>.

Any requests for information or clarification shall be submitted in writing to the City's Procurement Specialist at bids@oakridgetn.gov no later than Friday, September 25, 2026, at 12:00 p.m. Any addenda the City determines are necessary will be issued and posted to the City's official website no later than Friday, October 2, 2026, at 5:00 p.m.

5.5 No Collusion, Bribery, Lobbying, or Conflict of Interest

By responding to this RFQ, the firm shall be deemed to have represented and warranted that the qualification is not made in connection with any competing firm submitting a separate response to this RFQ and is in all respects fair and without collusion or fraud. Furthermore, the firm certifies that neither it, any of its affiliates or sub-consultants, nor any employees of any of the foregoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this RFQ.

5.6 Public Records

Confidentiality of Qualification Information: All qualifications and supporting qualification documents will become public information after the City has announced an intent to award the contract to the selected respondent. At that time, all qualifications will be available for inspection by the general public upon request.

5.7 Cost of Qualification Preparation

The City shall not be liable for any expenses incurred by any firm responding to this RFQ. Firms submitting a qualification in response to this RFQ agree that the materials and submittals are prepared at the firm's own expense with the express understanding that the firm cannot make any claims whatsoever for reimbursement from the City for the costs and expense associated with preparing and submitting a qualification. Each firm shall

hold the City harmless and free from any and all liability, costs, claims, or expenses incurred by, or on behalf of, any person or firm responding to this RFQ.

5.8 Advertising

In submitting a response to this RFQ, the respondent agrees not to use the results therefrom as part of any commercial advertising without prior written approval of the City.

5.9 Ownership of Work Products

The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents, and other work product prepared by, for, or under the direction of the selected firm pursuant to any contract under this RFQ including work product prepared by sub-consultants (collectively, the “Intellectual Property”), including, without limitation, the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose, or to assign such rights to any third party. The Intellectual Property shall be prepared in the City’s name and shall be the sole and exclusive property of the City, whether the work contemplated therein is performed. The City will grant the firm a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to fulfill the contract.

5.10 City Rights and Reservations

The City expects to select one (or more) firm(s) but reserves the right to request substitutions of any key team member, including staff and sub-consultants. The City reserves the right to contact any firm/team for any additional information, including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to modify any part of this RFQ as issued with an addendum. The City, at its sole discretion, reserves the right to reject any or all responses to the RFQ, to cancel the RFQ, to re-advertise for new RFQ responses either with identical or revised specifications, or to accept any RFQ response, in whole or part, deemed to be in the best interest of the City. The City reserves the right to waive technicalities and informalities.

A response to this RFQ shall not be construed as an agreement, nor indicate a commitment of any kind. The City reserves the sole right to award an agreement or agreements to the most qualified firm(s) on the basis of the best overall qualification that is most advantageous to the City. The City also reserves the right to make multiple awards, based on experience and qualifications if it is deemed in the City’s best interest.

5.11 Agreement

The contents of this RFQ and all provisions of the successful qualification deemed responsive by the City may be incorporated, either in whole or in part, into an agreement and become legally binding when approved and executed by both parties. Contents of the agreement may contain changes from the City’s perspective as a result of the RFQ process and qualification(s) received. The final negotiated agreement may include the scope of work as outlined in this RFQ along with the successful firm’s submittal and any additions or deletions made at the discretion of the City as a result of the RFQ process.

Please see the attached Sample Professional Services Agreement. It is provided for reference only and is subject to revision during negotiations to address the ESPC scope,

construction, guarantees, financing, measurement and verification, and other project-specific requirements.

5.12 Negotiation and Award

This RFQ is qualification-based; pricing or fee proposals are not requested as part of the qualification submission. Following evaluation of qualifications and any interviews, the City intends to negotiate the final scope, terms, compensation, and agreement with the highest-ranked firm. If the City is unable to reach a satisfactory agreement, it may discontinue negotiations and proceed with another qualified firm. No contract is binding until approved and executed by the City.

6 REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS

6.1 RFQ Schedule and Qualification Submission

Provided below is the anticipated schedule of events. The City reserves the right to adjust the schedule and to add/remove specific events to meet the unique needs of this Project.

Advertisement of RFQ:	Thursday, September 3, 2026
Deadline for Receipt of Written Questions:	Friday, September 25, 2026, at 12:00 p.m.
Deadline for Addenda:	Friday, October 2, 2026, at 5:00 p.m.
Submission Deadline and RFQ Opening	Tuesday, October 20, 2026 @ 2:00 p.m.
Anticipated Selection Announcement:	Monday, November 9, 2026

The RFQ opening will be at the Central Services Complex Conference Room at 100 Woodbury Lane, Oak Ridge, Tennessee.

Qualifications shall be enclosed in a sealed envelope or package, addressed to the City of Oak Ridge. The name and address of the firm, the RFQ Number and Title – “RFQ 2026-Q1008 Energy Saving Performance Contract”, shall be placed on the outside of the package. All items required for a responsive qualification shall be included. It is the sole responsibility of the respondent to ensure that the qualification package is received no later than the established due date and time at the proper location.

Qualifications received after the due date and time will not be considered.
Qualifications submitted by facsimile or other electronic means will not be accepted.

Submit/Deliver to:

In Person or By Overnight Delivery

Attn: Procurement, RFQ 2026-Q1008
Finance Department
City of Oak Ridge
100 Woodbury Lane

Regular Mail

Attn: Procurement, RFQ 2026-Q1008
Finance Department
City of Oak Ridge
P.O. Box 1

6.2 Qualification Format

Interested firms must submit six (6) bound copies and one (1) electronic copy. The electronic copy shall be submitted via thumb drive in PDF format and organized in the same manner as the original submission.

6.3 Qualification Content

The qualification submission may be formatted at the discretion of the respondent; however, it must, at a minimum, address the areas outlined below. The City values and encourages proposals that are both clear and concise.

Coversheet: General Information

- A. Consultant's name, address, email address and phone number, along with the name and e-mail address of a contact person if different than the firm's name or signature on the qualification.
- B. State any conflicts of interest your firm or any key team member may have with this Project. This includes any projects in which your firm has an interest or may be working on that would compete or conflict with this Project. A disclosed conflict is not necessarily disqualifying; however, discovery of an undisclosed conflict at a later time may be grounds for disqualification and may void any resulting contract.
- C. Identify and describe any pending claims, disputes, and/or litigation and any that occurred within the past five (5) years involving your firm or any of your proposed sub-consultants. With respect to resolved matters, describe the outcome.
- D. Debarment – The Respondent certifies by submission of a response to this RFQ that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State, or Local department or agency.

The qualification submission shall be styled at the discretion of the submitter; however, at a minimum it must address these areas:

Experience and Qualifications

- A. Firm Overview: Provide an overview of the firm, including the organizational structure (e.g., corporation, non-profit, partnership) and a brief history.
- B. Local Government Experience: Describe the firm's experience, expertise, and capabilities with respect to local government clients, both nationally and within Tennessee.
- C. Key Personnel: Identify key personnel who would be assigned to the City, detailing each member's education, certifications, experience, and qualifications relevant to this procurement.
- D. Availability: Indicate the degree of availability of each identified individual for this

procurement.

- E. Service History: Indicate how long the firm has been providing the services for various clients based on the City's Request for Qualifications.
- F. Past Success: Describe the firm's past success in providing services similar to those anticipated by the City's Request for Qualifications.
- G. Work Examples: Provide examples of work produced for similar clients.
- H. Client References: List at least three but no more than five clients for whom the firm has provided similar services in the last three years, including at least one Tennessee local government client if applicable. For each client, describe the work performed, noting similarities and differences with the City, and provide contact information for a reference. Include the City if it is a current or past client.
- I. Conflict of Interest: Indicate any conflicts of interest between the firm and/or its key personnel and the City.
- J. Insurance Requirements: Indicate the firm's ability to meet the City's insurance requirements. (See Sample Professional Services Agreement.)

Capabilities and Unique Strengths

- A. Relevant Capabilities: Describe the firm's capabilities, especially regarding similar scopes of services and clients, which make it well qualified for this procurement.
- B. Specialties: Describe the breadth of capabilities, including the range of specialties the firm offers.
- C. Resource Depth: Describe the depth of resources, indicating the firm's capacity to render services within industry-standard response times.
- D. Value-Added Features: Describe any exceptional, value-added features of the firm's response.
- E. Competitive Advantage: Explain what sets the firm apart from its competition.

Thoroughness and Quality of Response

- A. Understanding of Needs: Provide evidence that the firm understands the City's service needs as anticipated in the Request for Qualifications.
- B. Comprehensive Response: Affirm that the firm has responded thoroughly to the Request for Qualifications and any accompanying documents.
- C. Alignment with Objectives: Indicate whether those results would address the City's purpose and objectives.

7 Attachments

7.1 Sample Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
(insert brief description of project)

This Professional Services Agreement is entered into on this _____ day of _____, 2024, by and between the City of Oak Ridge, Tennessee, 200 S. Tulane Avenue, Oak Ridge, Tennessee 37830, with a mailing address of P.O. Box 1, Oak Ridge, Tennessee 37831-0001, hereinafter referred to as the "City," and _____, hereinafter referred to as the "Consultant," (and collectively referred to as the "Parties").

WITNESSETH

WHEREAS, the City desires to obtain professional services from the Consultant relating to the development of an updated Comprehensive Plan for the City of Oak Ridge, Tennessee, and issued a Request for Proposals for the same; and

WHEREAS, the Consultant is qualified to provide such services and is willing to undertake the performance of such services for the City in exchange for the fees hereinafter specified; and

WHEREAS, the Consultant has provided a proposal for the services and the City has determined the proposal to be satisfactory.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and subject to the terms and conditions stated, the Parties do mutually agree as follows:

Section 1. Employment of Consultant.

The Consultant will perform as an independent contractor all services under this Agreement to the prevailing professional standards consistent with the professional level of care and skill ordinarily provided by competent members of the Consultant's profession, both public and private, currently practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent _____ (hereinafter referred to as the "Standard of Care"). The Standard of Care shall be the sole standard governing the Consultant's performance of its professional service under this Agreement. If Consultant represents that it has special expertise in one or more areas to be utilized under this Agreement, the Consultant agrees to perform those special expertise services to the appropriate local, regional, and national professional standards.

Section 2. Scope of Services.

The Consultant shall provide all tools, equipment, labor, materials, personnel, and supplies necessary to perform professional services set forth in the City's Request for Proposals (attached as Exhibit A) related to the development of an updated Comprehensive Plan document working in conjunction with the City's staff and the Oak Ridge Municipal Planning Commission, specially including, but not limited to, the tasks enumerated more fully in the Consultant's proposal attached hereto as Exhibit B (hereinafter referred to as the "Scope of Services"). Services not set forth in Exhibit B shall be additional services and should the Consultant perform such additional services as permitted in this Agreement, the Consultant shall be entitled to payment of additional

compensation. Exhibit B is incorporated herein by reference and made a part of this Agreement as if fully set forth herein verbatim.

Section 3. Payment for Services; Invoicing; Reports.

- A. Payment for Services. Total payment for services described herein shall be a sum not to exceed _____ as set forth in Exhibit B [_____ insert any limitation of tasks here _____]. This total payment for services includes the Consultant's ordinary expenses such as salary costs, overhead, direct expenses, and profit.
- B. Progress Payments. The Consultant shall invoice the City on a percent complete basis in accordance with _____ list any exhibit/attachment that addresses payment schedule; provided however that this Agreement shall control in the event of any conflict. If additional services, trips, or expenses are requested, the Consultant will not provide such additional services until authorized by the City in writing to proceed. The Scope of Services shall be strictly limited. The City shall not be required to pay any amount in excess of the amount identified in Section 3.A. unless the City shall have approved in writing in advance—prior to the performance of additional work—the payment of additional amounts.
- C. Invoicing and Progress. Each month the Consultant will submit to the City an invoice supporting the percentage complete for which payment is sought, along with the progress report supporting the invoiced amount. Each invoice shall also state the percentage of work completed on the Project through the end of the then-submitted billing period, the total of the current invoice amount, and a running total balance for the Project to date.
- D. Payment Timeframe. Within thirty (30) days of receipt of each such monthly invoice, the City shall make payment and the amount shown by the Consultant's approved monthly statements and other documentation submitted.
- E. Non-Conformance. Nothing contained in this Agreement shall require the City to pay for any services that are not in conformance with the Standard of Care or for invoices which are not submitted in compliance with the material terms of this Agreement, nor shall failure to withhold payment pursuant to the provisions of this Section 3 constitute a waiver of any right, at law or in equity, which the City may have if the Consultant is in default, including the right to bring legal action for damages or for specific performance of this Agreement. Waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default.
- F. Withholding of Funds. Before paying the Consultant, the City may deduct the amount of any debt from any source that the Consultant owes to the City that is not under written dispute.

Section 4. Revisions of the Scope of Services.

The City reserves the right to revise or expand the Scope of Services after due approval by the City and agreement by the Consultant as the City may deem necessary, but in such event the City shall pay the Consultant equitable compensation as agreed to by the City and the Consultant for such services. In any event, when the Consultant is directed to revise or expand the Scope of Services under this section of the Agreement, the Consultant shall provide the City with a written proposal for the entire cost involved in performing such additional services. Prior to the Consultant undertaking

any revised or expanded services as directed by the City under this Agreement, the City must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project. The Parties shall amend this Agreement to include any expansion to the Scope of Services and Payment for Services.

It is expressly understood and agreed by the Consultant that any compensation not specified in Section 3 hereinabove may require approval by City Council and is subject to the City's current budget year limitations. Further, the Consultant has no obligation to perform any services not set forth in Exhibit B without the advanced written approval of the City.

Section 5. Term and Time of Performance.

This Agreement shall commence on the date first written above and shall terminate when the City has approved the project as being final or otherwise terminates this Agreement as provided herein.

The Consultant shall commence services upon execution of this Agreement. Unless terminated, or unless the Scope of Services and Time of Performance are changed in accordance with Section 15, Changes, the Consultant shall complete the Scope of Services provided under Section 2 by (insert date). Notwithstanding anything herein to the contrary, the City acknowledges and agrees that any schedule for the provision of the Consultant's services may be modified or adjusted by written agreement between the Parties due to review by third-party consultants, review and approval of submissions by authorities having jurisdiction over the Project, changes in the scope of the Project, and/or delays by the City and or its contractor or consultants. The Consultant shall have no liability for any such delays mutually agreed to by the Parties. Time of is the essence of this Agreement.

The completion schedule set forth in this section may be subject to causes that result in delay over which neither the Consultant nor the City has any control. Notification and written justification for any such delays identified by the Consultant must be made in writing and approved by the City. The Schedule of Work will be extended to include any such delays pursuant to Section 15, Changes.

Section 6. Contract Termination Provision.

This Agreement may be terminated at any time by the City for any cause by providing the Consultant with thirty (30) days written notice of such termination. Upon receipt of such notice, the Consultant shall immediately terminate working on, placing orders, or entering into contracts for supplies, assistance, facilities, or materials in connection with this Agreement, and shall proceed to promptly cancel all existing contracts insofar as they are related to this Agreement. Data and study products prepared by the Consultant under this Agreement shall be delivered to the City if requested on the condition that the City has fully paid the Consultant all sums due for such data and study products. The City will only be obligated to compensate the Consultant in the amounts agreed herein for those services performed prior to the effective date of termination and upon the Consultant submitting a statement of actual services performed and payment requested.

Section 7. Ownership of Documents.

All materials and documents prepared or assembled by the Consultant under this Agreement shall become the sole property of the City and shall be delivered to the City without restriction on future

use on the condition that the City substantially performs its obligations under this Agreement, including prompt payment of all sums due. The Consultant may retain in its files copies of all drawings, specifications, and all other pertinent information for the services. The Consultant shall have no liability for changes made to any materials or other documents by others subsequent to the completion of this Agreement. Further, in the event the City uses any materials or other documents provided, prepared, or assembled by the Consultant without retaining the Consultant, such use shall be at the City's sole risk and liability, and the City releases the Consultant from all claims and causes of action arising from such use.

Section 8. Insurance.

- A. Before commencing work, the Consultant shall, at its own expense, procure, pay for, and maintain during the term of this Agreement the following insurance written by companies approved by the State of Tennessee and acceptable to the City. The Consultant shall furnish to the City's Legal Department copies of the insurance policies required herein stating coverages, limits, expiration dates, and compliance with all applicable required provisions. Certificate shall reference the Project/Contract Number and be addressed as follows:

City of Oak Ridge – Legal Department
P.O. box 1
Oak Ridge, Tennessee 37831-0001

1. Commercial General Liability insurance, including, but not limited to, Premises/Operations, Personal and Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability, with minimum combined single limits of \$1,000,000.00 per occurrence, \$1,000,000.00 Products/Completed Operations Aggregate, and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: (a) by accident, \$100,000.00 each accident, (b) by disease, \$100,000.00 per employee with a per policy aggregate of \$500,000.00.
3. Business Automobile Liability insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.
4. Professional Liability insurance to provide coverage against any claim which the Consultant and all sub-consultants engaged or employed by the Consultant become legally obligated to pay as damages arising out of the performance of professional services caused by any negligent act, error, or omission with minimum limits of \$1,000,000.00 per claim and \$2,000,000 annual aggregate.

If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Agreement and acceptance of the Project by the City.

B. With reference to the foregoing insurance, the consultant shall endorse applicable insurance policies as follows:

1. A waiver of subrogation in favor of the City, its officials, its employees, and officers shall be contained in the Workers' Compensation insurance policy.
2. The City, its officials, employees, and officers shall be named as additional insureds on the Commercial General Liability policy and the City shall be provided a defense to any and all claims and causes of action arising out of or related to this Agreement as may be provided pursuant to the Consultant's General Liability insurance policies. In this regard, the Consultant shall assist the city to obtain any defense provided by the Consultants general liability insurance policies.

Nothing contained in Section 12, Indemnification, of this Agreement shall be interpreted or applied as limiting, reducing, or eliminating any obligation or duty that the Consultant's insurance carrier may owe to the City as an additional insured or broader under the Consultant's General Liability insurance policies required by this Agreement, to provide the City with the defense and/or indemnify the City for any claim or cause of action, whether one or more, regardless of proportionate responsibility or liability of the Consultant or the City. Neither shall anything contained in this Section 8 be interpreted or applied as providing or otherwise entitling either the Consultant, the Consultant's insurance carrier, or any other party any right or ability to recover against the City any amounts of money attributable to damages, costs, expenses, and/or attorneys' fees based on or arising out of a finding of comparative or proportionate responsibility or liability as against the City, it being understood and agreed that the City in no way intends by this Agreement to waive its sovereign immunity regarding any claim, suit, or cause of action.

3. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' advance notice of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for any reason other than non-payment of premium.
 4. All insurance policies shall be endorsed to the effect that the City will receive at least ten (10) days' advance notice of the cancellation effective date of any policy of insurance that is cancelled by the insurance company for non-payment of premium or cancelled by the Consultant for any reason.
- C. All insurance shall be purchased from an insurance company that meets the financial rating of A- or better as assigned by the A.M. Best Company or equivalent.
- D. The Consultant shall notify the City in writing at least thirty (30) days prior to the Consultant cancelling or making any material change to any coverage(s) provided in or through the insurance policies required under this Section 8. Failure by the Consultant to provide the City with notice required hereunder may, in the sole discretion of the City, be deemed a material breach of this Agreement.

Section 9. Right to Inspect Records.

The Consultant agrees that the City shall have access to and the right to examine any books, documents, papers, and records of the Consultant involving transactions related to this Agreement on the condition that the City substantially performs its obligations under this Agreement including prompt payment of all sums due. The Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate workspace in order to conduct audits and compliance with the provisions of this section of this Agreement. The City shall give the Consultant reasonable advanced notice of intended audits.

The Consultant further agrees to include in all of its subcontracts for services on the Project, if any, a provision that on the condition the City substantially performs its obligations under this Agreement any of the Consultant's subcontractors agree that the City shall have access to, and the right to examine, any directly pertinent books, documents, papers, and records of such subcontractor involving transactions to the subcontract related to the Project and further that the City shall have access during normal working hours to all such subcontractor facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give such subcontractors reasonable advanced notice of intended audits.

Section 10. Successors and Assigns.

The City and the Consultant each bind themselves and their successors, executors, administrations, and assigns to the other party to this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign or transfer its interest herein without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Section 11. Consultant's Liability.

Acceptance of the final plans by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents, or subconsultants for the accuracy and competency of their designs, working drawings, specifications, or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by the City for any defect in the designs, working drawings, specifications, or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by the City for any defect in the designs, working drawings, specifications, or other documents and work prepared by said Consultant, its employees, associates, agents, or subconsultants. Notwithstanding the foregoing or any term or condition to the contrary, the Consultant shall be entitled to rely on and shall not be responsible for the accuracy, completeness, and timeliness of services and information furnished by the City and the City's employees, agents, or other consultants and/or contractors related to the Project.

Section 12. Indemnification.

The Consultant does hereby covenant and contract to indemnify and hold harmless the City, its City Council, officers, employees, and agents, in both their public and private capacities, from and against liability for damage to any property, injury to any person(s), or any economic loss, arising out

of, in whole or in part, (1) the Consultant's performance or non-performance of its duties under this Agreement including any acts of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant or the Consultant's agent, its subconsultants under contract, or other entity over which the Consultant exercises control; and/or (2) any defect in any services provided by the Consultant. This duty to defend, indemnify, and hold harmless shall include the Consultant's responsibility for any and all foregoing claims, even if such claims are groundless, false, and/or fraudulent and any and all equitable relief, damages, costs, and attorneys' fees except those caused by either the City's sole negligence or its willful misconduct.

This obligation shall be continuing in nature and shall extend beyond the term of this Agreement.

Section 13. Independent Contractor.

The Consultant's status shall be that of an independent contractor and not an agent, fiduciary, servant, employee, or representative of the City in the performance of this Agreement. No term or provision of or act of the Consultant or the City under this Agreement shall be construed as changing that status. The Consultant will have exclusive control of and the exclusive right to control the details of its services performed hereunder, and shall be liable for the errors and omissions of its officers, agents, employees, contractors, subcontractors, and architects, and the doctrine of respondeat superior shall not apply as between the City and the Consultant, its officers, agents, employees, contractors, subcontractors, and architects, and nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Consultant. The City and the Consultant should not be construed to be in any type of joint venture with respect to the scope of work set forth in this Agreement.

Section 14. Default.

If at any time during the term of this Agreement, the Consultant shall fail to commence its services in accordance with the provisions of this Agreement or fail to provide its services in accordance with the Standard of Care or fail to use an adequate number or quality of personnel to perform its services as is consistent with the Standard of Care or fail to perform any of its obligations under this Agreement in accordance with the Standard of Care, then the City shall have the right, if the Consultant shall not cure any such default after thirty (30) days written notice thereof, to terminate this Agreement. Any such act by the City shall not be deemed a waiver of any other right or remedy of the City. If after exercising any such remedy due to the Consultant's non-performance as set forth herein, the cost to the City to complete the services to be performed under this Agreement is in excess of that part of the sum which has not theretofore been paid to the Consultant hereunder, the Consultant shall be liable for and shall reimburse the City for such excess but only to the extent caused by the Consultant. The Consultant's liability under this provision shall be limited to the total dollar amount of this Agreement.

The City's remedies for the Consultant's failure to perform its services in accordance with the Standard of Care or other material breach under this Agreement after notice and an opportunity to cure shall be one or more of the following remedies which may be exercised separately or in combination at the City sole exclusive choice:

- A. Re-performance of those services not in accordance with the Standard of Care and no extra charge to the City;

B. Monetary damages and amount not to exceed the greater of:

1. The amount of any applicable insurance coverage the Consultant is required to purchase and maintain under this Agreement plus any deductible amount to be paid by the Consultant in conjunction with said coverage regardless of whether the Consultant has actually purchased and maintained said coverage; or
2. The total dollar amount of this Agreement.

The terms of Section 12, Indemnification, and Section 17, Confidential Information, shall survive termination of this Agreement. Notwithstanding any term or condition to the contrary, the Consultant shall not be liable for the acts errors or emissions of the City, its agents, employees, contractors or subconsultants, or any person or entity under their supervision or control.

Section 15. Changes.

The City may, from time to time, require changes in the Scope of Services to be performed under this Agreement. Such changes as are mutually agreed upon by and between the City and the Consultant shall be incorporated by written modification to this Agreement.

Section 16. Conflict of Interest.

The Consultant covenants and agrees that the Consultant and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services under this Agreement. All activities, investigations, and other efforts made by the Consultant pursuant to this Agreement will be conducted by employees, associates, or subcontractors of the Consultant.

Section 17. Confidential Information.

The Consultant hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations under this Agreement which is of a confidential, non-public, or proprietary nature. The Consultant shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Agreement. As used herein, "Confidential Information" means all oral and written information received concerning the City of Oak Ridge Tennessee or its activities that is of a non-public, proprietary, or confidential nature including, without limitation, information pertaining to customer list, services, methods, processes, and operating procedures, together with all analyses, compilation studies, or other documents provided by the City which contain or otherwise reflects such information.

The term "Confidential Information" shall not include such materials that (1) are or become generally available to the public other than as a result of disclosure by the Consultant, (2) are required to be disclosed by the City pursuant to a properly submitted request under Tennessee's open records law as that law is interpreted in the strictest sense, (3) were known to the Consultant prior to its receipt from the City, and/or (4) becomes known independently of disclosure by the City to the Consultant

from a source other than one having an obligation of confidentiality to the City or from an employee or agent of the City.

Section 18. Permits, Licenses, Etc.

The Consultant shall obtain all necessary permits, licenses, and other authorizations that are required by law to perform the services. During the term of this Agreement, the Consultant shall remain in good standing under all such permits and licenses.

Section 19. Notices.

All notices and communications under this Agreement to be mailed to the City shall be sent to the address of the City's representative as follows, unless and until the Consultant is otherwise notified by the City in writing:

Insert Address

All notices and communications under this Agreement to be mailed to the Consultant shall be sent to the address of the Consultant's representative as follows, unless and until the City is otherwise notified by the Consultant in writing:

Insert Address

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted or personally delivered by the sending party.

Section 20. Remedies.

No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the written consent of the Parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

Section 21. Non-Waiver.

It is further agreed that one or more instances of forbearance by the City or the Consultant in the exercise of its rights herein shall in no way constitute a waiver thereof.

Section 22. Headings.

The headings of this Agreement are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

Section 23. No Third-Party Beneficiary.

For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters and disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with the City or the Consultant or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third party or entity from obligations owing by them to either the City or the Consultant.

Section 24. Incorporation of Provisions Required by Law.

Each provision and clause required by law to be inserted into this Agreement shall be deemed to be enacted herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, this Agreement shall be amended to make such insertion on application by either party.

Section 25. Anti-Discrimination.

In the performance of this Agreement, the Consultant not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, sexual orientation, national origin, or any other legally protected class.

Section 26. Mandatory Non-Boycott of Israel.

The Consultant acknowledges that this Agreement will be terminated and void, and payment withheld, if this certification is inaccurate:

Pursuant to Tennessee law (Tennessee Code Annotated §12-4-119), the Consultant certifies that it is not currently engaged in, and will not be engaged in, a boycott of the State of Israel and Israeli-controlled territories for the duration of the term(s) of this Agreement.

This provision is not applicable to contracts with a total potential value of less than \$250,000.00 or to contractors with less than ten (10) employees.

Section 27. Iran Divestment.

The Consultant acknowledges that this Agreement will be void at initio, and payment withheld, if this certification is inaccurate:

Pursuant to Tennessee law (Tennessee Code Annotated §12-12-101 et. seq, known as the Iran Divestment Act), the Consultant certifies that it is not on the list of persons engaging in investment activities in Iran as described in Tennessee's Iran Divestment Act and, therefore, ineligible to contract with the State of Tennessee. Further, the Consultant certifies that it will not utilize the services of any subcontractor for services under this Agreement that is identified by the State of Tennessee as engaging in investment activities in Iran in violation of the Iran Divestment Act.

This provision is not applicable to contracts with a total potential value of less than \$1,000.00.

Section 28. Severability.

If any of the terms, provisions, covenants, conditions, or any other part of this Agreement are for any reason held to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, conditions, or any other part of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 29. Controlling and Conflicting Provisions.

In the event of any inconsistencies or conflicts between the provisions of this Agreement and the provisions of the Consultant's proposal in Exhibit B, the provisions of this Agreement shall govern and control and be final and binding upon the Parties.

Section 30. Entire Agreement.

This Agreement, including all exhibit and appendices attached and incorporated by reference, embodies the complete and whole agreement of the Parties. There are no prior oral or written representations, terms, conditions, promises, or agreements between the Parties relating to matters herein, and except as otherwise provided herein. This Agreement cannot be modified except by a written amendment(s) signed by the Parties.

Section 31. Venue.

The Parties to this Agreement agree and covenant that this Agreement will be enforceable in Oak Ridge, Tennessee; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Anderson County, Tennessee, or in the United States District Court for the Eastern District of Tennessee, Knoxville Division.

Section 32. Governing Law.

This Agreement is entered into subject to the City of Oak Ridge's City Charter and City Code, as the same may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Tennessee and federal laws. The Consultant will make any and all reports required per federal, state, or local law including, but not limited to, proper reporting to the Internal Revenue Service as required in accordance with the Consultant's income. Situs of this Agreement is agreed to be Anderson County, Tennessee, for all purposes, including performance and execution.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives on the day and year first written above.

APPROVED AS TO FORM AND LEGALITY:

CITY OF OAK RIDGE, TENNESSEE

Tammy M. Rackard, City Attorney

Randall W. Hemann, City Manager

INSERT NAME OF CONSULTANT HERE

Signature

Printed Name and Title

Tax ID Number: _____

Attachment: Exhibit A – Request for Proposals, dated ###
Exhibit B – Consultant’s Proposal, dated ###

SAMPLE