



INVITATION FOR BIDS  
NO. 1-2017

Centerville Speed Humps  
Town of James Island

<b>PROJECT OVERVIEW</b> <b>(See Attachment A for details)</b>
--

**DATE:** March 24, 2017

**SOLICITATION NUMBER:** IFB No. 1-2017

**DESCRIPTION OF WORK:** Installation of 9 speed humps and related signage, all to SCDOT specifications, in the Centerville neighborhood on James Island, SC.

**PRE-BID CONFERENCE:** **No Pre-Bid Conference**

**DUE DATE FOR WRITTEN QUESTIONS:** Friday, April 7 2017 at 5:00 p.m.  
843-795-4141 [akellahan@jamesislandsc.us](mailto:akellahan@jamesislandsc.us)

**BID OPENING/TIME:** Thursday, April 13, 2017 AT 3:00 p.m.

**LOCATION:** *Town of James Island*  
*1238-B Camp road*  
*James Island, SC 29412*

---

This solicitation does not commit the Town of James Island to award a contract, to pay any cost incurred in the preparation of bids submitted, or to procure or contract for the services. The Town reserves the right to accept or reject any, all or any part of bids received as a result of this request, or to cancel in part or in its entirety this Invitation for Bids if it is in the best interest of the Town to do so. The Town will be the sole judge as to whether bids submitted meet all requirements contained in this solicitation.

<b>TABLE OF CONTENTS</b>
--------------------------

<b>SECTION</b>	<b>PAGE</b>
<b>General Terms and Conditions</b>	4
<b>Attachment A: Special Instructions/Terms and Conditions</b>	9
<b>Attachment B: Scope of Work/Specifications</b>	13
<b>Attachment C: Sample Contract</b>	16
<b>Attachment D: Sample Forms</b>	36
Insurance Requirements	
Labor and Material Bonds	
Performance Bonds/Performance and Payment Bonds	
Drug-free Workplace Certification	
<b>Attachment E: Required Forms</b>	49
Bid Form(s)	
Subcontractor Data Form	
Compliance with Illegal Immigration Act	
Non-Collusion Oath	

<b>INVITATION FOR BIDS (IFB) GENERAL TERMS AND CONDITIONS</b>
---

**1. PREPARATION, SUBMISSION AND WITHDRAWAL OF BIDS**

A. Bids must be submitted on the forms furnished or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, each erasure or change must be initialed by the person signing the bid. Bids may not be submitted by FAX or other facsimile transmittal.

B. Mailed or hand-delivered bids must be submitted in a sealed envelope showing the solicitation number on the outside of the envelope and must be addressed to Town of James Island, 2138-B Camp Road, James Island, SC 29412. Each sealed envelope containing a bid shall be marked on the outside with the Bidder's complete name, address, bid number, description of services requested by IFB (i.e., Elevator Maintenance, Road Construction), along with the due date and time. Failure to do so may result in premature opening of, or a failure to open, such bid.

C. **Bids submitted after the "Opening" date and time are considered "Late Bids". "Late Bids" will not be opened or considered.**

D. Bids may be withdrawn by written request received from the Bidder prior to the time set for opening of bid, but not thereafter.

E. Bidders shall promptly notify the Town of James Island, in writing, and no later than the last date and time for the submittal of written questions, of any ambiguity, inconsistency or error which they may discover upon examination of the IFB documents or the project premises and local conditions.

F. Bidders requiring clarification or interpretation of the IFB documents shall make a written request which must be received at Town Hall no later than the last date and time for submittal of written questions.

G. Any interpretation, correction or change of the IFB documents will be made by addendum. It is your responsibility to monitor the website at [www.jamesislandsc.us](http://www.jamesislandsc.us) for any additional information, revisions, or addenda that may be posted.

H. No substitutions will be considered after the Contract award except by amendment or change order.

I. Failure to submit a bid on the form requested or inclusion of any alternates, unit prices, conditions, limitations or provisions not called for, will render the bid irregular; and shall be considered sufficient cause for rejection of a bid. Failure to complete entries in all blanks on the Bid Form shall be considered cause for rejection of a bid.

J. The Town seeks a single, qualified company to be responsible for completion of the work (hereinafter "Work") described herein (although the Town reserves the option to award portions of the project to multiple bidders if such is to the advantage of the Town). Therefore, any one bid submitted by more than one company will be deemed to be a proposal for a joint venture between or among the companies so bidding unless the bid clearly and unequivocally describes that only one firm proposes to act as principal and the other firm(s) contractual position is clearly defined. The companies submitting as a joint venture will be held jointly and severally responsible for the entire project and will not be permitted to limit their liability to the Town.

K. The following are included in the Bid Package:

Attachment A: Special Instructions/Terms and Conditions

Attachment B: Scope of Work/Specifications

Attachment C: Sample Contract

Attachment D: Sample Forms

Attachment E: Required Forms

## **2. NON-COLLUSION OATH**

Every bid must be accompanied by a notarized affidavit of non-collusion, executed by the Bidder or in the case of a corporation, by a duly authorized representative of said corporation. The Non-Collusion Oath is provided herein.

## **3. BIDDER REPRESENTATIONS**

Each Bidder by submitting a bid represents that:

A. The Bidder has read and understands this IFB (including all specifications and attachments) and that their bid is made in accordance therewith.

B. The Bidder has reviewed the IFB, has become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the proposed Contract Documents.

C. The bid is based on the terms, materials, systems and equipment required by this IFB, without exception.

D. The Bidder is qualified to provide the services and equipment required under this IFB and, if awarded the Contract, will do so in a professional, timely manner using Bidder's best skill and attention.

## **4. AWARD OF CONTRACT**

A. Award of Contract will be made to the lowest responsive and responsible Bidder(s) whose bid, conforming to the IFB, is most advantageous to the Town, price and other factors considered.

B. The Town reserves the right to 1) reject any or all bids and any part of a bid; 2) waive informalities, technical defects, and minor irregularities in bids received; and 3) award the bid(s) received on the basis of individual items or groups of items or the entire list of items.

C. The Town shall be the sole judge of the suitability of the items or services to be provided pursuant to this IFB.

## **1. NOTICE OF AWARD OF CONTRACT**

The successful Bidder will be notified of acceptance of bid by a written Notice of Award of contract. The successful Bidder shall not undertake any work, and the Town will not be responsible for payment for any work whatsoever undertaken by successful Bidder prior to issuance of the Notice to Proceed.

Prior to executing a Contract, the successful Bidder must provide proof to the Town of:

- SCDOT Certification for the asphalt plant that will be utilized for the Project.
- SCDOT approval for the concrete plant that will be utilized for the Project.

The successful Bidder shall be required to submit acceptable Insurance Certificate(s) and Endorsement(s) within Five (5) Business Days after the issuance of the Notice of Award.

## **2. CONTRACT DOCUMENT**

The successful Bidder shall be required to execute a formal contract within Five (5) Business Days after issuance of a Notice of Award. Said Contract shall be virtually identical in substance and form to the Contract which is attached and marked Attachment C, Sample Contract. The only anticipated changes in Attachment C, Sample Contract, will be to include additional exhibits, to fill in the blanks to identify the successful Bidder, and terms relating to compensation, or to revise the contract to accommodate corrections, changes in the scope of work, or changes pursuant to addenda issued prior to the bid opening. **Bidders should raise any questions regarding the terms of the Contract, or submit requested changes in said terms, in the form of written questions or submittals, subject to the deadline for questions.** Because the signed contract will be substantively and substantially derived from Attachment C, Sample Contract, Bidder is urged to seek independent legal counsel as to any questions about the terms, conditions or provisions contained in Attachment C, Sample Contract, before submitting a bid. Again, Attachment C, Sample Contract, contains important legal provisions and is considered part and parcel of this IFB. Failure or refusal to sign aforesaid Contract shall be grounds for the Town to revoke any Notice of Award which has been issued, forfeit bid security, and award the Contract to another Bidder.

## **7. MODIFICATION**

The Town has defined this section in the Sample Contract under Section Twenty-Two.

## **8. NOTICE TO PROCEED**

A Notice to Proceed will be issued after the successful Bidder has executed the Contract and has submitted acceptable performance and payment bonds (if applicable) to the Town as well as other submittals specified herein as required to be delivered before the Notice to Proceed is issued.

The successful Bidder shall not deliver any equipment to the work site or commence work until the successful Bidder has received a written Notice to Proceed from the Town Administrator.

## **9. BIDDER'S QUALIFICATIONS**

Before a bid is considered for award, the Bidder may be requested by the Town to submit a statement providing additional information regarding their previous experience in performing comparable work.

## **10. SUBCONTRACTORS**

A. If any subcontractors will be used for this project, the successful Bidder shall provide to the Town Administrator a list of names of any of the intended subcontractors, the subcontractor's applicable

license number(s), and a description of the work to be done by each subcontractor on the Subcontractor Data Report Form included in the Attachment E, Required Forms.

B. The successful Bidder shall not substitute other subcontractors without the written consent of the Town Administrator.

C. The successful Bidder shall be responsible for all services performed by a subcontractor as though they had been performed by the successful Bidder. Responsibilities include, but are not limited to, compliance with any applicable licensing regulations.

D. If at any time the Town Administrator determines that any subcontractor is incompetent or undesirable, the Administrator shall notify the successful Bidder accordingly, and the successful Bidder shall take immediate steps for cancellation of the subcontract and replacement.

E. Nothing contained in any contract resulting from this IFB shall create any contractual relationship between any subcontractor and the Town.

F. It shall be the successful Bidder's responsibility to ensure that all terms required in the attached Contract are incorporated into all subcontracts.

G. No Bidder or subcontractor who participated in the development of project plans or specifications will be permitted to perform work under this Contract. Participants that are excluded from performing work under this contract are listed in the attachments.

#### **11. INDEMNIFICATION**

The Town has defined this section in the Sample Contract under Section Twenty-Four.

#### **12. TERMINATION**

The Town has defined this section in the Sample Contract under Section Twenty-Three.

#### **13. DRUG-FREE WORKPLACE ACT**

Successful Bidder shall comply with the South Carolina Drug-free Workplace Act, Section 44-107-10 et seq., S.C. Code of Laws (1976, as amended). The Town requires all successful Bidders executing contracts for a stated or estimated value of \$50,000 or more to sign a Drug-free Workplace Certification form prior to the issuance of the Notice to Proceed.

#### **14. STATE AND LOCAL TAXES**

Except as otherwise provided, Contract prices shall include all applicable state and local taxes.

The successful Bidder shall calculate that portion of the Contract which is subject to the eight and one half percent (8.5%) South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices, and shall be paid to the SCDOR by Contractor. If the successful Bidder is a non-South Carolina company, the Town will withhold said amount from all invoices and remit payment to the SCDOR, unless

the successful Bidder furnishes the Town with a valid South Carolina Use Tax Registration Certificate Number.

The successful Bidder shall indemnify and hold harmless the Town for any loss, cost, or expense incurred by, levied upon or billed to the Town as a result of the successful Bidder's failure to pay any tax of any type due in connection with this Contract.

The successful Bidder shall ensure that the above sections are included in all subcontracts and sub-subcontracts, and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

#### **15. INSURANCE REQUIREMENTS**

The successful Bidder, at its own expense, shall at all times during the term of the Contract, maintain insurance as required herein (see Sample Forms) and previously incorporated by reference. The Town shall not execute the Contract until the successful Bidder has submitted acceptable Insurance Certificate(s) and Endorsement(s), which must be submitted within Five (5) Business Days of receipt of the Notice of Award, and which reflect that the required coverages are in place and that all premiums have been paid. Refusal or failure to submit such Insurance Certificate(s) and Endorsement(s) shall constitute grounds for the Town to revoke its Notice of Award, forfeit bid security, and award the Contract to another successful Bidder. The Town may contact the successful Bidder's insurer(s) or insurer(s)' agent(s) directly at any time regarding the successful Bidder's coverages, coverage amounts, or other such relevant and reasonable issues related to this Contract. The successful Bidder shall also require any sub-contractors to carry the same coverages in the same amounts.

Faxed Insurance Certificate(s) and Endorsement(s) will be accepted if received no later than the time of contract execution and the original documents are received within one (1) business day after receipt of the fax transmittals.

The Town must be advised immediately of any changes in required coverages.



**ATTACHMENT A**

**SPECIAL INSTRUCTIONS/TERMS  
AND CONDITIONS**

**INVITATION FOR BIDS (IFB)  
SPECIAL INSTRUCTIONS AND TERMS AND CONDITIONS**

**1. PRE-BID CONFERENCE AND SITE VISIT :**

There will be no pre-bid conference for this project. Potential bidders are encouraged to visit the site. The proposed speed humps will be installed on various streets within the Centerville Neighborhood.

**2. WRITTEN QUESTIONS DEADLINE:**

The last day and time for submittal of written questions shall be no later than **5:00 p.m., Friday, April 7, 2017.**

**3. BID SUBMITTAL DEADLINE:**

Bids will be received until **3:00 p.m., Thursday, April 13, 2017 (as indicated on the official clock in the Council Chambers)** after which time will be publicly closed and read. Bidders are invited to attend the opening of this bid at the time stated above.

**4. PROJECT TIME OF COMPLETION:**

Time of completion for this project shall be sixty ( 60 ) calendar days from the issuance of a Notice to Proceed.

**5. DAMAGES**

The Town has defined this section in the Sample Contract under Section Twenty.

**6. PAYMENT TO CONTRACTOR**

Application for Payment shall be prepared and submitted in triplicate pursuant to the specifications contained in this IFB (See Attachment C, Sample Contract, Section Four).

**7. SECURITY REQUIRED**

A. Bid Security

Each bid must be accompanied by a bid bond acceptable to the Town. Bid bonds must be issued by a corporate surety registered and authorized to do business in the State of South Carolina. Bid bonds shall be payable to the Town, shall be for at least five (5%) percent of the total amount of the bid, and shall serve as a guarantee deposit that the bid will be carried out to the complete satisfaction of the Town. In lieu of a bond, Bidder may submit a certified check or cashiers check in aforesaid amount payable in U.S. funds. Pursuant to Town policy, bid security in the form of checks will be deposited with the Town into the Town's General Fund. Faxed bid bonds will not be acceptable.

B. Forfeiture of Bid Security

Nonperformance by the successful Bidder, or its failure to execute the Contract and meet performance and payment bond requirements and insurance requirements within Five (5) Business Days after issuance of Notice of Award, shall result in its bid security being forfeited as liquidated damages, and the Notice of Award and Contract will be rescinded and awarded to another Bidder. Withdrawal of a bid after the opening date and time but prior to final award after the opening date, may also result in forfeiture of bid security.

C. Return of Bid Security

Bid security will be returned to all bidders after the successful Bidder has executed the Contract and delivered all required bonds and insurance certificates and endorsements. Bidders will not be entitled to any interest earnings on returned funds, and in the case of bid security by check, such will be returned in the form of a Town check.

D. Payment and Performance Security

(1) The successful Bidder shall provide performance and payment bonds, in a form satisfactory to the Town (**see Attachment D, Sample Forms,**) in the following amounts:

Payment Bond: 100% of the total amount of the Contract.

Performance Bond: 100% of the total amount of the Contract.

(2) The aforesaid payment and performance bonds must be issued by a corporate surety registered and authorized to do business in South Carolina and must be counter-signed by a licensed, authorized South Carolina agent.

(3) Attorneys-in-fact who sign bid bonds or performance bonds must file with each bond a certified and effective, dated copy of their power of attorney.

(4) The time to be covered by the performance bond shall commence on the date of execution of any contract resulting from this IFB and terminate two (2) years after final payment to Bidder by Town.

The time to be covered by the payment bond shall commence on the date of execution of any contract resulting from this IFB and terminate twelve (12) months after the date of final acceptance of the Work by the Town.

(5) The successful Bidder may submit its payment bond and performance bond by fax; however, the original documents must be received within one (1) business day after receipt of the fax.

**8. PERMITS AND LICENSES**

The successful Bidder shall, without additional expense to the Town, be responsible for obtaining and maintaining all necessary licenses and permits required by the State of South Carolina, The Town, or the County or any other authority having jurisdiction. Prior to execution of a contract, the successful Bidder may be required to provide a copy of its current applicable Contractor's License issued by the State of South Carolina and the County. Any subcontractor must comply with the regulations promulgated in the South Carolina Contractor's Licensing Board as enforced by the South Carolina Licensing Board for Contractors. Contractor's (and or any subcontractor's) License Number, Person's Name and Business Name must all be shown on all required licenses.

**9. ADDITIONAL INFORMATION INQUIRIES**

Questions or clarifications concerning this should *only* be directed to:

Ashley Kellahan, Town Administrator  
Town of James Island  
1238-B Camp Road  
James Island, SC 29412  
Tel: 843-795-4141  
Fax: 843-795-4878  
Email: [akellahan@jamesislandsc.us](mailto:akellahan@jamesislandsc.us)

## **ATTACHMENT B**

# **SCOPE OF WORK/SPECIFICATIONS**

The Scope of Work/Specifications are intentionally not attached hereto but are provided separately herewith. The Scope of Work/Specifications are, nevertheless, part and parcel of this solicitation and are incorporated herein by reference.

**APPENDIX A**

**PLANS**

Appendix A (the Plans) to this Scope of Work is intentionally not attached hereto but is, because it is oversized, provided separately herewith. Appendix A is, nevertheless, part and parcel of this Scope of Work and is incorporated herein by reference.

**APPENDIX B**

**PERMITS**

The Permits are intentionally not attached hereto but are provided separately herewith. The Permits are, nevertheless, part and parcel of this solicitation and are incorporated herein by reference.

**ATTACHMENT C**

**SAMPLE CONTRACT**



STATE OF SOUTH CAROLINA    ) ) TOWN OF JAMES ISLAND    )	<b>CONTRACT                  No. 1-2017                  Centerville Speed Humps</b>
--	--

**THIS CONTRACT** (hereinafter the “Contract”) entered into this \_\_\_\_ day of (Month) 2017, between the **TOWN OF JAMES ISLAND**, South Carolina, a public body corporate and politic and political subdivision of the State of South Carolina, (hereinafter the "Town") and (**NAME OF COMPANY/INDIVIDUAL**), a (State Name) Sole Proprietorship/Partnership/Corporation, Limited Liability Corporation (choose one), the address of which is Street, City, State, Zip (hereinafter the "Contractor"), (“Party” as to each; collectively the “Parties”).

**WITNESSETH:**

**WHEREAS**, the Town has sought to contract with an independent contractor for the furnishing of all labor, supervision, materials and equipment required to perform and complete \_\_\_\_ (“Work”) as detailed in the Contract Documents (defined below); and

**WHEREAS**, the Town solicited bids pursuant to IFB NO. 1-2017 for the aforesaid Work that is needed; and

**WHEREAS**, the Contractor has represented to the Town that its staff is qualified to provide the Work required in this Contract in a professional and timely manner; and

**WHEREAS**, the Town has relied upon the above representations by the Contractor; and

**WHEREAS**, the Contractor desires to provide the aforesaid services pursuant to the terms and conditions contained below;

**NOW, THEREFORE**, in consideration of these promises and of the mutual covenants herein set forth, it is agreed by and between the Parties hereto as follows:

**SECTION ONE  
Definitions**

Unless the context clearly requires otherwise, all capitalized terms used in this Contract shall have the meanings set forth in this Section One.

“Commencement Date” means the date specified in the Notice to Proceed as the date on which the Contractor shall begin providing the Work.

“Contract Documents” means all exhibits, attachments, specifications, and any addenda to this Contract that are incorporated by reference into this Contract and which are marked as follows:

- Exhibit A:        Invitation for Bids (IFB) No. 1-2017
- Exhibit B:        Scope of Work/Specifications(with Appendices)
- Exhibit C:        Contractor’s Insurance Certificate(s) and Endorsement(s)
- Exhibit D:        Drug-free Workplace Certification Form
- Exhibit E:        Contractor's Bid dated \_\_\_\_\_, 2017

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- a. As between the Contract and the Contract Documents and any other document to include, but not limited to, the plans or specifications, the Contract shall govern.
- b. In the event of any conflict, discrepancy, or inconsistency among any of the other Contract Documents, the Contractor shall notify the Town immediately upon discovery of same, and the Town will notify the Contractor of the resolution.
- c. Any documents not included or expressly contemplated in this Contract do not, and shall not, form a part of this Contract. The Contract Documents are intended to be complementary, and a requirement in one document shall be deemed a requirement in all documents.

As provided in Exhibit B, Scope of Work (with Appendices), attached hereto, certain publications shall also govern the Work hereunder, unless otherwise provided herein, and are also hereby incorporated by reference.

“Contract Price” means the price listed in the Contract for service to be received in return.

“Contractor” has the meaning assigned above to that term, and includes that company’s agents, employees, and representatives.

“Contract Quantities” means the estimated quantities listed on the bid form.

"Town" means Town of James Island, a public body politic and corporate and political subdivision of the State of South Carolina.

“Department” means the South Carolina Department of Transportation also shown herein as “SCDOT”.

“Engineer” means the Project Engineer for the Town, acting directly or through its duly designated representative, such representative acting within the scope of particular duties assigned to it or of the authority given it. For purposes of this Contract and the Work to be performed under it, the duly designated representative of the Engineer shall be the Project Manager (as defined below).

“Final Payment” means the last payment from the Town to the successful Bidder of the entire unpaid balance of the Contract sum as adjusted by any approved change orders.

“Notice to Proceed” means the written notice to be given by the Town to the Contractor to commence Work under this Contract.

“Town Administrator” means the Chief Administrative Officer for the Town of James Island.

“Project” means the “Work” and is used interchangeably with that term.

“Project Manager” shall be the field representative designated by the Town to serve as project manager for the Work.

“Project Site” means the site or sites where the Work is performed. This term is used interchangeably with “Work Site.”

“Work” means the work specified and described in Exhibit B (“Scope of Work (with Appendices)”) to this Contract and includes, but is not limited to, materials, workmanship, manufacture and fabrication of components.

“Work Site” means the “Project Site” and is used interchangeably with that term.

## **SECTION TWO**

### **Term**

The Contractor shall complete the work within sixty (60) calendar days after the Town issues a Notice to Proceed, absent any extensions as provided for herein. The Contractor shall not commence Work prior to the issuance of a Notice to Proceed.

## **SECTION THREE**

### **Work**

Contractor agrees to perform and furnish all labor, supervision, materials, equipment, tools, machinery, transportation and supplies necessary for the completion of the Work required under this Contract in a professional and timely manner.

See Exhibit B, Scope of Work (with Appendices), for complete Scope of Work and Plans.

Work is to be completed as indicated in Section Two after the issuance of the Notice to Proceed, absent any extensions as provided in Section Five hereof.

## **SECTION FOUR**

### **Contract Price: Payment Terms**

A. The Contractor is to perform the Work beginning on the Commencement Date until the termination of this Contract for the total, all inclusive price not to exceed                     Dollars (\$                    ). Actual payments will be based on verified quantities actually incorporated in the Work as priced in Contractor’s Bid.

The amount as specified may be increased or decreased by the Town through the issuance of a change order or amendment. Any prices specified in Contractor’s Bid or any such change order or Amendment will remain firm for the term of this Contract and any Amendment thereto.

B. The Contractor shall submit monthly invoices itemizing all labor and materials for which payment is requested. Subject to approval of the invoice by the Town, the Town shall pay Contractor for the performance of the Work, including all labor and items necessary to accomplish and complete the Work, in accordance with all terms and conditions as stated in the Contract Documents, on the following basis:

The Contractor shall submit invoices in the format that will be provided by the Town at the pre-construction meeting. Failure to follow the format may result in payment delays.

All invoices will be processed by the Town once a month. All partial payments will be based upon the Contractor's invoices, approved by the Project Manager, for the Work performed and materials completely in place in accordance with the Contract and to the satisfaction of the Project Manager. From the total of the amounts so ascertained, ninety percent (90%) shall be paid to the Contractor and ten percent (10%) shall be retained by the Town until after the completion of all the Work to the satisfaction of the Town. After completion of ninety-five percent (95%) of the project, the retainage may be reduced to five percent (5%).

C. Invoices will be submitted to the Project Manager, and the invoice will contain IFB No. 1-2017.

D. With regard to items (which term includes, without limitation, any and all materials) in the Contract Price, the Town reserves the right to increase the Contract Quantities by an amount not to exceed in value twenty percent (20%) of the total Contract Price or decrease the Contract Quantities by an amount not to exceed in value twenty percent (20%) of the total Contract Price. Payment will be made based on the unit prices submitted by the Contractor and incorporated by reference in this Contract.

No claim shall be made by the Contractor for any loss of anticipated profits because of any such alteration, or by reason of any variation between the approximate quantities and the quantities of work as done. If the altered or added work is of sufficient magnitude as to require additional time in which to complete the Project, such time adjustment will be made at the determination of the Town.

E. No claim by the Contractor for any adjustment under this Contract shall be allowed if asserted after Final Payment under this Contract.

F. When the Town requires substantiating information, the Contractor shall submit data justifying dollar amounts in question.

## **SECTION FIVE**

### **Time**

The Contractor agrees to punctually and diligently perform all parts of the Work at the time scheduled by the Contractor which shall be subject to change by the Town as deemed necessary or convenient to the overall progress of the Project. In this connection, the Contractor agrees that the Contractor will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the Town so as to plan its work in coordinated sequence with the Work of the Town and of others and so as to be able to expeditiously undertake and perform the Work at the time most beneficial to the entire Project. The Contractor will be liable for any loss, costs, or damages sustained by the Town for delays in performing the Work hereunder, other than excusable delays for which the Contractor shall be granted an extension of time. If, in the reasonable opinion of the Town, the Contractor is not complying with the progress schedule or will not meet the completion date, the Town may require the Contractor to provide additional manpower, or work overtime, or expedite materials, and the Contractor shall take the necessary steps to comply, all without increase in Contract Price.

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Town, or by any separate contractor employed by the Town, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, unavoidable casualties, delays

specifically authorized by the Town, or by causes beyond the Contractor's control, avoidance, or mitigation, and without the fault or negligence of the Contractor and/or subcontractor or supplier at any tier, then the Contract time shall be extended by change order for such reasonable time, if any, as the Town may determine that such event has delayed the progress of the Work or overall completion of the Work, if the Contractor complies with the notice and documentation requirements set forth below.

Any claim for extension of time, except as provided for below with regard to rain delays, shall be made in writing to the Town, not more than five (5) calendar days from the beginning of the delay. The notice shall indicate the cause of the delay upon the progress of Work. If the cause of the delay is continuing, the Contractor must give written notice every week to the Town. Within five (5) calendar days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and a formal change order request for an extension of time for such delay.

The written request for a time extension shall state the cause of the delay, the number of days' extension requested, and such analysis and other documentation to demonstrate a delay in the progress of the Work or the overall Project completion. If the Contractor does not comply with the above notice and documentation requirements, the claim for the delay shall be waived by the Contractor.

Extensions of time shall be the Contractor's sole remedy for any and all delays, hindrances, or obstructions. No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or obstruction in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid cause and agrees that the Contractor's sole right and remedy in the case of any delay, obstruction, or hindrance, shall be an extension of the time fixed for completion of the Contract. Without limitation, the Town's exercise of its rights under the changes clause, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable, other than through an extension of time, it being acknowledged that the Contract amount includes and anticipates any and all delays, hindrances, or obstructions whatsoever from any cause, whether such be avoidable or unavoidable.

Weather delays are generally referred to as "rain days," and shall apply to days when the Work cannot be undertaken due to adverse weather conditions. Time for hot, cold, and/or windy conditions have been allowed for in the allocated date of completion. An average number of rain days are included in the completion date determination. This was determined by the following method:

Using the National Oceanic and Atmospheric Administration (NOAA) monthly reports, all days in each month in which rainfall in any part of the day exceeded .10 inch has been calculated and averaged. These averages are as follows:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	7	6	6	9	14	14	17	11	8	6	10

Rain delays, therefore, will only be considered when the number of days in any month in which rainfall, as recorded by the weather bureau as .10 inch or greater, exceeds the number of days shown. Notwithstanding the days shown on the monthly report, time extensions for rain days will only be considered based upon actual conditions at the Project Site. If, in the opinion of the Contractor, adverse weather causes unsuitable

conditions that prevent the Contractor from proceeding with the Work at any time during the term of this Contract, the Contractor shall submit written notification to the Town's Representative within twenty-four (24) hours of the onset of said conditions. Notwithstanding the requirements of Section 18, the Contractor shall make a claim for time extension due to rain delays within five (5) calendar days of issuance of the NOAA monthly report.

**SECTION SIX**  
**Insurance Requirements**

The Contractor, at its own expense, shall at all times during the term of the Contract, maintain insurance as included in Exhibit A, Insurance Certificate(s) and Endorsement(s), which is attached hereto and previously incorporated by reference. The Town may contact the Contractor's insurer(s) or insurer(s)' agent(s) directly at any time regarding the Contractor's coverage, coverage amounts, or other such relevant and reasonable issues related to this Contract. The Contractor shall also require any subcontractors to carry the same coverage in the same amounts.

The Town must be advised immediately of any changes in required coverage.

**SECTION SEVEN**  
**Payment and Performance Security**

The Contractor shall provide and maintain payment and performance bonds in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), inclusive of change order.

**SECTION EIGHT**  
**Compliance with Legal Requirements**

All applicable federal, state and local laws, ordinances, and rules and regulations of any authorities (including, but not limited to, any laws, ordinances or regulations relating to the S.C. Department of Revenue or the S.C. Board of Contractors) shall be binding upon the Contractor throughout the pendency of this Work. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold the Town harmless and indemnify same in the event of non-compliance as set forth in the Contract.

By signing a bid, the Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws (1976, as amended), and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors; or (b) that the Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both."

The Contractor agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with the sub-contractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

The Contractor agrees to and shall certify agreement to abide by the requirements under Title VI of the Civil Rights Act of 1964, and other non-discrimination authorities under Federal Executive Order Number 11246, as amended, and specifically the provisions of the equal opportunity clause.

The Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations of any authorities throughout the duration of this Contract. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold Town harmless and indemnify same in the event of non-compliance.

#### **SECTION NINE** **Drug-free Workplace Act**

The Contractor shall comply with the South Carolina Drug-free Workplace Act, Section 44-107-10 et seq., S.C. Code of Laws (1976, as amended). The Town requires all Contractors executing contracts for a stated or estimated value of \$50,000 or more to sign a Drug-free Workplace Certification form prior to the issuance of the Notice to Proceed.

#### **SECTION TEN** **Material and Workmanship: Warranties and Representations**

The Contractor represents that its staff is knowledgeable about and experienced in performing the Work required in this Contract and warrants that it will use best skill and attention to provide above described Work in a professional, timely manner.

Contractor warrants and represents that it shall be responsible for all subcontractors working directly for it, as well as for their Work product, as though Contractor had performed the Work itself.

A. All equipment, materials and articles incorporated in the Work covered by the Contract and supplied by the Contractor are to meet the SCDOT Standard Specifications, unless otherwise stated herein. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall not be construed as limiting competition. When requested, the Contractor shall furnish to the Administrator, for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating in the Work. When required by this Contract or when called for by the Administrator, the Contractor shall provide full information concerning the material or articles which he contemplates incorporating in the Work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without the required prior approval of the Town shall be at the risk of subsequent rejection by the Town.

B. Any and all manufacturers' warranties on any equipment or materials will be passed on to the Town and copies of said warranties will be furnished by the Contractor to the Town upon completion and final acceptance of the Project.

C. The Town Administrator may, in writing, require the Contractor to remove from the Work Site any employee the Town deems incompetent, careless or otherwise objectionable.

D. In addition to any manufacturer's warranties, all workmanship and materials are warranted to be free from defects for a period of twenty-four (24) months after the date of Final Payment by the Town.

**SECTION ELEVEN**  
**Retention of Records**

The Contractor agrees to maintain for three (3) years from the date of Final Payment, or until the end of any audit or closure of all pending matters under this Contract, whichever is later, all books, documents, papers, and records pertinent to this Contract. The Contractor agrees to provide to the Town, any federal grantor agency, the Comptroller General of the United States, any state grantor agency, any assignee, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them. The Contractor further agrees to include these provisions in any subcontracts issued in connection with this Contract.

**SECTION TWELVE**  
**State and Local Taxes**

Except as otherwise provided, Contract prices shall include all applicable state and local taxes.

The Contractor shall calculate that portion of the Contract that is subject to the eight and one half percent (8.5%) South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices, and shall be paid to the SCDOR by the Contractor. If the Contractor is a non-South Carolina company, the Town will withhold said amount from all invoices and remit payment to the SCDOR, unless Contractor furnishes the Town with a valid South Carolina Use Tax Registration Certificate Number.

The Contractor shall indemnify and hold harmless the Town for any loss, cost, or expense incurred by, levied upon or billed to the Town as a result of the Contractor's failure to pay any tax of any type due in connection with this Contract.

The Contractor shall ensure that the above sections are included in all subcontracts and sub-subcontract and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

**SECTION THIRTEEN**  
**Independent Contractor**

The Contractor is an independent contractor and shall not be deemed the agent or employee of the Town for any purpose whatsoever. The Contractor shall not hold himself out as an employee of the Town, and shall have no power or authority to bind or obligate the Town in any manner, except the Town shall make payment to the Contractor for Work and expenses as herein provided. The Contractor shall obtain and maintain all licenses and permits required by law for performance of this Contract by him or his employees, agents, and servants. The Contractor shall be liable for and pay all taxes required by local, state or federal governments, including but not limited to social security, Workers' Compensation, employment security, and any other taxes and licenses or insurance premiums required by law. No employee benefits of any kind shall be paid by the Town to or for the benefit of the Contractor or its employees, agents, or servants by reason of this Contract.

**SECTION FOURTEEN**  
**Inspection and Acceptance, No-Claim Affidavits**



- A. All Work (which term includes, but is not restricted to materials, workmanship, manufacture and fabrication of components) shall be subject to inspection and test by the Town and/or SCDOT at all reasonable times and places prior to acceptance. Any such inspection and test is for the sole benefit of the Town and/or SCDOT and shall not relieve the Contractor of the responsibility of providing quality supplies to comply with the Contract requirements. No inspection or test by the Town and/or SCDOT shall be construed as constituting or implying acceptance of Work. Inspection or test shall not relieve the Contractor of the responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights (including warranty rights) of the Town and/or SCDOT after acceptance of the completed Work. The Contractor shall conduct and pay for all tests required in the Scope of Work.
- B. The Contractor shall, without charge, replace any material or correct any workmanship found by the Town not to conform to the Contract requirements, unless the Town consents in writing to accept such material and workmanship with an appropriate adjustment in Contract Price. The Town shall promptly remove rejected material from the premises.
- C. Upon completion and acceptance of all Work, the Contractor shall provide the Project Manager with written affidavits. Such affidavits shall state that all claims arising by virtue of the Contract have been paid in full with any exceptions listed on such affidavits.
- D. Final acceptance of the completed project will be upon final payment to the Contractor. Upon final acceptance, the workmanship and material warranty period will begin.

**SECTION FIFTEEN**  
**Cleanup Work**

- A. During progress of Work, Contractor will keep the Work Site and affected adjacent areas cleaned up. The Contractor will remove all rubbish, surplus materials, surplus excavates, and unneeded construction equipment so that the Work Site will be inconvenienced as little as possible.
- B. Where materials or debris have washed or flowed into or have been placed in existing watercourses, ditches, gutters, drains, pipes, or structures by work done under this Contract, the Contractor will remove and dispose of such material or debris during the progress of the Work.
- C. Upon completion of Work, the Contractor will leave all ditches, channels, drains, pipes, structures and work, etc. in a clean and neat condition.
- D. The Contractor will remove all debris from any grounds that have been occupied by the Contractor and leave the roads and all parts of the premises and adjacent site affected by the Contractor's operations in a neat and satisfactory condition.
- E. The Contractor will restore or replace, when and as directed, any public or private property damage by the Contractor's work, equipment or employees to a condition at least equal to that existing immediately prior to the beginning of the operations.

**SECTION SIXTEEN**  
**Conditions Affecting the Work**

A. The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Town. The Town assumes no responsibility for any understandings or representations concerning conditions or anything related to this Contract, made by any of its officers or agents prior to the execution of this Contract, unless such understandings or representations by the Town are expressly stated in this Contract.

B. The Contractor has visited and inspected the Work Site and accepts the conditions at the Work Site as they eventually may be found to exist and warrants and represents that this Contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, anything in this Contract to the contrary notwithstanding.

**SECTION SEVENTEEN**  
**Safety of Persons and Property**

A. The following provisions are in addition to those pertinent sections contained in the standard specifications.

B. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(i) Employees on the Work Site and other persons who may be affected thereby; and

(ii) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and

(iii) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

C. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

D. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting and maintaining danger signs and other warnings against hazards as long as such hazards exist. The Contractor shall also promulgate safety regulations and notify owners and users of adjacent sites and utilities of all construction and related activities.

E. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

F. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except damage or loss attributable to acts or omissions of the Town or anyone directly or indirectly employed by it, or by anyone for whose acts the Town may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 24, Indemnification, herein.

G. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Town.

H. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

I. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's best discretion, to prevent threatened damage, injury or loss.

## **SECTION EIGHTEEN**

### **Change Orders**

One or more changes to the Work within the general scope of this Contract may be ordered by change order. The Town may also issue construction change directives, as set forth below. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

A. Change orders shall be submitted on the forms and pursuant to the procedures of the Town. Change order shall mean a written order to the Contractor executed by the Town after execution of this Contract, directing a change in the Work. A change order may include a change in the Contract Price, (other than a change attributable to damages to the Contractor for delay, which the Parties agree are not allowed under this Contract) or the time for the Contractor's performance, or any combination thereof. Where there is a lack of total agreement on the terms of a change order, the Town may also direct a change in the Work in the form of a construction change directive, which will set forth the change in the Work and the change, if any, in the Contract Price or time for performance, for subsequent inclusion in a change order.

B. Any change in the Contract Price resulting from a change order shall be determined by use of the Unit Prices set forth in the Contractor's bid.

C. The execution of a change order by the Contractor shall constitute conclusive evidence of the Contractor's contract to the ordered changes in the Work, this Contract as thus amended, the Contract Price, and the time for performance by the Contractor. The Contractor, by executing the change order, waives and forever releases any claim against the Town for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed change order.

D. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all change orders if such notice, consent or approval is required by the Town, the

Contractor's surety or by law. The Contractor's execution of the change order shall constitute the Contractor's warranty to the Town that the surety has been notified of, and consents to, such change order and the surety shall be conclusively deemed to have been notified of such change order and to have expressly consented thereto.

**SECTION NINETEEN**  
**Claims and Disputes**

A. Definition. A Claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, and extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Town and the Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the Party making the Claim. Following all limits and procedures herein shall be a condition precedent to the Contractor's entitlement to any increased compensation from any claim.

B. Time Limits on Claims. Claims by either Party must be made within ten (10) business days after occurrence of the event giving rise to such Claim or within ten (10) business days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. An additional Claim made after the initial Claim has been implemented by change order will not be considered.

C. Continuing Contract Performance. Pending final resolution of a Claim request for review of site conditions, request for information, or resolution of a dispute, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Town shall continue to make payments in accordance with the Contract Documents.

D. Waiver of Claims: Final Payment. The making of Final Payment shall constitute a waiver of Claims by the Town except those arising from:

1. Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. Failure of the Work to comply with the requirements of the Contract Documents; or
3. Terms of special warranties required by the Contract Documents.

E. Claims for Additional Costs. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 17(I). If the Contractor believes additional cost is involved for reasons including but not limited to (1) an order by the Town to stop the Work where the Contractor was not at fault, (2) a written order for a minor change in the Work, (3) failure of payment by the Town, (4) termination of the Contract by the Town, (5) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

F. Claims for Additional Time. See Section Five herein.

G. Injury or Damage to Person or Property. If either Party to the Contract suffers injury or damage to person or property because of an act or omission of the other Party, of any of the other Party's employees or agents, or of others for whose acts such Party is legally liable, written notice of such injury or damage,

whether or not insured, shall be given to the other Party within a reasonable time not exceeding Ten (10) Business Days after first observance. The notice shall provide sufficient detail to enable the other Party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided herein.

**SECTION TWENTY**  
**Damages**

The Contractor agrees that if the Work, or any part thereof, is not completed within the time agreed upon in this Contract or any extension thereof, the Contractor or its sureties shall be liable to the Town in the amount specified below for each and every calendar day the completion of the Work is delayed beyond the calendar date in this Contract, as fixed and agreed liquidated damages and not as a penalty; and the Town shall have the right to deduct from and retain out of monies which may be then due or which may become due and payable to the Contractor, the amount of such liquidated damages; and if the amount so retained by the Town is not sufficient to pay in full such liquidated damages, the Contractor shall pay to the Town or its sureties the amount necessary to effect payment in full of such liquidated damages.

Any adjustment of the Contract time for completion of the Work granted in accordance with the provisions of this Contract will be considered in the assessment of liquidated damages.

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Town of any of its rights under this Contract.

Schedule of Liquidated Damages for Each Day of Overrun in Contract Time:

Schedule of Liquidated Damages for Each Day of Overrun in Contract Time		
Original Contract Amount		Daily Charge per Calendar Day at Fixed Rate
From More Than	To and Including	
\$0	\$50,000	\$100.00
\$50,000	\$100,000	\$200.00
\$100,000	\$500,000	\$400.00
\$500,000	\$1,000,000	\$600.00
\$1,000,000	\$2,000,000	\$800.00
\$2,000,000	\$5,000,000	\$1,200.00
\$5,000,000	\$10,000,000	\$1,400.00
\$10,000,000	and greater	\$1,800.00

Additional provisions concerning the Contractor’s liability in certain specific events or circumstances are set forth throughout the Scope of Work. By signing this Contract, the Contractor expressly agrees to the terms thereof.

**SECTION TWENTY-ONE**  
**Suspension of Work**

The Town Administrator may order, in writing, the Contractor to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Town. The Town may suspend performance of its obligations under this Contract in good faith for the convenience of the Town or to investigate matters arising in the Work.

The Town Administrator may order suspension of the Work in whole or in part for such time as he deems necessary because of the failure of the Contractor to comply with any of the requirements of this Contract, and the Contract's completion date shall not be extended on account of any such suspension of Work.

When the Town Administrator orders any suspension of the Work under the paragraph above, the Contractor shall not be entitled to any payment for Work with respect to the period during which such Work is suspended and shall not be entitled to any costs or damages resulting from such suspension.

The rights and remedies of the Town provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

#### **SECTION TWENTY-TWO** **Modification of Contract**

The Town Administrator has the unilateral right to modify this Contract when the modification is in the best interest of the Town, provided however, the Contractor is given written notice of any such modification and the Town is responsible for paying Contractor for any additional expenses incurred by Contractor that relate to the modification. Subject to the above, the Contractor shall immediately notify the Town in writing of any proposed adjustment in its fee. The Contractor is obligated to perform the revised contract when so directed by the Town Administrator and the Town is obligated to pay for the work performed pursuant to the modification. No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after Final Payment under this Contract.

#### **SECTION TWENTY-THREE** **Termination**

##### **A. For Convenience**

The Town Administrator, by advance written notice, may terminate this Contract when it is in the best interests of the Town. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually accomplished. The Contractor will not be compensated for any other costs in connection with a termination for convenience. The Contractor will not be entitled to recover any damages in connection with a termination for convenience.

##### **B. For Default**

If the Contractor refuses or fails to perform the Work or any separable part thereof in a timely or workmanlike manner in accordance with the Contract Documents, or otherwise fails, in the sole opinion of the Town, to comply with any of the terms and conditions of the Contract Documents deemed, in the sole opinion of the Town, to be material (including, without limitation, the requirement that Contractor obtain and maintain in force all necessary permits), such refusal or failure shall be deemed a default under this Contract.

In the event of a default under this Section, the Town shall have the right to terminate forthwith this Contract by written notice to the Contractor. In the event of such default, the advance notice period for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this section.

Whether or not the Contractor's right to proceed with the Work is terminated, it and its sureties shall be liable for any damage to the Town resulting from Contractor's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

**C. Termination for Non-Appropriation of Funds**

The Town Administrator, by written advance notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, County or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits.

**D. Rights Cumulative**

The rights and remedies of the Town provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

**SECTION TWENTY-FOUR**  
**Indemnification**

Except for expenses or liabilities arising from the negligence or intentional acts of the Town, the Contractor hereby expressly agrees to indemnify and hold the Town harmless against any and all expenses and liabilities arising out of the negligent performance, action or inaction of the Contractor in conduct of this Contract, as follows:

For matters other than those arising from the rendering or failure to render professional services, the Contractor expressly agrees to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm or corporation directly or indirectly employed by the Contractor and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage) that is suffered by the Town and/or its officers or employees or by any member of the public, to indemnify and save the Town and its officers and employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the negligence, action or inaction of the Contractor, regardless of whether such liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses are caused in part by the Town. Such costs are to include, without limitation, defense, settlement and reasonable attorney's fees incurred by the Town and its employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including, without limitation, any employee of any subcontractor), the Town's

officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the Town submits notice, Contractor shall promptly defend any aforementioned action.

For matters arising out of the rendering or failure to render professional services, the Contractor will indemnify and save the Town and its officers and employees harmless from and against all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses arising out of or resultant from any negligent act, error or omission of the Contractor in the rendering or failure to render professional services under this Contract. Such costs are to include, without limitation, defense, settlement and reasonable attorneys' fees incurred by the Town and its officers and employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including, without limitation, any employee of any subcontractor), the Town's officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the Town submits notice of claim that triggers the indemnity, the Contractor shall promptly defend any aforementioned action at its own cost.

The limits of insurance required in this Contract shall not limit the Contractor's obligations under this Section. The terms and conditions contained in this Section shall survive the termination of the Contract or the suspension of the Work hereunder. To the extent that any liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses are caused in part by the acts of the Town, the Contractor's obligations shall be reduced in proportion to the Town's fault. The obligations herein shall also extend to any actions by the Town to enforce this indemnity obligation. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

#### **SECTION TWENTY-FIVE** **Gratuities and Kickbacks**

**Gratuities.** It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement of a contract or subcontract, or to any solicitation or proposal therefore.

**Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Violation of this clause may result in Contract termination.

#### **SECTION TWENTY-SIX** **Labor: Subcontractors: Employment Consideration**

The Contractor shall not contract with a proposed person or entity to whom the Town has made reasonable and timely objections. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable and timely objection.



The Contractor shall enforce strict discipline and good order among its employees and other persons carrying out the Contract.

Employment of labor by Contractor shall be effected under conditions which are satisfactory to Town. Contractor shall remove or cause to have removed from the project any employee or employees who are considered unsatisfactory by the Town.

The Contractor assumes the responsibility for assuring that its working forces are compatible with other forces on the job, and the Contractor is responsible for making himself aware of those forces. The Contractor will furnish a competent representative who is to be kept available to the site to represent the Contractor for the purpose of receiving notices, orders and instruction.

**SECTION TWENTY-SEVEN**  
**Other Contracts**

The Town reserves the right to undertake or award other contracts for additional work/services, and may elect to complete portions of the work/services included in this Contract using its own forces or through other contracts, and the Contractor shall fully cooperate with such other contractors, Town employees and carefully fit its own work/services to such work/services as may be directed by the Town. The Contractor shall not commit or permit any act by its forces or subcontractors which will interfere with the performance of work/services by any other contractor or by Town and or Department employees.

**SECTION TWENTY-EIGHT**  
**Permits and Licenses**

The Contractor shall, without additional expense to the Town, be responsible for obtaining and maintaining all necessary licenses and permits required by the State of South Carolina, the Town or the County or any other authority having jurisdiction. Prior to execution of a contract, the Contractor may be required to provide a copy of its current applicable Contractor's License issued by the State of South Carolina and the County. Any subcontractor must comply with the regulations promulgated in the South Carolina Contractor's Licensing Board as enforced by the South Carolina Licensing Board for Contractors. Contractor's (and or any subcontractor's) License Number, Person's Name and Business Name must all be shown on all required licenses.

**SECTION TWENTY-NINE**  
**Assignment**

The Contractor shall not assign in whole or in part the Contract without the prior written consent of the Town or its Assignee. The Contractor shall not assign any money due or that may become due to it under said Contract without the prior written consent of the Town or its Assignee. Each Party binds itself, its successors, assigns, executors, administrators or other representatives to the other Party hereto and to successors, assigns, executors, administrators or other representatives of such other Party in connection with all terms and conditions of the Contract.

**SECTION THIRTY**  
**Controlling Law**

The laws of South Carolina shall govern this Contract. All litigation arising under this Contract shall be litigated only in a nonjury hearing in the Court of Common Pleas, Ninth Judicial Circuit, Charleston County, South Carolina.

**SECTION THIRTY-ONE**  
**Severance**

Should any part of this Contract be determined by a Court of competent jurisdiction to be invalid, illegal, or against public policy, said offending Section shall be void and of no effect and shall not render any other Section herein, nor this Contract as a whole, invalid.

**SECTION THIRTY-TWO**  
**Town's Designated Representative(s)**

In the event that any questions or problems arise in the course of performing this Contract, Contractor shall immediately contact one or more of the following Town representatives:

Ashley Kellahan, Town Administrator  
Town of James Island  
1238-B Camp Road  
James Island, SC 29412 (843) 795-4141

**SECTION THIRTY-THREE**  
**Notices**

Whenever any provision of this contract requires the giving of written notice, it shall be deemed to have been validly given if delivered by person or by registered mail to the following:

If to the Town:

Ashley Kellahan, Town Administrator  
Town of James Island  
1238-B Camp Road  
James Island, SC 29412 (843) 795-4141

If to the Contractor:

[To be completed upon award]

**SECTION THIRTY-FOUR**  
**Non-Waiver**

Any waiver of any default by either Party to this Contract shall not constitute waiver of any subsequent default, nor shall it operate to require either Party to waive, or entitle either Party to a waiver of, any subsequent default hereunder.

**SECTION THIRTY-FIVE**  
**Entire Contract**

This Contract constitutes the entire understanding and Contract between the Parties hereto and supersedes all prior and contemporaneous written and oral contracts between the Parties and their predecessors in interest regarding the subject matter of this Contract. This Contract may not be changed, altered, amended, modified, or terminated orally, except as specifically provided, and any such change, alteration, amendment, or modification must be in writing and executed by the Parties hereto.

**IN WITNESS WHEREOF**, the Parties executed this Contract under their several seals the day and year first written above.

**CONTRACTOR:**

**TOWN OF JAMES ISLAND, SOUTH CAROLINA:**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Ashley Kellahan  
Town Administrator

**Attest:**

**Attest:**

1)\_\_\_\_\_

1)\_\_\_\_\_

2)\_\_\_\_\_

2)\_\_\_\_\_  
James Island, SC

**ATTACHMENT D**

**SAMPLE FORM(S)**

**INSURANCE REQUIREMENTS  
(Contracts Greater Than \$25,000)**

Contractors working for the Town of James Island are required to procure and maintain for the duration of their contract with the Town insurance against claims for injuries to persons or damages to property which may arise from or in connection with work performed by the Contractor, his agents, representatives, employees or subconsultants. The cost of such insurance shall be the responsibility of the Contractor.

A. The Contractor shall carry liability insurance with a reliable company licensed to do business in South Carolina. Coverage shall be at least broad as:

- 1 Insurance Services Office (ISO) Commercial General Liability Coverage Form ("occurrence") CG 00 01 10/01.
- 2 Insurance Services Office Business Auto Coverage Form CA 00 01 1% 1 covering automobile liability for all "owned, hired and non-owned autos".

B. Contractor shall carry workers' compensation as required by the State of South Carolina and Employers Liability insurance (including applicable occupation disease provisions and all state endorsements.)

C. Contractor shall maintain limits no less than the following:

- 1 **COMMERCIAL GENERAL LIABILITY:** \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal injury with a \$2,000,000 general aggregate limit.
- 2 **BUSINESS AUTOMOBILE LIABILITY:** \$1,000,000 combined single limit per accident for bodily injury and property damage.
- 3 **WORKERS' COMPENSATION:** Statutory limits are required by South Carolina state law, and employer's liability limits of \$500,000 each accident, \$500,000 policy limit, and \$500,000 each employee.

D. Required policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

The Town of James Island, its officials, employees and volunteers are to be covered as additional insured's as respects: Liability arising out of activities performed by or on behalf of the Contractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town of James Island, its officials, employees or volunteers. To accomplish this objective, the Town of James Island shall be named as an additional insured under the Contractor's general liability policy by attaching Insurance Services Office (ISO) Commercial General Liability Endorsement CG 20 10 10/01 (*Additional Insured-Owners, Lessees or Contractors-Scheduled Person or Organization*) and CG 2037 (*Additional Insured-Owners, Lessees or Contractors-Completed Operations*) or their equivalent endorsements. Contractors' insurance coverage shall be primary insurance as respects the Town of James Island, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Town of James Island, its officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not be required to contribute. To accomplish this objective, the following wording should be incorporated in the previously referenced additional insured endorsement.

Other Insurance: This insurance is primary, and our obligations are not affected by any other insurance carried by the additional insured whether primary, excess, and contingent or on any other basis.

Any failure to comply with reporting provisions of the Contractor's policies shall not affect coverage provided to the Town of James Island, its officials, employees or volunteers.

2. Workers' Compensation

The Contractor shall agree to waive all rights of subrogation against the Town of James Island, its officials, employees and volunteers for losses arising from work performed by the Contractor for the Town of James Island.

E. Any deductibles or self-insured retentions larger than \$5,000 must be declared to and approved by the Town of James Island.

F. Each Insurance policy required by the Town of James Island shall be endorsed to state that should any of the required policies be cancelled before the expiration date thereof, notice will be delivered to the Town of James Island within policy provisions.

G. All coverages for subcontractors shall be subject to all the requirements stated herein.

H. Insurance must be placed with an approved insurance company with current Best's rating of A+, A, or A-and minimum Financial Size Category (FSC) of VIII or greater. Exceptions to this requirement must be approved in writing by the Safety & Risk Management Department.

I. The Contractor shall furnish the Town of James Island with Certificates of Insurance noting the endorsements. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Town of James Island, before work commences. The Town of James Island reserves the right to require complete, certified copies of all required insurance policies, at any time.

Required certificates should be mailed to:

Town of James Island  
1238-B Camp Road  
James Island, SC 29412

**POLICY NUMBER: COMMERCIAL GENERAL LIABILITY CG 20 10 10 01**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE**

**Name of Person or Organization:**

THE TOWN OF JAMES ISLAND

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

TOWN OF JAMES ISLAND SAMPLE CERTIFICATE OF INSURANCE						
<b>Producer</b> ABC AGENCY 123 MAIN STREET ANYTOWN, SC 12345  <b>Insured</b> XYZ CONTRACTOR P.O. BOX 000 ANYTOWN, SC 12345		This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.				
		<b>COMPANIES AFFORDING COVERAGE</b>				
		Company A		(Issuing Company)		
		Company B				
COVERAGES						
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies. Limits shown may have been reduced by paid claims.						
CO LTR	Type of Insurance	Policy Number	Policy Eff. Date (MM/DD/YY)	Policy Exp. Date (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY : Comm. General Liability 9 Claims Made : Occur 9 Owner's & Contract's Prot :Holder Named as Additional Insured	XXXXXXXXXX	XX/XX/XX	XX/XX/XX	General Aggregate	\$2,000,000
					Prod-Comp/Op Agg	\$1,000,000
					Pers. & Adv. Injury	\$1,000,000
					Each Occurrence	\$1,000,000
					Fire Damage (One Fire)	\$50,000
					Med Exp. (Any one Person)	\$5,000
	AUTOMOBILE LIABILITY : Any Auto 9 All Owned Autos 9 Scheduled Autos 9 Hired Autos 9 Non-Owned Autos	XXXXXXXXXX	XX/XX/XX	XX/XX/XX	Combined Single Limit	\$1,000,000
					Bodily Injury (Per Person)	
					Bodily Injury (Per Accident)	
					Property Damage	
	GARAGE LIABILITY 9 Any Auto				Auto Only - Ea Accident	
					Other Than Auto Only	
					Each Accident	
					Aggregate	
	EXCESS LIABILITY 9 Umbrella Form 9 Other Than Umbrella Form				Each Occurrence	
					Aggregate	
	Workers Compensation and Employers' Liability  The Proprietor/Partners/Executive Officers Are: 9 Incl 9 Excl	XXXXXXXXXX	XX/XX/XX	XX/XX/XX	9 Statutory Limits	
					Each Accident	\$500,000
					Disease - Policy Limit	\$500,000
					Disease - Each Employee	\$500,000
	OTHER					
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: ADDITIONAL INSURED - OWNERS, LESSEES, OR CONTRACTORS (FORM B (ISO-2010 10/93) IS INCLUDED, NAMING HOLDER AS ADDITIONAL INSURED. THIS INSURANCE IS PRIMARY, AND OUR OBLIGATIONS ARE NOT AFFECTED BY ANY OTHER INSURANCE CARRIED BY THE ADDITIONAL INSURED WHETHER PRIMARY, EXCESS, CONTINGENT, OR ON ANY OTHER BASIS.						
CERTIFICATE HOLDER				CANCELLATION		



TOWN OF JAMES ISLAND ATTN: TOWN ADMINISTRATOR PO BOX 12240 JAMES ISLAND, SC 29422	Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative
AUTHORIZED REPRESENTATIVE	



**STATE OF SOUTH CAROLINA**     )  
 )                                   **FOR**  
**TOWN OF JAMES ISLAND**     )     **CONTRACT/SOLICITATION #** \_\_\_\_\_

**THIS PERFORMANCE BOND** entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between \_\_\_\_\_, as Principal (hereinafter the "Principal" or "Contractor"), whose principal office is located at \_\_\_\_\_ and \_\_\_\_\_ as Surety (hereinafter "Surety") whose principal office is located at \_\_\_\_\_ are held and firmly bound unto the Town of James Island, a political subdivision of the State of South Carolina, and a body politic and corporate (hereinafter the "Town"), in the sum of \$\_\_\_\_\_ ("Performance Bond Amount"), lawful money of the United States of America, for the payment of which, will and truly be made, we, and each of us, bind ourselves and each of us, our successors and assigns, jointly and severally, by these presents.

**WHEREAS**, the Contractor has entered a Contract with the Town and is required under the terms of Contract # \_\_\_\_\_ (hereinafter the "Contract") to provide a bond for the faithful performance of the Contractor's obligations under the Contract; and

**WHEREAS**, the Contractor has by written agreement dated \_\_\_\_\_ 20\_\_, entered into a Contract with the Town for \_\_\_\_\_ in accordance with the Scope of Work (the "Work") identified in the Contract which Contract is incorporated herein by reference and made a part hereof; and

**WHEREAS**, the Surety agrees that if the Contractor fails to perform the Work then it will complete and properly perform the Contract subject to the terms and conditions set forth herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

**SECTION I. DUTY TO PERFORM**

The Surety hereby waives notice of any modifications, alterations, or extensions of time made by the Town whether unilateral or by mutual consent. No extension of time, change, alteration, modification, deletion, or addition to the Contract, or of the Work required therein shall release or exonerate the Surety on the Bond or in any way affect the obligations of the Surety on this Bond.

Whenever the Contractor shall be, and declared by the Town to be in default under the Contract, the Town having performed the Town's obligations thereunder, the Surety may promptly remedy the default, or shall promptly elect one of two options. The Surety may elect Option 1 and complete the Contract in accordance with its terms and conditions. If the Surety selects Option 1, it may perform and complete the Contract itself, through its agents or through independent contractors; provided however, that the Surety may not select the Contractor as its agent or independent contractor without the Town's consent. If Option 1 is selected, the Town may withhold consent to the selection of the option in its sole discretion, in which case the Surety must select Option 2. Notwithstanding the provisions of Option 1, the Surety may elect Option 2 and obtain a bid or bids for completing the Contract in accordance with its terms and conditions.

Upon determination by the Surety of the lowest responsive and responsible bidder, or, if the Town elects, upon determination jointly by the Town and the Surety of the lowest responsive and responsible bidder, the Surety shall arrange for a contract between such bidder and the Town under the same terms and conditions for the performance and completion of the Contract, and/or in the sole discretion of the Town in substantially similar under the same terms and conditions for the performance and completion of the Contract. The new contract must be secured with a performance bond executed by the new vendor and a qualified surety equivalent to the bond issued on the initial Contract.

**SECTION II. FINANCIAL OBLIGATIONS**

The Surety agrees to make available as Contract Work progresses (even though there should be a default or a succession of defaults under the Contract or contracts of completion arranged under this Performance Bond) sufficient funds to pay the cost of completion of the Contract or successor contracts. The Performance Bond Amount shall cover all costs invoiced by third party vendors to the Town that exceed the cost in the Contract (to include phases) or costs already paid by the Town to Contractor, but not exceeding the Performance Bond Amount (excluding other costs and damages for which Surety may be liable hereunder).

The Surety's monetary obligation under this Bond is limited to the Performance Bond Amount identified herein, except as otherwise provided. In the event the entire Contract Price has been paid in whole or in part by the Town and the Work is determined to be incomplete or defective in accordance with the terms of the Contract, the Surety is obligated to complete the Contract in an amount not to exceed the Performance

Bond Amount, except as provided herein. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Contractor under the Contract. The Surety's obligations shall include, but are not limited to:

- A. The responsibilities of the Contractor to complete the Contract and/or to correct defective work;
- B. The responsibilities of the Contractor to pay damages under the Contract; and
- C. The cost of additional professional fees, and costs for all delays resulting from Contractor's default, and resulting from the Contractor's or Surety's actions or failure to act.

**SECTION III. RIGHTS AND REMEDIES**

If the Surety does not proceed as indicated herein within ten (10) days after receipt of written notice from the Town to the Surety demanding that the Surety perform its obligations under this Bond, then the Surety shall be deemed to be in default on this Bond. At all times, the Town shall be entitled to enforce any remedy available to the Town under the laws of South Carolina.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due and is paid.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Town named herein or the heirs, executors, administrators or successors of the Town.

**SECTION IV. GENERAL PROVISIONS**

If any term or condition of this Performance Bond or the application thereof to any person(s) or circumstances is held invalid, this invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Bond are declared severable.

This Performance Bond shall be governed by the laws of the State of South Carolina and any and all disputes arising out of this Bond shall, if it cannot be resolved without litigation, be litigated only in a non-jury hearing. Any such lawsuit shall be filed with the Circuit Court for the Ninth Judicial Circuit, Charleston County, South Carolina.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Contractor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
by its: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_, Surety

\_\_\_\_\_  
Witness

\_\_\_\_\_  
by its: \_\_\_\_\_

\_\_\_\_\_  
Witness



**Town of James Island  
Labor and Material Payment Bond**

*(This bond is issued simultaneously with Performance Bond in favor of the Owner conditioned on the full and faithful performance of the Contract)*

---

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(Insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and, \_\_\_\_\_  
(Insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the Town of James Island, 1238-B Camp Road, James Island, South Carolina 29412, as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated \_\_\_\_\_, 20\_\_ entered into a contract with

Owner for \_\_\_\_\_  
(Insert full name, address and description of project)

in accordance with the Drawings and Specifications prepared by \_\_\_\_\_  
(Insert full name and address or legal title of the Design Professional)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant=s work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the

Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a nonjury hearing before the Circuit Court for the Ninth Judicial Circuit sitting in Charleston, South Carolina.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics= liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Principal) (Seal)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety) (Seal)

\_\_\_\_\_  
(Title)

**Town of James Island**  
**Drug-free Workplace Certification**  
**(Contractor/Vendor Other Than Individuals)**

This certification is required by the Drug-free Workplace Act, Section 44-107-10 et seq South Carolina Code of Laws (1976, as amended). The regulations require certification by Contractors/Vendors prior to award, that they will maintain a drug-free workplace as defined below. The certification set out below is a material representation of fact upon which reliance will be placed when determining the award of a contract. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of contract, or suspension or debarment from the right to submit bids or proposals for Town of James Island projects.

For purposes of this Certification, “Drug-free Workplace” is defined as set forth in Section 44-107019 (1), South Carolina Code of Laws (1976, as amended). The aforesaid Section defines workplace to include any site where work is performed to carry out the Contractor’s/ Vendor’s duties under the contract. Contractor’s/Vendor’s employees shall be prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Drug-free Workplace Act.

By signing this document, the Contractor/Vendor hereby certifies that it will provide a drug-free workplace by:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor’s/Vendor’s workplace and specifying the actions that will be taken against employees for violation of the prohibition;
- (2) Establishing a drug-free awareness program to inform employees about:
  - (a) The dangers of drug abuse in the workplace;
  - (b) The Contractor’s/Vendor’s policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) The penalties that may be imposed upon employees for drug violations;
- (3) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (1) above;
- (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the contract, the employee will:
  - (a) Abide by the terms of the statement: and

(b) Notify the employer of any criminal drug statue conviction for a violation occurring in the workplace no later than five (5) days after the conviction;

(5) Notifying the using agency within ten (10) days after receiving notice under subparagraph (4) (b) from an employee or otherwise receiving actual notice of the conviction;

(6) Taking one of the following actions, within thirty (30) days of receiving notice under subparagraph (4) (b) with respect to any employee who is convicted:

(a) Taking appropriate personnel action against the employee, up to and including termination; and

(b) Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.

**Town of James Island Contract Number:**

**Project Name:**

\_\_\_\_\_

**Contractor/Vendor**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Authorized Representative**

**Name/Title:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Witness:** \_\_\_\_\_

\_\_\_\_\_

**Note: This certification form is required for all contracts for a stated or estimated value of \$50,000 or more.**



**ATTACHMENT E**

**REQUIRED FORMS**

<b>BID FORM</b> <b>Page One</b>
------------------------------------

BY SUBMITTING THIS BID, THE UNDERSIGNED BIDDER REPRESENTS:

1. The Bidder has carefully examined the plans and specifications with the related documents and visited the site of the Project for which he is submitting a bid.
2. The Bidder is familiar with all the conditions surrounding the performance of the Work required for this Project, including the availability of materials, equipment, supplies and labor, and has visited the site and is therefore familiar with all physical conditions affecting the Work and has considered same in calculating its bid.
3. If the Bidder is awarded the Contract, he will provide all labor, material, supplies and equipment and execute the Work in accordance with the Contract Documents.
4. If the Bidder is awarded the Contract, Bidder will commence Work after the issuance of a "Notice to Proceed" as required in the Invitation for Bids.
5. If the Bidder awarded the Contract, Bidder agrees that if the Work or any part thereof is not completed according to the specifications and terms of the Contract Documents and within the Contract Time (including any extension thereof), its sureties will be liable for Liquidated Damages in accordance with the Contract.
6. The Bidder will hold its bid open for Sixty (60) Calendar Days after the date bids are opened or else will forfeit the bid security to the Town.
7. If the Bidder is awarded the Contract, he will provide a performance bond and a payment bond (Town of James Island labor and material bond and performance bond) together with insurance coverage as required by the Invitation for Bids. The costs of the bonds and insurance are included in the bid.
8. The Bidder understands that the Town reserves the right to reject any bids which do not meet the bid requirements or all bids in the event that the Project is canceled or postponed, or if such is in the best interests of the Town.
9. That if awarded the Contract the successful Bidder will enter and execute a contract as required in the Invitation for Bids.
10. That the Bidder is legally able to enter into and perform a contract, if awarded.
11. That the Bidder is current on all taxes and fees owed to the Town.

<b>BID FORM</b> <b>Page Two</b>
------------------------------------

The undersigned hereby offers to furnish all materials and supplies, tools, barriers, equipment, labor, subtrade costs, supervision, clean-up and other costs, without exception, in accordance with the plans, specifications, drawings, and Contract Documents for Invitation for Bids No. 1-2017.

TIME OF COMPLETION:

The undersigned agrees to commence Work upon issuance of a Notice to Proceed with an adequate force, carry the Work forward as rapidly as possible, and complete the Project as required by the Invitation for Bids. Completion of this Project shall be achieved within **sixty (60)** Calendar Days from the date of issuance of the Notice to Proceed.

EXECUTION OF THE CONTRACT:

The undersigned further agrees that in the case of failure or refusal on its part to execute the Contract within Five (5) Business Days after the issuance of a Notice of Award, the check, cash, or bid bond accompanying this bid shall be paid into the funds of the Town's account set aside for this Project, as liquidated damages, and not as a penalty, for such failure; otherwise the check, cash, or bid bond accompanying this bid shall be returned to the undersigned. Please note that the Contract must be executed in Charleston, South Carolina.

BID PRICES:

The unit price per ton, square yard, linear foot, etc., must reflect all materials, supplies, equipment, supervision, labor costs, quality control services, and sales tax necessary to complete the Project. All costs for grading, sweeping, cleaning, shaping, tacking, compacting, etc., shall also be included in the unit bid price.

The total base bid will be considered in determining the Award of Contract pursuant to Paragraph Four (4) of this IFB.

The Town of James Island reserves the right to increase the Contract quantities by an amount not to exceed in value twenty percent (20%) of the total Contract amount, or decrease the Contract quantities by an amount not to exceed in value twenty percent (20%) of the total Contract amount. Any increase in quantity will be on other streets or in the same general area of Work. Payment will be made based on the unit bid prices shown on the successful bidders Bid Form(s) and incorporated by reference in the Contract. See the attached Contract for additional terms regarding payment for adjustments in quantities, and other adjustments to the Contract.

**BID FORM  
Page Three**

Respectfully submitted this \_\_ day of \_\_\_\_\_, 2017

Company Name: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Signature \_\_\_\_\_ Print Name \_\_\_\_\_  
Title: \_\_\_\_\_ (e.g. Owner, Partner, Corporate Officer, etc.)

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Remittance Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ FEIN: \_\_\_\_\_

Email Address: \_\_\_\_\_  
\_\_\_\_\_

Vendor is a/an:  Sole Proprietorship  Partnership  LLC  Corporation – list the state of incorporation \_\_\_\_\_

SC Contractor’s License No. \_\_\_\_\_

Contractor’s Federal Tax I.D. No. \_\_\_\_\_

**LOCAL VENDOR PREFERENCE OPTION:**

My company meets the requirements and wishes to request the local vendor preference.  No  Yes

**BID SECURITY**

Amount Enclosed (5% of Bid) \$ \_\_\_\_\_ (Bid Bond or Cashier's Check)

**BID HOLDING TIME:**

Prices must remain firm for a minimum of Sixty (60) Business Days from bid opening. Please indicate maximum time that bid prices will remain firm.

Prices firm through: \_\_\_\_\_

**BID FORM****Page 4****CHARLESTON COUNTY TAXES:**

Please note that the Town of James Island is required to verify that all taxes have been paid to the County. If you owe delinquent taxes, your bid may be disqualified from consideration. If you wish to inquire as to your tax status, you may contact the Charleston County Delinquent Tax Office Department at (843) 958-4570.

**BUSINESS LICENSE:**

Does your business have a valid Town of James Island Business License?  Yes  No

If so, list the number \_\_\_\_\_. You must possess a valid Town of James Island for business undertaken in the Town of James Island jurisdiction. Contact the Town of James Island at 843-795-4141 with any questions.

## TOWN OF JAMES ISLAND PROCUREMENT SUBCONTRACTOR DATA FORM

**List all subcontractors to be used on this project. Failure to complete this Subcontractor Data Form in its entirety, as well as to submit this form with your original response to this solicitation, may subject your response to rejection. Attach additional copies of this form if more space is needed. Substitutions for this form are not acceptable.**

Solicitation No. \_\_\_\_\_ Total Bid Amount \_\_\_\_\_ Date \_\_\_\_\_

Prime Contractor \_\_\_\_\_ City & State \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

### RESPONDENT MUST LIST ALL SUBCONTRACTORS

Subcontractor's Business Name, Address, Phone, and Principal's Name	Short Description of Goods or Services to be Provided by Subcontractor	Are there any licenses or certifications required by SC law for this subcontractor or any of its employees?	Dollar Amount of Subcontract	Subcontract Percentage of Total Bid Amount
		<input type="checkbox"/> Yes (Must Attach Copy) <input type="checkbox"/> No		
		<input type="checkbox"/> Yes (Must Attach Copy) <input type="checkbox"/> No		
		<input type="checkbox"/> Yes (Must Attach Copy) <input type="checkbox"/> No		
		<input type="checkbox"/> Yes (Must Attach Copy) <input type="checkbox"/> No		

## **Compliance with Illegal Immigration Act**

By signing a bid/proposal, the Bidder/Offeror certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either; (a) that Title 8, Chapter 14 is inapplicable to the Bidder/Offeror and its subcontractors or sub-subcontractors; or (b) that the Bidder/Offeror and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both."

Bidder/Offeror agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with the subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

Contract Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Contractor/Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_

Authorized Representative Name and Title: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Witness (Print Name and Sign): \_\_\_\_\_

## **NON-COLLUSION OATH**

COUNTY OF:

STATE OF: \_\_\_\_\_  
\_\_\_\_\_

Before me, the Undersigned, a Notary Public, for and in the County and State aforesaid, personally appeared and made oath that the Bidder herein, its agents, servants, and/or employees, to the best of its knowledge and belief, have not in any way colluded with anyone for and on behalf of the Bidder, or itself, to obtain information that would give the Bidder an unfair advantage over others, nor have it colluded with anyone for and on behalf of the Bidder, or itself, to gain any favoritism in the award of the Contract herein.

SWORN TO BEFORE ME THIS

\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

NOTARY PUBLIC FOR THE

STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature for Bidder

Please print Bidder's name and address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(Note: Notary seal required for Out of State Bidders)**