

IFB #2024-02

Onancock Wharf – Sunset Patio

Matt Spuck, Town Manager, Onancock, VA

5/31/2024

Contained herein are Bid Forms, General Terms & Conditions, and Instructions to Bidders

Town of Onancock

**15 North Street, Onancock, Virginia 23417
Telephone: (757) 787-3363 fax: (757) 787-3309**

IFB # 2024-02- Onancock Wharf – Sunset Patio

The Town of Onancock is seeking **sealed bids** from qualified Virginia-licensed contractors for renovations to the Onancock Wharf Patio at the end of Market Street near King Street.

Scope of Work

Work shall include excavating between 12-18 inches, laying geotextile fabric, using a minimum of 8-12 inches of compacted ¾" crushed stone (compact every 2-3 inches), adding 4-6 inches of dense-graded-aggregate (DGA), providing a 1" bed for pavers (sand), lay concrete pavers in pattern provided by owner, sweeping fine sand between the joints (polymeric sand is an add/alternate), compacting entire surface after laying the pavers, edge restraints around perimeter. The Belgard concrete pavers will cover approximately 2,100 square feet.

***Work shall begin no earlier than November 1, 2024, and be completed before December 15, 2024.**

If your company does not meet all requirements, submit your bid. The review team will prioritize those companies that meet the requirements, but you will be considered.

Sealed bids must be received at the Onancock Town Hall Office, 15 North Street, Onancock, VA 23417, before Friday, June 28, 2024, at 3:00 PM. Immediately thereafter, at 3:05 PM, all bids received by the due date and time will be publicly opened and read aloud in the **Council Chambers at 15 North Street, Onancock, VA. Bids received after the due date and time will be returned unopened.**

Project Contact Information:

Town Manager, Onancock – Matt Spuck,

757-787-3363; Matt.Spuck@Onancock.com

BID FORM

Company name: _____ Date: _____

Address: _____ Phone #: _____

_____ Fax #: _____

Attn: _____ Email: _____

Base Bid

- Construct a new brick patio as drawn and described in the Scope of Work.

Lump Sum Base Bid: \$ _____

(Words:) _____

Add/Alternate #1

- Substitute polymeric sand for joint sand.

Add/Alternate #1: \$ _____

(Words:) _____

BID FORM

Receipt of Addenda:

Addendum No.

Dated

Base Bid Lead Time: _____, **Add/ Alt. Lead Time:** _____

Exceptions: _____

Quotation Prepared By: _____
Name (printed)

Signature: _____ **Date:** _____

Current Licenses, if Applicable:

VIRGINIA CONTRACTOR'S

LICENSE#: _____ **EXPIRATION DATE:** _____ (please attach copy)

ONANCOCK BUSINESS

LICENSE#: _____ **EXPIRATION DATE:** _____ (please attach copy)

By signing this form, the bidder or offeror certifies, acknowledges, understands, and agrees to be bound by the conditions outlined in this IFB and the General Terms, Conditions, and Instructions to Bidders/Offerors herein.

BID FORM

The Town of Onancock intends to make every reasonable effort to comply with relevant federal and state laws, orders, and regulations and to promote the interests of the Virginia Department of Small Business and Supplier Diversity and like agencies. The Town of Onancock's procurement practices are non-discriminatory and promote equality of opportunity for all qualified businesses.

PLEASE INDICATE THE FOLLOWING INFORMATION RELEVANT TO YOUR FIRM, IF ANY:
DESIGNATIONS: (Please refer to the definitions provided by the Virginia Department of Small Business and Supplier Diversity.)

<u>Micro Business</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<u>Small Business</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<u>Women-Owned Business</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<u>Minority Business</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<u>Service Disabled Veteran</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

The above information is requested for statistical purposes only. All firms tendering responses will receive equal consideration for award.

CONTACT FOR ADMINISTRATION

Name:

Office Address:

Office Phone Number:

Please return this page

BID FORM

VENDOR ELIGIBILITY CERTIFICATION

This is to certify that this person/firm/corporation has neither been barred from bidding on contracts by any agency of the Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that has been barred from bidding on contracts by any agency of the Commonwealth of Virginia.

Name of Official

Title

Firm or Corporation

Please return this page.

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA THIS FORM MUST BE SUBMITTED WITH YOUR PROPOSAL/BID. FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR PROPOSAL/BID.

Pursuant to Virginia Code §2.2-4311.2, an Offeror/Bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the code of Virginia shall include in its proposal/bid the identification number issued to it by the State Corporation Commission ("SCC"). Any Offeror/ Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the code of Virginia or as otherwise required by law shall include in its proposal/bid a statement describing why the Offeror/ Bidder is not required to be so authorized. Any Offeror/ Bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Town Administrator as applicable.

If this quote for goods or services is accepted by the Town of Onancock, Virginia, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information.

- A. Offeror/Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such vendor's Identification Number issued to it by the SCC is _____ and is in good standing.
- B. Offeror/Bidder is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor's identification Number issued to it by the SCC is _____.
- C. Offeror/Bidder does not have an Identification Number issued to it by the SCC and such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets if you need to explain why such Offeror/ Bidder is not required to be authorized to transact business in Virginia.

Legal Name of Company (as listed on W-9)

Legal Name of Offeror/ Bidder

Date

Authorized Signature

Print or Type Name and Title

Please return this page.

Town of Onancock
General Terms and Conditions and Instructions to Bidders

Tax Exemption

The Town of Onancock is exempt from and will not pay Federal Excise Tax, Transportation Tax or the Commonwealth of Virginia Sales and Use Tax. The Town is also exempt from the local 911 tax.

A signed certificate to document the Town's tax-exempt status is available upon request by contacting the Purchasing office.

1. **Contractor's License:** Bidders (as required) must be licensed as Contractors in the State of Virginia. The bidder's attention is directed to Chapter 11, Title 54.1, Code of Virginia, as amended. The bidder shall include a copy of his license with the completed bid form.
2. **Business License:** All businesses wishing to engage in business with the Town of Onancock must possess a valid Onancock Town Business License or document why they are exempt from licensure.
3. **Insurance:** (A contractor is defined as an individual or firm that has entered into an agreement to provide goods or services to the Town of Onancock.) Any contractor doing business with the Town shall maintain insurance to protect the Town of Onancock, Virginia, from claims under the Worker's Compensation Act and from any other claim for damages for personal injury, including death, and for property damage which may arise from operation under a contract, whether such operations by the contractor or subcontractor, or anyone directly or indirectly employed by either, such insurance to conform to the amounts as prescribed by law. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia* during the entire term of the contract.

Whenever work is to be performed on town-owned or leased property or facilities, the contractor shall be required to have the insurance specified by an insurance company acceptable to the Town of Onancock and licensed to do business in the state of Virginia. All insurance must be obtained before any work is commenced and kept in effect until its completion.

Minimum insurance requirements for the Town of Onancock are as follows:

- A. Commercial General Liability: \$1,000,000 per occurrence /\$2,000,000 aggregate and is to include:
 - 1) Premises/Operations' Liability,
 - 2) Products and Completed Operations Coverage, and
 - 3) Independent Contractor's Liability or Owner's and Contractor's Protective Liability.

The Town of Onancock, Virginia, must be endorsed as an "additional insured" when a Contractor is required to obtain Commercial General Liability coverage.
- B. Automotive Liability: \$1,000,000 combined single limit and only if the motor vehicle is to be used in the contract.
- C. Worker's Compensation Liability: Virginia statutory requirements and benefits (if the contractor has three or more employees).
- D. Employer's Liability: \$100,000 (if employees are paid a wage or salary).

E. In addition, various Professional Liability/Errors and Omissions insurance coverages are required when providing those services as follows:

Profession/Service	Occurrence Limit	Aggregate Limit
Accounting	\$1,000,000	\$3,000,000
Architecture	\$2,000,000	\$6,000,000
Asbestos Design, Inspection, or Abatement		
Contractors	\$1,000,000	\$3,000,000
Health Care Practitioner	\$1,650,000	\$3,000,000
Insurance/Risk Management	\$1,000,000	\$3,000,000
Landscape/Architecture	\$500,000	\$1,000,000
Legal	\$1,000,000	\$5,000,000
Professional Engineer	\$2,000,000	\$6,000,000
Surveying	\$100,000	\$300,000

The minimum amount of professional liability insurance required to be carried by the A/E shall be calculated as not less than an amount equal to 5% of the estimated cost of construction of all Town-owned projects designed by the A/E which are currently under construction but in no event shall the amount of professional liability insurance be less than \$100,000 per claim. As an alternative to the calculated amount indicated above, the A/E may work with the Town to procure a 'Project Insurance' package for that project which is satisfactory to the Town, or the A/E may provide a Certificate of Insurance indicating coverage in the amount of \$2,000,000 per claim and \$6,000,000 in the aggregate.

4. **Non-Discrimination:** The Town of Onancock does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4310 and 2.2-4343.1 *Code of Virginia* as amended, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Contractors shall agree as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.
- B. The contractor shall agree to post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.
- C. In all solicitations or advertisements for employees placed by or on behalf of the contractor, the contractor shall state that such contractor 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 provision's requirements.
- D. The contractor shall include the provisions of paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

5. **Drug-Free Workplace:** During the performance of contracts, contractors shall agree to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

6. **Qualifications of Bidder/Offeror:** Each bidder shall be prepared to supply evidence of qualifications and capacity to

perform work as proposed. Items which may be considered evidence are as follows:

- A. Current financial statement
- B. List of current and past similar contracts
- C. Explanation of methods to be used in fulfilling this contract
- D. Statement of current workload and/or capacity

Additional items may be requested as needed by the Town. All qualifications shall be received within ten (10) days of request by the Town.

7. Competency of Bidder/Offeror:

- A. The bidder, if requested, shall present evidence of performance ability and possession of necessary facilities, pecuniary resources, and adequate insurance to comply with the terms of these specifications and contract documents. Such evidence shall be presented within a specified time and to the satisfaction of the Town.
- B. Bidders certify that their bid is made without any previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same project; without prior knowledge of competitive prices; and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.
- C. Bidders or their authorized agents are expected to fully inform themselves of the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the bidder's own risk.
- D. Bids and contracts issued by the Town of Onancock shall bind bidders to applicable conditions and requirements set forth in the bid boilerplate, unless otherwise specified in the bid documents, and are subject to all federal, state, and municipal laws, rules, regulations, and limitations.

8. Completing Bid Forms:

- A. Use only the bid form supplied by the Town.
- B. One original signed bid shall be submitted.
- C. All blanks on the bid form shall be filled in by typewriter or manually in ink.
- D. Any interlineation, alteration, or erasure on the bid form shall be initialed by the signer of the bid.
- E. Each bid shall be signed by the person or persons legally authorized to bind the bidder to a contract, using the legal name of the signer.
- F. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the bidder.
- G. Bidders shall supply all information and submittals required by the bid documents to constitute a proper and responsive bid. Any ambiguity in any bid due to omission, error, lack of clarity, or noncompliance by the bidder with specifications, instructions, and/or all conditions of bidding shall be construed in the light most favorable to the Town.
- H. When an error is made in extending total prices, the unit bid price will govern.
- I. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices or in preparing a bid will not relieve the bidder.
- J. Bidders are cautioned to recheck their bids for possible errors.

9. Descriptive Literature: Bidder may be required to submit with the bid complete pertinent descriptive literature and specifications fully describing the materials proposed to be furnished.

10. Specifications Exceptions: Exceptions to the specifications or general instructions must be in writing and submitted with the bid form. Exceptions to the specifications contained in bids are specifically discouraged. Bidders should attempt to submit a bid that fully conforms to the specifications. Failure to clearly identify any exception may result in disqualification of the bid.

11. Use of Brand Names: The name of a certain brand, make, manufacturer or definite specification is set forth to convey to prospective bidders the general style, type, character, and quality of the article desired. Any article that the Town, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose, shall be acceptable.

12. Eligible Vendors: Vendors responding to a request for supplies must be the manufacturer or authorized distributor of all products bid.

13. Delivery Terms: Bid prices must be net, based on delivery to the specified location(s) in the Town of Onancock. Prices

shall include all applicable freight charges; extra charges will not be allowed.

- 14. Comments/Questions:** Any information relative to the interpretation of specifications and drawings shall be requested of the Manager, in writing, in ample time before the opening of bids. If received by the Manager within five (5) business days of the date set for the opening of bids, no inquiries will be given any consideration. Any material interpretation of a specification, as determined by the Town Manager, will be expressed in the form of an addendum to the specification, which will be posted to the websites indicated in the IFB no later than three (3) business days before the date set for receipt of bids. Oral answers will not be authoritative. Comments concerning specifications or other provisions of the bid documents may be directed to Matt Spuck, Town Manager, Town of Onancock, 15 North St., Onancock, VA 23417, by e-mail to Matt.Spuck@Onancock.com.
- 15. Bid/Proposal Delivery:** Bids/proposals may be delivered to the Town of Onancock, Town Hall, 15 North Street, Onancock, VA 23417, c/o Matt Spuck.
- 16. Bid/Proposal Preparation:** The bid/proposal and any other documents required to be submitted with the bid shall be enclosed in a sealed, opaque envelope. The envelope must have the notation indicated in the Invitation for Bid package. **If the bid is sent by mail or any other mail service**, the sealed, opaque bid envelope shall be enclosed in a separate mailing envelope addressed to the Town of Onancock, 15 North Street, Onancock, VA 23417, with the notation "**IFB 2024-02 " Onancock Wharf Sunset Patio"**" on the face thereof.
- 17. Bid/Proposal Receipt:** Bids/proposals shall be received before the opening time stated in the Invitation for Bid or the Request for Proposal. The bidder/offeror shall assume full responsibility for taking whatever measures are necessary to ensure that the bid/proposal reaches the Town of Onancock before the local time and date specified for receipt of the bid/proposal. The Town will not be responsible for any bid/proposal delayed in the postal or other delivery service nor any late bid/proposal or amendment thereto received after the bid date. Bids/proposals received after the time and date for receipt of bids will be returned to the bidder unopened.
- 18. Opening of Bids:** Bids received on time will be opened publicly and read aloud at the time specified in the Invitation for Bid. The device or mechanism for establishing the opening time shall be established by the Town.
- 19. Acceptance or Rejection of Bids:**
 - A. Unless otherwise specified, the contract shall be awarded to the lowest **responsible** and **responsive** bidder complying with the provisions of the bid documents, provided the bid price is reasonable, does not exceed the funds available, and is in the best interest of the Town. The Town reserves the right to reject the bid of any bidder who has failed to perform properly in any way or to complete on-time contracts previously awarded or a bid from any bidder whose investigation shows he is not able to perform the contract.
 - B. In determining a bidder's **responsibility**, the Town may consider the following in addition to price:
 - 1) The bidder's ability, capacity, and skill to provide the required goods and/or services within the specified time.
 - 2) The bidder's ability to provide needed maintenance and service.
 - 3) The bidder's character, integrity, reputation, experience, and efficiency. The quality of the bidder's performance of previous and/or existing contracts.
 - 4) Whether the bidder is in arrears to the Town, in debt on a contract, or default on any surety.
 - C. In determining a bidder's **responsiveness**, the Town shall consider whether the bid conforms in all material respects to the bid documents. To be responsive, a bid must include all information the solicitation requires.
 - D. The Town reserves the right to waive any irregularities.
 - E. The Town reserves the right to reject any and all bids, to accept any bid in whole or in part, to add or delete quantities, to waive any informalities in bids received, to reject a bid not accompanied by any required bid security or other data required by bidding documents, and to accept or reject any bid which deviates from specifications when in the best interest of the Town.
 - F. If the lowest responsive bid received from a responsible bidder exceeds available funds, the Town reserves the right to negotiate with that bidder to obtain a contract price within available funds.
 - G. Such other information may be secured by the Town Manager, who has a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Town Manager shall so notify that bidder and shall have recorded the reasons in the contract file.

20. Binding Bids/Proposals: Bids/proposals are binding for one hundred twenty (120) calendar days following the opening date unless extended by all parties' mutual consent or otherwise specified in Special Terms and Conditions. Changes in the costs of materials will be considered.

21. Bid Bond: Bidders must provide a Bid Bond equal to 5% of the bid amount.

22. Withdrawal of Bids:

- A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as *opposed* to a judgment mistake and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. If a bid contains *both* clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Manager of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid-opening procedure and shall submit original work papers with such notice.
- B. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
- 1) Requests for the withdrawal of bids before the opening of such bids shall be transmitted to the Town Manager in writing.
 - 2) Requests for withdrawal of bids after opening such bids but before award shall be transmitted to the Town Manager in writing, accompanied by full documentation supporting the request. If the request is based on an error claim, documentation must show the basis of the error. Such documentation may include supplier quotations, vendor worksheets, etc. If bid bonds were tendered with the bid, the Town may exercise its right of collection.
 - 3) No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
 - 4) If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

23. Contract Award:

Bid (IFB) -- Award will be made based on information submitted with the bid and on what is determined to be in the Town's best interest, considering the bidders' pricing and qualifications. A written award in the form of a purchase order, acceptance agreement, or formal contract shall result in a binding contract without further action by either party. If a contract or acceptance agreement is used, the successful bidder shall execute it within ten (10) working days of receipt of notice of award.

Proposal (RFP) -- A Selection Committee will review and evaluate all proposals submitted in response to a Request for Proposals. The Committee shall conduct a preliminary evaluation of all proposals based on the information provided with the proposal and the evaluation criteria listed herein. The Committee shall make recommendations to the Town Board of Supervisors, and the Board of Supervisors shall make the final decision. The Town shall be the sole judge on the merits of qualifications submitted by offerors. The decision of the Town shall be final. In the event the Town determines, in writing and its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

The following documents, which are included in the solicitation, shall be incorporated by reference in the resulting contract and become a part of said contract:

- A. Town of Onancock Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be

incorporated by reference, if applicable,

- B. General Terms, Conditions, and Instructions to Bidders,
- C. Special Provisions and Specifications,
- D. Pricing Schedule,
- E. Any addenda/amendments/Memoranda of Negotiations.

- 24. Tie Bids:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the Town Manager is authorized to award the contract to the resident Onancock Town tie bidder whose firm has its principal place of business in the Town, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public. The decision of the Town to make the award to one or more such bidders shall be final.
- 25. Notification of Award:** Successful bidders/offerors will be notified immediately upon acceptance of their bid/proposal.
- 26. Guarantees & Warranties:** The Contractor shall furnish all required guarantees and warranties and deliver them to the Manager before final payment on the contract is made. Unless otherwise stated, the manufacturer's standard warranty applies.
- 27. Permits:** The contractor shall obtain all required permits.
- 28. Performance Bond and Payment Bond:** The contractor granted shall be required to provide the Town with a Performance Bond and Payment Bond equal to the amount of the contract.
- 29. Termination for Convenience:** A contract may be terminated in whole or in part by the Town in accordance with this clause whenever the Town Manager determines that such a termination is in the best interest of the Town. Any such termination shall be affected by delivery to the Contractor at least five (5) working days before the termination date of a Notice of Termination, specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
- 30. Termination of Contract for Cause**
- A. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Town shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared

- by the Contractor under the contract shall, at the option of the Town, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- B. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by any breach of contract by the Contractor to set off until such time as the exact amount of damages due to the Town from the Contractor is determined.
- 31. Contract Alterations:** No alterations in the terms of a contract shall be valid or binding upon the Town unless made in writing and signed by the Manager or his or her authorized agent.
- 32. Subletting of Contract or Assignment of Contract Funds:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of his or her contractual duties to any other person, firm, or corporation without the previous written consent of the Manager. If the Contractor desires to assign his or her right to payment of the contract, the Contractor shall notify the Manager immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from his or her obligations or change the contract terms.
- 33. Funding:** A contract shall be deemed binding only to the extent of appropriations available to each Department or Office to purchase goods and services.
- 34. Delivery/Service Failures:** Failure of a Contractor to deliver goods or services within the time specified, or within a reasonable time as interpreted by the Manager, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Manager, shall constitute authority for the Manager to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the Town, within a reasonable time specified by the Manager, of any expense incurred over contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the Town reserves the right to use or consume articles delivered or services performed that are substandard in quality, subject to an adjustment in price to be determined by the Manager.
- 35. Non-Liability:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy, or by any other circumstances which, in the Manager's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Manager may cancel the contract at his or her discretion.
- 36. Responsibility for Supplies Tendered:** Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after the date of notification, the Town may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
- 37. Replacement:** The contractor shall replace materials or components that have been rejected by the Manager in accordance with the terms of a contract at no cost to the Town.
- 38. General Guaranty:**
- Contractor agrees to:
- A. Save the Town, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article

or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee, or owner.

- B. Protect the Town against latent defective material or workmanship and repair or replace any damages or marring occasioned in transit or delivery.
- C. Furnish adequate protection against damage to all work and repair damages of any kind to the building or equipment, to his or her own work, or to the work of other contractors for which his or her workers are responsible.
- D. Pay for all permits, licenses, and fees, give all notices, and comply with all laws, ordinances, rules, and regulations of the Town.
- E. Protect the Town from loss or damage to Town-owned property while it is in the custody of the Contractor.

39. Service Contract Guaranty:

Contractor agrees to:

- A. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions set forth provided that the Town may reduce the services at any time.
- B. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- C. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
- D. Allow services to be inspected or reviewed by an employee of the Town at any reasonable time and place selected by the Town.
- E. The Town of Onancock shall be under no obligation to compensate the Contractor for any services not rendered in strict conformity with the contract.

40. Indemnification: The Contractor shall indemnify, keep, and save harmless the Town, its agents, officials, employees, and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost, and expenses which may otherwise accrue against the Town in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and, the Contractor shall, at his or her own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgment is rendered against the Town in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. The contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the Town as herein provided.

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

- A. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- B. Any competitive sealed bidding bidder, upon request, shall be allowed to inspect bid records within a reasonable time after the opening of all bids but before award, **except** if the Town decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after contract award. Any competitive negotiation offeror, upon request, shall be allowed to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but before award, **except** if the Town decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after the award of the contract, **except** as provided in paragraph "C" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- C. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor shall (i) invoke the protections of this section before or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Any offeror shall not

identify their entire completed proposal as a trade secret or proprietary information.

- D. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of why a particular proposal was not deemed the most advantageous to the Town.
42. **Applicable Law and Courts:** The contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and the Circuit Court of Accomack County, Virginia, shall have exclusive jurisdiction to resolve any dispute arising out of this contract.
43. General Terms and Conditions stated herein are controlling, and any variance or inconsistency with terms elsewhere shall be resolved in favor of these General Terms and Conditions.