

**TOWN OF KENSINGTON
REQUEST FOR BID PROPOSALS
REPAIR OF THREE BRIDGES**

Bid Documents

Issued by
Town of Kensington

CONTACT: Matthew Hoffman, Town Manager
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Issue Date
December 15, 2021

Questions Due
January 10, 2021 at 4:00 p.m.

Bid Submissions Due
January 19, 2021 at 2:00 p.m.

TOWN OF KENSINGTON, MARYLAND

REQUEST FOR BID PROPOSAL MAINTENANCE AND REPAIR OF THREE BRIDGES

I. ADVERTISEMENT AND BID REQUIREMENTS

The Town of Kensington (“the Town”) requests bid proposals to maintain and repair three bridges in the Town, located on Kensington Parkway (MK03001), Kent Street (MK004) and Frederck Avenue (MK 02X01).

Bids shall be delivered electronically with the subject line of RFP Maintenance and Repair of Three Bridges to MJHoffman@tok.md.gov. **All bids must be received no later than Wednesday, January 19, 2022 at 2:00 p.m.** The bids will be publicly opened and read via conference call on January 19, 2022 at 2:30 p.m. The call-in number and access code for the bid opening will be posted to the Town’s website at least 5 days before the bid opening at <https://tok.md.gov>. Bids received after the deadline will not be considered. Bidders should submit their bids with sufficient time to confirm it has been received electronically. Award of a contract will be made by the Mayor and Council of the Town of Kensington at a regular Town Council meeting.

All questions about the meanings or intent, discrepancies or omissions of the Contract Documents must be submitted by email on or before January 10, 2022 by 4:00 p.m. to Matt Hoffman as Project Manager, at mjhoffman@tok.md.gov. Responses will be provided by email to known bidders, and on the Town’s website by January 12, 2022.

Copies of the Contract Documents may be downloaded from the Town’s website at <https://tok.md.gov>. If you are unable to obtain the Contract Documents from the website, please contact the Town 8:00 a.m.-4:00 p.m., at 301-949-2424.

The Town of Kensington is an Equal Opportunity Employer. Discrimination based on race, religion, sex, age, ethnicity, ancestry or national origin, physical or mental disability, color, marital status, sexual orientation, gender identity, genetic information, political affiliation or any other factors not related to the ability to perform the work is expressly prohibited.

The Town reserves the right to reject any and all proposals or change its requirements in the best interest of the Town.

II. INSTRUCTIONS TO BIDDER

1. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

Work described herein shall be constructed in accordance with the approved drawings, typical details, plans and specifications and all approved Contract Documents. All work must meet or exceed applicable standards established by the Town.

Before submitting a bid, each Bidder must (a) examine the plans and specifications provided by the Town thoroughly, (b) visit the site to become familiar with local conditions and on-going contracts that may in any manner affect performance of the Work, and (c) be familiar with federal, state, county and local laws, ordinances, rules and regulations affecting performance of the Work.

The submission of a proposal will constitute an incontrovertible representation that the Bidder has complied with every requirement. Failure to inspect the site will not relieve the Bidder of the obligation to furnish the material, equipment, and labor necessary to carry out the work and to complete said work for the consideration and in the time set out herein.

Errors in preparation of the proposal will not relieve the Bidder from the terms thereof. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if the proposal is accepted.

2. NO PRE-BID MEETING

No pre-bid meeting will be held. Potential bidders may visit the sites of the three bridges.

3. INTERPRETATIONS

All questions about the meanings or intent, and any discrepancies or omissions of the Contract Documents must be submitted by email on or before January 10, 2022 at 4:00 p.m. to Matthew Hoffman, Project Manager, kjhoffman@tok.md.gov. The Project Manager will issue an addendum to the RFP with the questions and answers on or before January 12, 2022. Any addenda will be posted to the Town's website and provided to known bidders. In any event, it shall be the responsibility of the Bidder to ascertain whether any addenda have been issued by checking the Town's website. Bidder must acknowledge the receipt (or mark "None" if applicable) of any addenda on their Bid Proposal Form. No questions will be accepted after the January 10, 2022 deadline. Upon award of the bid, all

questions concerning progress of the work shall be directed to the Project Manager or designee.

4. PREPARATION AND SUBMISSION OF BIDS

Bids shall be submitted on the attached forms and shall be filled out in full, in ink or electronically, signed and submitted in electronic format. If changes and erasures are made, such changes and erasures shall be clear and legible, and shall be initialed by the person signing the Bid Proposal Form. Proposals made on any other than the specified bid forms will not be considered. Any changes not approved by the Project Manager will cause rejection of the proposal. Conditional proposals and proposals containing escalator clauses will not be accepted. Any proposed alternatives must be clearly noted in the bid.

Bids shall be delivered electronically with the subject line of “RFP Maintenance and Repair of Three Bridges” to MJHoffman@tok.md.gov. The call-in number and access code for the bid opening will be posted to the Town’s website at least 5 days before the bid opening. **All bids must be received no later than Wednesday, January 19, 2022 at 2:00 p.m. The bids will be publicly opened and read aloud via conference call at 2:30 p.m.** Bids received after the deadline will not be considered. Documents to be submitted with the Bid Proposal include:

- Bid Proposal Form
- Information Regarding the Bidder Form
- Non-Collusion Affidavit
- Affidavit with Respect to Non-Conviction, Non-Suspension and False Pretenses
- Tentative Construction Schedule

A Bidder may submit only one bid proposal. More than one proposal from an individual, firm or partnership, corporation or association under the same or different names will not be considered on any given project, and will be considered grounds for disqualification and/or rejection of the proposals involved, unless prior approval has been granted by the Town.

No Bidder may withdraw a bid within 120 days after the opening thereof. Negligence on the part of the Bidder in preparing the Bid confers no right to the withdrawal of the Bid after it has been opened. Any and all costs incurred in the development of Bids, i.e., preparing and submitting, on-site product/service demonstrations, on-site visits, oral presentations, travel and lodging, etc., shall be the sole responsibility of Bidder.

The Town reserves the right to amend or cancel the RFP at any time at its sole discretion before the execution of a contract with the selected bidder.

Bidders must take into account in their bid that a state of emergency exists in Maryland due to the COVID-19 pandemic and that the construction of the Project is or may be impacted as a result. In the event of delays to the critical path of the construction schedule resulting solely from the effects of the

COVID-19 pandemic, the actual number of days of delay will be added to the construction schedule as an equitable adjustment. Expected costs that may be incurred due to the need for social distancing, personal protective equipment, additional sanitary conveniences and cleaning should be included in the bid, as well as any expected delays in delivery of supplies or equipment. To the fullest extent possible, the Town intends to resolve these issues in the bid process, and not as change orders.

5. BID BOND AND PERFORMANCE AND LABOR AND MATERIALS BONDS

A bid bond is not required in connection with a bid submittal. A performance bond and labor and materials bond for 100% of the contract amount is required.

6. CONTRACT TIME

Work under the Contract shall be completed in accordance with a construction time schedule mutually agreeable to the parties. Work must begin within ten (10) days of notice to proceed. Any request for adjustments to the agreed construction schedule shall be made to the Project Manager when Contractor becomes aware of anticipated delays in receipt of materials or adverse weather, etc. Provisions for liquidated damages for failure to comply with the Contract Time are set forth in the General Provisions. Time is of the essence to this Contract.

7. SCOPE OF WORK

The project involves the maintenance and repair of three bridges located in the Town ("Project"). The scope of work includes the following:

A. Bridge No. M-K-04 Kent Street

- 1) Repair the spalls in the South Spandrel Wall that undermine the bridge rail post base plates.
- 2) Install traffic barrier transitions at all corners of the structure.
- 3) Install MD-SHA Type-G End Treatments on the Northwest, Southwest and Southeast Approaches. Install a MD- SHA Type-K End Treatment on the Northeast Approach.
- 4) Install object markers at all corners of the structure.
- 5) Replace the hand railings on the structure with a crash tested bridge railing.
- 6) Repair drainage pipe behind the Southeast Wingwall.

B. Bridge M-K-001 Kensington Parkway

- 1) Stabilize the Southwest Approach Embankment.
- 2) Remove debris from beneath the bridge.
- 3) Install object markers at all four corners.
- 4) Install scour countermeasures understructure.
- 5) Replace bridge railing in accordance with MD SHA standards.
- 6) Repaint stone wingwalls and spandrel walls.
- 7) Install W-beam traffic barrier along the approaches in accordance with MD SHA standards.
- 8) Install W-beam end treatment at all four corners in accordance with MD SHA standards.
- 9) Grout the gap between the arch and West Spandrel Wall.
- 10) Replace missing stones at both spandrel walls and wingwalls.
- 11) Clean and apply a protective coating to the corroded areas of the pipe arch.
- 12) Grout the full-circumference of the utility pipe where it penetrates the arch.
- 13) Remove tree adjacent to pilaster at the southeast corner of the structure.
- 14) Repair south footing, which is intermittently undermined over a length of 35'-0", up to 5" high with up to 1'-7" of horizontal penetration.
- 15) At 18'-0" from the east end, repair the south footing full-height x 1/4" wide vertical crack.
- 16) At 7'-0" from the east end, repair the north footing full-height x 1/8" wide vertical crack

C. Frederick Avenue MK-02X01

- 1) Install W-beam traffic barrier transitions at all four corners of the bridge.
- 2) Install W-beam traffic barrier end treatments at the four corners of the bridge.

- 3) Install W-beam traffic barriers at all four corners of the bridge.
- 4) Install object markers at the four corners of the bridge.
- 5) Install advance posting sign at the East Approach at the intersection with Wake Drive.
- 6) Repair gabion baskets in the downstream channel
- 7) Repair the edge spalling in the wearing surface along the top of the abutment backwalls.
- 8) Replace the West Abutment joint seal.
- 9) Repair the delaminated areas in both abutments.
- 10) Repair the spalls and delaminated areas in the Southeast and Southwest Wingwalls.

The required maintenance and repair of the bridges is more specifically described in the attached Montgomery County Department of Transportation 2019 Bridge Inspection reports for each bridge, which are incorporated herein by reference.

All required licenses and permits will be the responsibility of the selected contractor, including without limitation, building permits and site certifications.

The selected contractor shall be responsible for the cost and provision of any Third Party inspection requirements. The selected Contractor will be required to pay all necessary fees and post any necessary bonds to any regulatory agencies having jurisdiction for inspection or for the privilege or right to execute the Work as called for in the Contract Documents, and the Contractor shall include the cost of said fees in its bid. The selected Contractor shall be responsible for any “construction fees” to implement the construction of the project.

Work can be performed between 7:00 a.m. and 5:00 p.m., Monday - Friday. Work may be scheduled on Saturdays through the Project Manager. Request to work at any other time will be evaluated based on operations at the facility.

The selected contractor will be responsible for all work listed above, shown on the plans and approved permits and written on the project specifications constituting the Contract Documents, and all work that is incidental thereto.

Contractor parking, dumpster storage and staging in Town rights-of-way shall be coordinated with the Project Manager.

8. AWARD OF CONTRACT

The Contract will be awarded at the discretion of the Mayor and Council of the Town of Kensington. It is expected that the award will be made in February, 2022. In determining which proposal is best, the Town will take into consideration, among other things, the bid price, and the experience, qualifications, references, responsibility and currently available facilities of the Bidder to perform the work.

The Town reserves the right to reject any or all proposals, and to exercise its sole discretion to best serve the interests of the Town.

Except where the Town exercises the right reserved herein to reject any or all proposals, the Contract will be awarded on a per unit price or lump sum basis, as is in the best interest of the Town of Kensington.

The Town of Kensington reserves the right to cancel the award of the Contract at any time prior to execution of the Contract without liability on the part of the Town.

9. EXECUTION OF THE CONTRACT

The Bidder to whom the Contract has been awarded must execute a Contract substantially similar to the one attached within ten (10) days after the award and submit such other documents as required by the Contract Documents, including a current insurance certificate listing the Town of Kensington as additional insureds with an additional insured endorsement for the duration of this Project. Failure by the Contractor to execute the Contract and submit such other documents as required by the Contract Documents shall be just cause for annulment of the Award.

If the Bidder to whom the award is made shall fail to execute the Contract and performance bond hereto attached, and as herein provided, the award may be annulled and the Contract awarded to the second lowest responsive and responsible bidder, and such bidder shall fulfill every stipulation embraced herein, as if he were the original party to whom the award was made, or the Town of Kensington may reject all of the bids, as its interest may require.

10. PERFORMANCE AND LABOR AND MATERIALS BONDS

The successful Bidder will be required to give Performance and Labor and Materials Bonds within 10 business days after the execution of the Contract. The Performance Bond shall be in the amount of 100% of the Contract Price and shall name the Town as an insured and shall be in a form and with a surety acceptable to the Town. The Labor and Materials bond shall be in the amount of 100% of the Contract Price.

11. CONTRACTOR LICENSE

Bidders are required under Section 17-602 of the Business Regulation Article, Annotated Code of Maryland, to show evidence of having obtained a construction license in the State of Maryland. The Bidder shall also obtain any other license or permit required by law.

13. APPROXIMATE QUANTITIES

The Bidder's attention is called to the fact that any quantities given are estimated quantities and are intended as a guide to the Bidder, but in no way bind or limit the Town to the actual amount of work to be performed or the quantity of material to be furnished. Any estimates of quantities herein furnished are approximate only.

14. POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

15. UNBALANCED BID

Bidders are specifically warned against unbalancing their bids as this will render them liable for rejection.

16. MODIFICATION OF BID DOCUMENTS

The right is reserved, as the interests of the Town may require, to revise or amend the Bid Documents prior to the date set for opening bids and to postpone the date set for opening bids. Such revisions, amendments and/or postponements will be announced by addendum, a copy of which shall be available to all prospective bidders on the Town's website at

17. RECEIPT OF ADDENDA

All bidders will be required to acknowledge receipt of any addenda on their Bid Proposal Form.

III. TECHNICAL SPECIFICATIONS

Contractor shall provide biweekly forecast of construction activities to the Town for coordination with Town staff.

IV. GENERAL CONDITIONS

A. DEFINITIONS

Wherever used in the Contract Documents, the following term shall be applicable to both the singular and plural thereof:

1. Addendum or Addenda - Written or graphic instruments issued prior to the Bid Opening of the Contract which modify or interpret the Contract Documents.
2. Approval - Written approval from the Project Manager.
3. Bid – The offer or proposal of the Bidder submitted in the prescribed manner on the prescribed form setting forth the prices for the Work to be

performed.

4. Bidder – Any person, firm or corporation submitting a Bid for the Work.
5. Bonds – Bid Bond, Performance Bonds, Labor and Material Payment Bonds, Maintenance Bonds, and other instruments of security furnished by the Contractor and surety in accordance with the Contract Documents.
6. Change Order – A written order to the Contractor signed by the Project Manager authorizing an addition, deletion or revision in the Work within the general scope of the contract Documents, authorizing an adjustment in the Contract Price or Contract Time.
7. Not used.
8. Commission – Washington Suburban Sanitary Commission or WSSC
9. Contract/Contract Documents – The Contract, including Request for Bid Proposals, the Bidders Proposal/Bid Form, Contract, Bonds, Notice of Award, Notice to Proceed, Change Orders, Plans, Drawings, Certificate of Substantial Completion, Standard Specifications, Addenda, General and Special Provisions, Standard Details, Information Regarding the Bidder, Bidder's Questionnaire, General Conditions, Special Conditions, Affidavits, Insurance Certificates, and Federal Contract Provisions when appropriate.
10. Construction Manager – The authorized representative of the Project Manager assigned to make interpretations, clarifications and other instructions as to the intent of the Contract Documents.
11. Contract Price – The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
12. Not used.
13. Contract Time – The specific date or the number of days stated in the contract for the completion of the Work.
14. Contractor – The person, firm or corporation with whom the Town has executed the Contract.
15. County – Montgomery County, Maryland and any department thereof.
16. Day – A calendar day of 24 hours lasting from midnight one day to midnight the next day.
17. Environmental Pollution – Presence and action of physical, chemical, biological, and human agents that adversely affect individual and community health and welfare; unfavorably alter or destroy ecosystems of importance to man; or degrade significant aesthetic and recreational values.
18. Field Order – A written order to the Contractor issued during construction by the Project Manager or agent for interpretations, clarifications and other

instructions as to the intent of the Contract Documents.

19. Inspector – The authorized representative of the Project Manager assigned to make detailed inspection of any or all portions of the Work or materials therefor.
20. Manufacturer – Any person or organization who changes the form of a commodity or creates a new commodity and supplies it for the Work at any time, but who does not perform labor at the site.
21. Notice of Award – The written notice of the acceptance of the Bid from the Mayor and Council of the Town of Kensington to the successful Bidder.
22. Notice to Proceed – Written communication issued by the Project Manager authorizing the Contractor to proceed with the work and establishing the dates of commencement and completion of the work.
23. Project – The undertaking to be performed as provided in the Contract Documents.
24. Project Manager – T o w n M a n a g e r
25. Provide – Means furnish and install as specified in Contract Documents.
26. Rock – Any indurated material that requires drilling, wedging, blasting, or other methods of brute force to excavate.
27. Not used.
28. Specifications – Contract Documents under the contract.
29. Standard Specifications – Maryland Department of Transportation, State Highway Administration, "Standard Specifications for Construction and Materials", as amended.
30. Not used.
31. Subcontractor – An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor at any time for the performance of a part of the work at the site.
32. Substantial Completion – That date as certified by the Project Manager when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents so that the Project or specified part can be utilized for the purposes for which it is intended.
33. Supplier – Any person or organization who supplies materials or equipment for the Work at any time, including that fabricated to a special design, who does not perform labor at the site.

34. Town - Town of Kensington, Maryland
35. Work – Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, labor, materials, equipment and other incidentals and the furnishing thereof.

Whenever, in the Contract Documents, the words DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Project Manager is intended. Similarly, the words APPROVED, ACCEPTABLE, SATISFACTORY or words of like import shall mean approved, acceptable or satisfactory to the Project Manager unless otherwise expressly stated.

B. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The work under this Contract shall be built of the materials, sizes, dimensions, on the lines and slopes, at the depths, and in the manner called for by the Contract Documents and/or shown on the Contract Drawings or in accordance with such changes as may be approved from time to time during the progress of the work, as hereinafter provided.

The Contractor may be furnished additional instructions and detail drawings by the Project Manager as necessary to carry out the work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents.

The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

C. SERVICE OF NOTICE

Any written communication, and any communication, notice, or order required by the Contract Documents to be in writing, may be served by electronic transmission, personal delivery, or by certified mail via the United States Postal Service.

D. SCHEDULES, REPORTS AND RECORDS

A tentative construction schedule shall be included in the bid proposal, preferably in a Gantt chart. The Contractor shall submit to the Project Manager, in a timely manner, such schedules of quantities and costs, construction progress schedules, breakdown of lump sum items, reports, estimates, records and any other data, as requested by and acceptable to the Project Manager.

E. CONTRACT REQUIREMENTS

The Contractor shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or

operation by the Town.

F. MATERIALS, SERVICES AND FACILITIES

The Contractor shall do all of the work as stated in the Contract Documents. The Contractor shall provide and pay for all materials, taxes, labor, tools, equipment, light, power, transportation, supervision, temporary construction of any nature, and all other services or facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time. Any temporary construction done to execute the work under contract shall be removed and the area shall be left in original condition or as specified in the Contract Documents. The Contractor shall complete the entire work together with such extra work as may be required, at the price fixed therefor, but at a total price not to exceed that provided for in the Contract, unless otherwise agreed in writing.

Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection. The Contractor may request that materials required for this project be delivered to and stored at the project site, and the Project Manager may approve this request prior to execution of the Contract.

The Contractor shall provide a proposed written plan for any storage of materials and equipment, which must be approved in writing by the Project Manager before commencement of the work.

All construction and storage sites shall be kept clean and free of debris and trash. The Contractor shall provide sufficient trash receptacles with lids for use by its employees on site. The receptacles shall be emptied on a regular basis at Contractor's expense, with the contents disposed of properly.

Manufactured articles, materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer and as approved by the Project Manager.

G. PATENTS

The Contractor shall indemnify and save harmless the Town from all suits, actions and damages or costs to which the Town may be subjected by reason of the use of any patented article or process in the work under this Contract.

H. SURVEYS, PERMITS, LAWS AND REGULATIONS

1. SURVEYS – Unless otherwise specified, Contractor will furnish all boundary surveys and establish all baselines for locating the principal component parts of the work together with a suitable number of benchmarks adjacent to the Work as shown in the Contract Documents.
2. PERMITS – Permits, such as building permits, and licenses of a temporary nature necessary for the performance of the work such

as plumbing and electrical permits, shall be secured and paid for by the Contractor.

The Contractor shall give all notices and comply with all permits, laws, ordinances, rules and regulations applicable to the conduct of the work as drawn and specified. If the Contractor observes that the Contract Documents are at variance therewith, a notification shall promptly be given to the Project Manager in writing.

If any permit, license, or certificate expires, or is revoked, terminated or suspended, as a result of any action or omission on the part of the Contractor, he shall not be entitled to any additional compensation, nor to any extension of the completion date, by reason thereof.

3. LAWS AND REGULATIONS – The Contractor and its agents, servants, and employees shall strictly comply with the ordinances and regulations of the Town, and all other applicable laws, when performing the work on this project. The Contractor shall protect and indemnify the Town and its officers, officials, employees and agents, against any claim or liability arising from or based on the violation of any such law, ordinance or regulation, whether by Contractor or by its agents, servants, or employees.

I. PROTECTION OF WORK, PROPERTY AND PERSONS

1. GENERAL – The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work according to the accepted practices, and applicable rules, regulations and laws. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage, or on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the entire course of construction.

In case of suspension of work for any cause whatever, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the work, and provide for proper drainage, and shall erect any necessary temporary structure, signs, or other facilities at his expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in acceptable growing condition all living material in newly established plantings, seedings and sodding furnished under this Contract and shall take adequate precautions to protect new growth and other important growth against injury.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. The Contractor shall notify owners of adjacent

utilities when prosecution of the work may affect them.

2. ACCIDENT PREVENTION – Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the most recent version of the Manual of Accident Prevention in Construction, as published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable laws and regulations.
3. LIGHT, RAILINGS AND WATCHMEN – The Contractor shall place sufficient lights to light the work and work area to protect workers and public, and shall erect suitable railings, fences or other protection around the work zone, and provide all watchmen during the work, at all times, if they become necessary for the public safety. The Contractor shall place proper guards and lights for the prevention of accidents during and after delivery of materials and supplies, and shall at all times take all necessary precautions to avoid accidents or injury to persons or property.

The Contractor shall, upon notice from the Project Manager of unsatisfactory compliance with the foregoing requirements, immediately take such measures and provide such means and labor to comply therewith as the Project Manager may direct. The Contractor shall not be relieved of obligations under the Contract by any such notice or directions given by the Project Manager, or by neglect, failure or refusal to give such notice or directions. In case the Contractor shall not comply with any order with respect to guarding the work, or public and private properties, the Project Manager may provide the required protection and the cost thereof will be deducted from any monies due or to become due the Contractor under the Contract Documents. The Contractor shall not be relieved of the obligations under the Contract Documents by any such action of the Project Manager.

4. CARE AND PROTECTION OF WORK - From the commencement of the Contract until its completion, the Contractor shall be solely responsible for the care of the work and all injury or damage to same, from whatever cause, shall be made good by Contractor at its own expense, before the final estimate is made. The Contractor shall provide suitable means of protection for all materials intended to be used in the work and for work in progress, as well as for completed work.
5. PROTECTION OF STRUCTURES FROM MATERIALS - It shall be the responsibility of the Contractor to adequately protect the adjacent structures during the course of the project. The Contractor may use any protection method that is a normal practice. If any of the structures are defaced, they shall be repaired at the Contractor's expense.
6. INJURY TO PROPERTY - In case of any direct or indirect damage done to public or private property by or because of the work, or in consequence of any act or omission on the part of the

Contractor, his agents, servants or employees, the Contractor shall, at his own cost and expense, restore such property to a condition similar or equal to that existing before such damage was done. In case of failure on the part of the Contractor to so restore such property or properties, the cost of such restorations shall be deducted from any monies due or to become due the Contractor under the contract, or the Town may deduct from any monies due the Contractor, a sum sufficient, in the judgment of the Project Manager, to reimburse the owners of the property so damaged. This remedy shall be in addition to, and not in place of, any other remedy allowed by law.

J. CHANGES IN THE WORK

1. **INCREASE OR DECREASE OF QUANTITIES** – The Town reserves the right to increase or decrease the quantity of materials to be furnished or of work to be done under this Contract whenever it is deemed advisable or necessary. Such increase or decrease shall in no way void this Contract and the total price of the contract shall be adjusted accordingly. The Town reserves the right to increase or decrease quantities based on a per unit price for the specific item, amount, or work requested without affecting the contract prices for any item or remaining work. Unit prices shall not be increased or decreased regardless of changes in quantity and shall be based solely on the unit price quotation.
2. **ALTERATIONS** – The Town reserves the right to change the alignment, form, length, dimensions or materials of the work under the Contract whenever any conditions or obstructions are met that render such changes desirable or necessary. In the event such alterations make the work less expensive for the Contractor, a proper deduction shall be made from the Contract price and the Contractor shall have no claim on this account for damages or for anticipated profits on the work that may be dispensed with. In the event such alterations make the work more expensive for the Contractor, a proper addition shall be made to the Contract price as shall be determined by the Project Manager.
3. **IMPLIED WORK** – All incidental work required by the Contract Documents for which no payment is specifically provided and any work or materials not therein specified which are required to complete the work, and which may fairly be implied as included in the Contract and which the Project Manager shall judge to be so included, shall be done or furnished by the Contractor without extra compensation.
4. **EXTRA WORK/CHANGE ORDERS** – The Contractor shall do such extra work as may be approved by the Project Manager in writing as a change order. No claim for extra work shall be considered or allowed unless the said work has been so ordered. The extra work will be paid for on the basis of the unit prices agreed upon in the Contract Documents. In the event the extra work is not priced by unit in the Contract Documents, then the payment shall be as agreed upon by the Contractor and the Project Manager. The amount to be paid to the Contractor for extra work

shall be determined in the following manner:

- a. Wages of necessary day laborers and foremen actually employed on extra work, for such time as they are so employed, plus 15 percent.
- b. Actual purchase price, as paid by the Contractor for materials actually incorporated into the extra work, plus 0 percent.
- c. Actual rental price for vehicles equipment or machinery, as paid by the Contractor for their use in connection with extra work, plus 0 percent.

Payment for extra work shall not include an allowance for general conditions or for the time of superintendents, timekeepers, water-boys, flagmen or of any workmen or foremen not employed upon the extra work in question for a definitely and easily ascertainable period, or for insurance of employees or the public, or the use, maintenance or repair of tools or for the maintenance, operation and repair of machinery, or office accounting, project management or administrative expense, or any rent, interest, depreciation or bonding costs, or any other overhead, collateral or estimated expense, or any profit, and the costs of all such items shall be deemed to be included in the said allowance of 15 percent on labor.

All extra work shall be done as economically and expeditiously as possible, and under sufficient but not disproportionate supervision. Labor shall be furnished at the current rates and materials shall be charged at the lowest market prices. The Town may, at its option, furnish any material required for extra work and the Contractor shall not be entitled to any allowance or percentage on materials so furnished. Likewise, the Town may supply any necessary machinery or equipment and the Contractor shall not be entitled to any allowance thereupon.

Separate itemized statements and itemized bills, covering the extra work done in each month on each change order for extra work shall be delivered to the Project Manager before the 5th day of the following month. All bills shall include vouchers showing the cost of materials supplied by the Contractor that have been actually incorporated into such extra work. The Contractor shall permit such examination of his books, bills, vouchers and accounts as the Project Manager may require in checking bills for extra work.

The decision of the Project Manager shall be final and binding upon all questions relating to extra work. If it is determined that any extra work bill is unreasonable or improperly performed, the Project Manager shall be empowered to require its revision and adjustment in accordance with such terms as they shall judge to be fair and reasonable.

The Project Manager will certify to the Town those bills for authorized extra work, submitted in approved form and by the prescribed date, for which she recommends payment. Payment for approved extra work completed under the Contract during any

month shall be subject to all the provisions of the Contract relating to the payment of current estimates. Should the work under any extra work order remain uncompleted during any month, the payment shall not be made until the correct estimate is determined for the month, or the entire work under said extra work order is completed. The Contractor shall not be entitled to any claim for interest on any bill for extra work on account of delay in its approval.

All approved extra work shall be considered a part of the Contract and shall be subject to all of the provisions thereof.

In case of neglect or refusal on the part of the Contractor to perform any required extra work, or to make satisfactory progress in its execution, the Town may invoke the provisions of "O. Waiver of Contract and Right of Recovery of this Section". The Contractor shall not interfere with the prosecution of such work by the Town.

During the progress of the extra work the Contractor shall carry forward all other parts of the work under the Contract, and may suspend any other part of the work only as approved by the Project Manager. No claim by the Contractor for extra compensation shall thereby be allowed. The Contractor, however, shall be entitled to an extension of time to the extent that the Project Manager shall certify that the work done under the Contract has been delayed by the performance of said extra work, provided that a claim for such extension shall be submitted in a timely manner.

K. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

1. EXTENSION OF TIME – If the amount of work done under the Contract is greater than indicated by the statement of quantities, or if the Contractor is materially obstructed or delayed in the procedure of the work by delay on the part of the Town, the Contractor shall be entitled to such extension of the Contract time for the completion of the work, or any phase of the work, as the Project Manager shall certify in writing to be just and proper. A claim for such extension shall be made by the Contractor by a written notice sent to the Project Manager within 10 days after the date when such alleged cause for extension of time occurred. The notice shall state specifically the amount of delay that the Contractor is claiming. If said statement, thus made out, is not received within the prescribed time, the claim for extension of time shall be forfeited and invalid.

No extension of time will be granted for ordinary delays, weather conditions or minor accidents.

2. DEFAULT IN COMPLETION – The Project Manager shall determine the number of working days that the Contractor is in default in completing the Contract, or any of its phases, within the specified period of time, and shall certify same to the Town in writing. For each day so certified, the Contractor shall pay to the Town the sum of \$500.00 per day, which sum is hereby agreed upon, not as a penalty, but as liquidated damages which the Town will suffer by reason of such default, as the actual damage is difficult to quantify.

The Town, in its discretion, may extend the time for completion of the work beyond the Contract Time. The Town shall be fully authorized and empowered to deduct and retain the amount of any such liquidated damages for each day that the Contractor shall be in default in completing the work after the time fixed in the Contract, or after any later date to which the time for completion may have been extended, from any monies due or to become due to the Contractor under the Contract at any time after such default has occurred. The permitting of the Contractor to finish the work or any part of it after the time fixed for its completion, or after the time to which completion may have been extended, shall in no way operate as a waiver on the part of the Town of any of its rights under the Contract.

L. EXECUTION OF WORK

1. The execution of work shall begin on the date specified in the notice to proceed and be carried on continuously to completion, subject to such suspensions as are provided for herein. The progress of the work shall be at a rate sufficient to complete the Contract, and its phases, in an acceptable manner within the time specified. If it appears that the rate of progress is such that the Contract is not being executed in a satisfactory and workmanlike manner, the Project Manager may order the Contractor to take such steps as he considers necessary to complete the contract within the time provided, or to prosecute the work in a satisfactory manner. The Contractor shall prepare and submit a written construction schedule, indicating the manner and order in which the work is to be accomplished, prior to beginning construction. The schedule must be approved by the Project Manager.

2. SUPERVISION AND DIRECTION OF WORK – The Contractor shall supervise the Work. The Contractor is solely responsible for the means, methods, techniques, sequences and procedures of construction. At all times when work is progressing within the Town, the Contractor shall provide one or more supervisors on site who are capable of communicating with all parties involved. The supervisor(s) shall be designated by the Contractor in writing, and shall have full authority to act on behalf of the Contractor, to bind the Contractor, and to stop work. Communications given to the designated supervisor(s) shall be as binding as if given to the Contractor. In the absence of a supervisor on site, no work on the project will proceed. A fine of \$200.00 shall be assessed against the Contractor for each occasion on which a designated supervisor is not present on site as required.

While it is intended that the Contractor shall be allowed, in general, to carry out the Contract in accordance with the approved schedule, the Project Manager shall have the discretion to direct the manner in which the work shall be prosecuted, and may exercise such general control over the conduct of the work at any time or place as shall be necessary to safeguard the interests of the Town. The Contractor shall have no claim for damages or extra compensation by reason of any such change in scheduling or conduct of the work. The Contractor shall immediately comply with any and all orders and instructions given by the Project Manager, provided however that nothing herein contained shall be considered such an assumption of control over the work by the Town or the

Project Manager as to relieve the Contractor of any of its obligations or liabilities under this Contract.

3. LINES, GRADES AND ELEVATIONS – Unless otherwise specified the Contractor will furnish all necessary lines, grades and elevations and the Contractor shall conform his work thereto.

The Contractor shall preserve and maintain the position of all stakes, grade-boards and lines until authorized to remove same. If the Contractor fails to do so, any stakes or grade-boards that are moved shall be reset at the Contractor's expense. The Contractor shall furnish, when required, all necessary materials, labor and assistance, for the setting of all stakes, grade-boards, line forms, etc., which may be required for the proper construction of the work.

Any work done without utilizing lines, levels and instructions provided in the specifications and plans or without the supervision of any inspector will not be estimated or paid for except when such work is authorized by the Project Manager. Work so done without lines, levels, and instructions or without supervision of an inspector may be ordered removed and replaced at the Contractor's cost.

4. NOTIFICATION OF PROJECT MANAGER – The Contractor must notify the Project Manager or her representative at least 24 hours prior to commencing work, if work has been suspended for any reason other than normal non-working days. Failure to so notify the Project Manager may result in material or work being declared unsatisfactory and being removed or redone at the Contractor's expense. The Contractor must obtain written approval from the Project Manager or her representative at least 24 hours prior to suspending work, except for normal non-working days. In the event that work that is scheduled for commencement or suspension of work is delayed by inclement weather, the Project Manager must be notified immediately. The sum of \$100.00 for each such failure to notify shall be assessed against the Contractor. The monies will be deducted from any monies due to the Contractor under the Contract.
5. SATURDAY, SUNDAY AND HOLIDAY WORK – No material may be placed on Saturdays, Sundays, or holidays without the written consent of the Project Manager. A violation of this requirement may result in the removal of material at the Contractor's expense.
6. MAINTENANCE OF TRAFFIC – The Contractor shall carry on the work in such a manner so as to cooperate with all pedestrian and vehicular traffic in the vicinity. Access to the site for contractor equipment shall be arranged with the Town prior to the beginning of work.
7. WATER SUPPLY – The Contractor shall provide at his own expense such quantities of clean, potable water as may be required for any and all purposes under this Contract.
8. SANITARY ARRANGEMENTS – Approved sanitary conveniences for the use of laborers and others employed on the work, properly

screened from public observation, shall be furnished and maintained at the Contractor's expense. The collections in the same shall be disinfected or removed on a regular basis.

9. WORKMANSHIP – All materials furnished and all work done shall be of the quality and character required by the drawings and/or Contract Documents. Where no standard is specified, such work or materials shall be of a kind acceptable to the Project Manager. Any unsatisfactory materials furnished or work done at whatever time they may be discovered, shall be immediately removed and satisfactorily replaced by the Contractor when notified to do so by the Project Manager. If the Contractor shall neglect or refuse to remove such unsatisfactory work or material within 48 hours after the receipt of the notice to do so, or if he does not make satisfactory progress, the Project Manager may cause said work or material to be removed and satisfactorily replaced by other means. The expense thereof shall be charged to the Contractor. Such expense shall be deducted from any monies due or to become due to the Contractor under the Contract. Upon completion of the Contract, the entire work shall be delivered to the Town in a satisfactory working condition.
10. ADJUSTMENT OF STRUCTURES – It shall be the Contractor's responsibility well in advance of the beginning of work to notify all public utility corporations, governments with jurisdiction or owners to make all necessary adjustments to public utility fixtures and appurtenances within or adjacent to the limits of the construction. Unless otherwise specified, these adjustments will be made by the owners and in advance of construction.
11. EMPLOYMENT OF SKILLFUL WORKMEN – The Contractor shall employ only competent, skillful workers to do or supervise the work. Whenever the Project Manager shall, in writing, notify the Contractor that any person employed on the work is, in his opinion, incompetent, disobedient, disorderly, discourteous or otherwise unsatisfactory, such person shall be removed and shall not again be employed on the work except with the consent of the Project Manager.
12. TIMBER AND BRUSH – All brush and/or timber cut during the course of work shall be removed from the work site in a timely fashion unless otherwise directed.
13. CONSTRUCTION OUTSIDE TOWN PROPERTY – Where construction may occur outside Town property, the Project Manager will obtain the permission from the owner to occupy the property during construction. The Contractor shall confine his operations strictly within the limits of the Town property, unless he has the written permission of the owner of the property to occupy additional ground. Trees within the limits of the Town property shall not be cut down without the written permission of the Project Manager.

The Contractor shall so conduct his work that there will be a minimum of disturbance of adjacent properties crossed. Fences shall be disturbed as little as possible and, if damaged or removed, shall be replaced to the satisfaction of the owner.

14. CONSTRUCTION IN VICINITY OF TREES – The Town has control over trees in public areas such as roads, streets and public rights of way. Permission for roadside trees that require removal, within the work area, must be obtained from the Town Arborist prior to removal. Any other trees may be cut down only with the written permission of the Project Manager or other owner of the property. The Contractor shall exercise due care not to unnecessarily injure any trees.
15. UTILITIES – The Contractor shall be responsible for contacting all agencies relative to their installations and for locating them in the field. The Contractor shall be prepared to modify operations in order to accommodate utilities and shall bear the expense of all repairs to utilities damaged as a result of activities undertaken as part of the project.

M. REMOVAL OF DEFECTIVE WORK AND CONDEMNED MATERIAL

1. DEFECTIVE WORK – Neither the inspection or supervision of the work, nor the presence or absence of any employee of the Town during the execution of any part of the work, shall relieve the Contractor of any of his obligations under the Contract or of conforming his work to the lines, grades and elevations given by the Project Manager. Defective work shall be made good and unsuitable material will be rejected, notwithstanding that such work and material may have been previously overlooked and accepted or estimated for payment. If the work or any part thereof shall be found defective or to have been damaged at any time before the final acceptance of the whole work, the Contractor shall make good such defective and damaged work at his own cost, even though said defect or injury may not have been due to any act, default or neglect on the Contractor's part. All materials shall be carefully examined by the Contractor for defects just before placing, and any material found defective shall not be placed in the work.
2. REMOVAL OF CONDEMNED MATERIAL – If any material brought upon the site or selected for use in the work shall be condemned by the Project Manager as unsuitable or not in conformity with the Contract Documents, the Contractor shall forthwith remove it from the Town. Condemned materials not removed within 48 hours after the receipt of notice by the Contractor, may be removed by the Town and the cost of said removal shall be deducted from any monies due or to become due to the Contractor under the Contract.

N. SUSPENSION, ABANDONMENT OR DELAY IN THE WORK

1. SUSPENDING WORK – The Town may suspend the whole or any part of the work under this Contract, if in its judgment such action is necessary or advisable.
2. ABANDONMENT OR DELAY IN THE WORK – If the work under this Contract shall be abandoned by the Contractor, or if at any time the Project Manager shall determine that the performance of the Contractor is unnecessarily or unreasonably delayed, or that the Contractor is violating one or more provisions of the Contract, or is executing the same in bad faith, or if the work is not fully completed

within the time allowed for its completion, together with such extensions of time as may have been granted, the Town, by written notice, may order the Contractor to discontinue all work under the Contract, or any part thereof. Upon receipt of such notice, the Contractor shall discontinue the work, or such part thereof, and the Town shall have the right to complete said work and charge the Contractor for same. The Town may deduct the entire cost of said work from any monies due or to become due the Contractor under the Contract. For such completion of the work, the Town may take possession of and use any or all materials, tools, machinery and appliances found on the site of the work.

When any part of the Contract is carried out by the Town under this section, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to interfere with the workmen employed by the Town.

O. WAIVER OF CONTRACT AND RIGHT OF RECOVERY

1. WAIVER OF CONTRACT – Neither the acceptance of the whole or any part of the work by the Project Manager or the Town or any of its employees, or any order, measurement or certified by the Project Manager, or any order of the Town for the payment of money, or any payment by the Town for the whole or any part of the work, or any extension of time, or any possession taken by the Town or its employees, shall operate as a waiver of any portion of the Contract or of any power therein reserved to the Town, or any right to damages therein provided. Nor shall any waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.

2. RIGHT OF RECOVERY – The Town shall not be precluded or estopped by any certificate made or given by the Town or any of its agents, servants, or employees, under any provision of the Contract, from showing the true and correct amount and character of the work done and materials furnished by the Contractor or any other person under the Contract, at any time before or after the final completion and acceptance of the work and payment therefore, or from showing at any time that any such certificate is untrue and/or incorrect or improperly made in any particular, or that the work, or any part thereof, does not in fact conform to the Contract Documents. Notwithstanding any such certificate, or payment made by reason thereof, the Town shall not be precluded or be estopped from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the terms of the Contract.

P. USE OF THE PREMISES

Not used.

Q. PAYMENTS TO THE CONTRACTOR

1. SCHEDULE OF VALUES – Within fifteen (15) calendar days after the Notice to Proceed, the Contractor shall submit for review and approval by the Construction Manager, a Schedule of Values for receiving progress payment during the construction period. A Schedule of values is a statement furnished by the Contractor allocating portions of the Contractum to various portions of the Work and used as the basis for reviewing the Contractor's

Each activity of the construction schedule shall be allocated a dollar value. Each activity's assigned cost shall consist of labor, equipment, material costs and a pro rata contribution to overhead and profit. The sum of the activities' costs shall be equal to the total contract price. General Conditions may not be used as a construction activity. In submitting cost data, the Contractor certifies that they are not unbalanced or front-end loaded and that the value assigned to each activity represents the Contractor's estimate of actual costs of performing that activity. The accepted schedule of values, in the best judgment of the Contractor and the Construction Manager shall represent a fair, reasonable and equitable dollar cost allocation for each activity of the Contractor's construction schedule.

If, in the opinion of the Project Manager, the cost data does not meet the requirements for a balanced cost Bid breakdown, the Contractor will present documentation to the Project Manager substantiating any cost allocation on the cost data. Cost allocations shall be considered unbalanced if any activity of the construction schedule has been assigned a disproportionate allocation of direct costs, overhead and profit.

2. CURRENT ESTIMATES - Upon approval by the Project Manager, the Town will pay to the Contractor up to 95% of the total amount of the estimate, which shall represent the estimate less 5% retainage, provided, however, that the Town may retain out of any such payments any or all sums it is authorized to retain by the terms of the Contract and/or any applicable law.

3. MEASUREMENT OF WORK AND MATERIAL – All quantities, work and material to be paid for will be measured and determined by the Project Manager in his sole discretion, according to the specifications, drawings, additional instructions in writing, and detail drawings that may be given to carry out the work required by the Contract Documents. No allowance will be made for any excess above the quantities required by the specifications, additional instructions in writing, and detail drawings on any part of the Work, except where such excess material has been supplied or work done by order of the Project Manager and in the absence of default or negligence on the part of the Contractor. Should the dimensions of any part of the work or of the materials be less than those required by the drawings or the directions of the Project Manager, only the actual quantities placed will be allowed in the calculations of the total price to the Town.

4. EVIDENCE OF PAYMENT – The Contractor shall certify to the Town as each payment draw is made and within 10 days after the final completion and acceptance of the whole work under the Contract, that all persons, partnerships and corporations who have done work or furnished materials under the Contract up to that point, or in or about the work contracted for, have been fully paid or secured. In the event such evidence is not furnished by the Contractor, such amount as may be deemed necessary by the Town to pay such claims may be retained by the Town out of any money due the Contractor under the Contract until such claims have been fully discharged.

5. FINAL ESTIMATE AND RETAINAGE – When the Project Manager shall determine that substantial completion of the Project has been achieved he shall make a written final estimate based upon actual measurements, of the whole amount of authorized work done by the Contractor and of the value thereof under the terms of the Contract, and final estimate. All current

estimates are subject to correction in the final estimate. The Project Manager shall determine the final estimate and work still to be completed (punch list). The Project Manager's measurements upon which the final estimate is based shall be deemed to be, and shall be, final and conclusive. Upon approval of the final estimate, the Town will notify the Contractor, in writing, of the acceptance of the work and transmit to him a copy of the final estimate. Out of the amount representing the total of the final estimate, the Town shall retain the 5% retainage, which shall be in addition to any and all other amounts which under the Contract it is entitled or required to retain, and shall hold said sum for a period of 6 months from substantial completion. Such part as may be necessary, or all of said retained sum, shall be applied to any expense which may be deemed to have been caused by failure of the Contractor to comply with the terms of the Contract, or to any breach of the Contract on the part of the Contractor. The Town shall be empowered to make any required repairs or renewals during said period without notice to the Contractor if it shall judge such action to be necessary, or if after notice, he Contractor shall refuse or neglect to do said required work or make satisfactory progress thereon within such period as the Project Manager shall consider necessary or reasonable. Further, the Town is entitled to retain 5% of said sum pending receipt from the Contractor of any certification required by the Project Manager from utilities. In addition, the Town shall retain those sums equal to any outstanding unpaid amounts claimed by any suppliers, sub- contractors, or others for labor or materials contributed to the work.

Within 15 days after the approval of the final estimate, the Town will pay to the Contractor those sums remaining after the deductions as set out herein.

7. FINAL PAYMENT – Upon the expiration of the aforesaid period of 6 months succeeding the payment of final estimate, the Town will pay to the Contractor all sums reserved or retained, less such amounts as it may be entitled under the provisions of the Contract to permanently retain.

R. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the Contractor of the final payment shall release the Town and every officer, employee and agent thereof, from all claims by the Contractor made for work and/or materials provided under the Contract.

S. INSURANCE

The Contractor shall provide proof of compliance with State law as to workers' compensation and unemployment insurance, and of adequate comprehensive general liability insurance (bodily injury of \$2,000,000 for each occurrence / aggregate; property damage of \$500,000 for each occurrence / aggregate), automobile fleet coverage (\$1,000,000 for each occurrence / aggregate; property damage of \$500,000 for each occurrence / aggregate). The Contractor shall indemnify and save harmless the Town, it's officers, officials, agents, servants, and employees, from all suits, actions, and damages or costs of every kind and description arising directly or indirectly out of the performance of the Contract, including attorneys' fees, whether caused by actions or omissions on the part of the Contractor, its agents, servants and employees, or to other causes.

Any special hazards, such as blasting, shall be covered by a rider or riders to the Public Liability and/or Property Damage Insurance policy or policies to cover any special hazards which may develop in the course of the work with such companies and in such amounts as may be approved by the Town.

The Town shall be named as additional insureds under an additional insured endorsement on the Comprehensive General Liability Insurance, the Automobile Insurance, and the Property Damage Insurance.

A Certificate of Insurance and additional insured endorsement shall be provided to the Town by the Contractor prior to beginning work under the contract. The Certificate shall demonstrate that the Contractor has complied with the requirements of this section and be in a form acceptable to the Town.

The Contractor shall carry, at its own expense, Builder's Risk Insurance for the full Contract amount, insuring without limitation against the perils of fire and lightning, and providing extended coverage for vandalism and malicious mischief, subject only to the minimum standard deductibles currently filed by the Insurance Service Office with the Maryland State Insurance Department.

The Town will provide no coverage during the construction period.

T. WARRANTY

Contractor warrants that the equipment, material and design furnished by the Contractor or any subcontractor or supplier at any tier is free of any defect. The Contractor further warrants that the work performed by the Contractor or any subcontractor or supplier at any tier conforms to the contract requirements and general standards in the industry. The workmanship warranty shall continue for a period of one (1) year from the date of Final Completion and close out of the punch list.

In the event the Contractor neglects to make such repairs as required during the warranty period, the Project Manager may cause such damage to be repaired and made good at the cost and expense of the Contractor.

Upon the expiration of the warranty period, the Project Manager shall make a final inspection of the entire work and upon completion of all repairs which may appear at that time to be necessary in the judgment of the Project Manager, she shall certify to the Town in writing as to the final acceptance of the entire work.

U. RESOLUTION OF CONTRACT QUESTIONS

The Project Manager shall decide any and all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work and shall decide all questions which may arise as to the interpretation of any or all plans relating to the work and of the specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor;

and the Project Manager shall determine the amount and quantity of the several kinds of work performed and materials which are to be paid for under the Contract and such decision shall be final and conclusive, in case any question shall arise, shall be a condition precedent to the right of the Contractor to receive any money due under the Contract. Any doubt as to the meaning of the wording of the specifications, Contract, the intent of the plans and all directions and explanations requisite or necessary to complete the work, or make definite any of the provisions of the specifications, Contract or plans and to give them due effect, will be interpreted by the Project Manager. The decision of the Project Manager shall be final.

V. ACCIDENT PREVENTION

Precautions shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws, and building and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the latest editions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, and the American Standard Safety Code for Building Construction, to the extent that such provisions are not inconsistent with applicable law or regulation.

- W. APPROVAL BY THE TOWN OF KENSINGTON It is expressly understood and agreed that the selection of the Contractor, and any sub-contractor, and acceptance of the Agreement for construction of the Project, is subject to the prior approval of the Mayor and Council of the Town of Kensington. The Town may for any reason deemed to be in its best interest decide not to award the bid and/or to enter into an Agreement for construction of the Project.

X. MEETINGS

The Contractor, or designated Supervisor, shall be available to meet with the Project Manager, third party inspector, and any State, County or Town representative on an as-necessary basis.

Y. GUARANTEE OF UNIT PRICE

The unit prices in the Contract shall be guaranteed by the Contractor for up to and until the completion of the project.

Z. CONSTRUCTION SCHEDULE

A final Construction Schedule shall be agreed upon by the Town and Contractor and shall be reviewed periodically and adjusted as necessary. Construction work is authorized between 7:00 a.m. and 5:00 p.m., Monday – Friday. Work on weekends by permission of Project Manager only.

AA. WAIVER OF LIENS

The Contractor shall provide a signed, notarized waiver of liens to the Project Manager upon completion of the work, and various phases of the work, which shall state that all liens have been fully paid.

BB. INTERIM AND FINAL INSPECTIONS

Upon completion of the work, or various phases of the work, as appropriate, the Project Manager, in conjunction with any required governmental inspector, as necessary, will inspect the completed project or part thereof, and if deficiencies are present, shall so inform the Contractor, who shall have all said deficiencies corrected. The Contractor is responsible for ensuring that all necessary inspections are scheduled and performed by the appropriate individual and/or agency. The Project Manager shall be notified immediately of any adverse or unexpected conditions located in the field in order to allow for inspection before further action is taken or work performed in that area.

CC. UTILITIES

The Contractor is responsible for locating all utilities in the field, and for appropriate and timely notice of intent to perform work to all utilities involved. The Contractor shall coordinate the work, including all adjustments, with all utilities in the area. All adjustments of utilities shall be performed at the Contractor's expense. The Contractor shall ensure that all work involving any utility shall be inspected, approved, and accepted by that utility. Damage caused to existing facilities by the Contractor's operations shall be repaired or replaced at Contractor's expense to the utility's acceptance.

DD. WORK RECORDS

The Contractor is responsible for maintaining all records necessary to demonstrate the cost, in terms of labor and materials, and for providing a final accounting of costs, of all phases of this Contract, as required by the Town. The Contractor agrees to make all of its applicable records available to the Town upon request.

EE. CONSTRUCTION STAKEOUT

The Contractor shall furnish all necessary lines, grades, and construction stakeout as required to complete the Project as per the approved Contract Documents.

V. SPECIAL PROVISIONS

- A. Contractor to maintain a clean and safe site on a daily basis and provide a final cleaning of the pavilion upon completion of work.
- D. At project completion, Contractor to provide all warranty documents.
- E. Contractor shall provide copies of all tickets to the Project Manager.

VI. BID RESPONSE PACKAGE

**TOWN OF KENSINGTON, MARYLAND
REPAIR AND MAINTENANCE OF THREE
BRIDGES
BID PROPOSAL FORM**

TOWN OF KENSINGTON
Matthew Hoffman
Town Manager
MJHoffman@tok.md.gov

BID DUE DATE: 1/19/22

TIME: 2:00 p.m.

(Business Name)

Hereby submits the following proposal for the construction of. Having carefully examined the Request for Bid Proposals, Instructions to Bidders, the General Provisions, the Plans and Specifications, the proposed Contract and Addenda numbered _____(complete if any addenda or enter "None"), and having received clarification on all items of conflict or upon which any doubt arose, and understanding that all unit- priced bids will remain in effect throughout the term of the contract, whether completed at one time or in interrupted phases, the undersigned proposes to furnish all labor, equipment, materials, required permits, etc. required by the documents for the entire work, all in strict accordance with the Contract Documents, for the stipulated lump sum of:

TOTAL ALL INCLUSIVE, LUMP SUM COST FOR BID SHEET I-IV:

_____ Dollars
(Written)

(\$ _____)

I. BID SHEET – KENT STREET M-K-04

Crossing SILVER CREEK
Bridge Type Single Span Structural Plate Arch

DESCRIPTION	PRIORIT Y	QUANTITY	UNIT COST	TOTAL COST
1) Repair the spalls in the South Spandrel Wall that undermine the bridge rail post base plates.	2	2 SF		
2) Install traffic barrier transitions at all corners of the structure.	2	4EA		
3) Install MD-SHA Type-G End Treatmentson the Northwest, Southwest and Southeast Approaches. Install a MD- SHA Type-K End Treatment on the Northeast Approach.	2	4EA		
4) Install object markers at all corners of the structure.	2	4 EA		
5) Replace the hand railings on the structure with a crash tested bridge railing.	2	48 LF		
6) Repair drainage pipe behind the Southeast Wingwall.	3	LS		
			Sub- Total:	

BID SHEET II KENSINGTON PARKWAY M-K-03001

Crossing SILVER CREEK

Bridge Type SINGLE-SPAN STRUCTURAL PLATE ARCH

DESCRIPTION	PRIORITY	QUANTITY	UNIT COST	TOTAL COST
Stabilize the Southwest Approach Embankment.	2	1 LS		
8) Remove debris from beneath the bridge.	2	50		
9) Install object markers at all four corners.	3	4 Ea.		
10) Install scour countermeasures under structure.	3	1 LS		
11) Replace bridge railing in accordance with MD SHA standards.	3	40 L.F.		
12) Repaint stone wingwalls and spandrel walls.	3	75 L.F.		
13) Install W-beam traffic barrier along the approaches in accordance with MD SHA standards.	3	100 L.F.		
14) Install W-beam end treatment at all four corners in accordance with MD SHA standards.	3	4 Ea.		
15) Grout the gap between the arch and West Spandrel Wall.	3	1 LS		
16) Replace missing stones at both spandrel walls and wingwalls.	3	1 LS		
17) Clean and apply a protective coating to the corroded areas of the pipe arch.	3	1 LS		
18) Grout the full-circumference of the utility pipe where it penetrates the arch.	3	1 LS		
19) Monitor movement/alignment of the spandrel walls.	3	1 LS		
	4	3	0	0

20. Remove tree adjacent to pilaster at the southeast corner of the structure.	4	LS			
21 .Repair south footing, which is intermittently undermined over a length of 35'-0", up to 5" high with up to 1'-7" of horizontal penetration.	2	LS			
22. At 18'-0" from the east end, repair the south footing full-height x 1/4" wide vertical crack	2	LS			
Subtotal \$					

BID SHEET III FREDERICK AVENUE M-K-02X01

Bridge Type Concrete Slab

Crossing SILVER CREEK

DESCRIPTION	PRIORITY	QUANTITY	UNIT COST	TOTAL COST
1. Install W-beam traffic barrier transitions at all four corners of the bridge.	1	4 Ea.		
2. Install W-beam traffic barrier end treatments at the four corners of the bridge.	1	4 Ea.		
3. Install W-beam traffic barriers at all four corners of the bridge.	1	100 L.F.		
4. Install object markers at the four corners of the bridge.	2	4 Ea.		
5. Install advance posting sign at the East Approach at the intersection with Wake Drive.	2	1 Ea.		
6. Repair gabion baskets in the downstream channel.	3	100 S.F.		
7. Repair the edge spalling in the wearing surface along the top of the abutment backwalls.	3	10 S.F.		
8. Replace the West Abutment joint seal.	2	27 L.F.		
9. Repair the delaminated areas in both abutments.	3	64 S.F.		
10. Repair the spalls and delaminated areas in the Southeast and Southwest Wingwalls.	3	14 S.F.		
				Sub-Total: \$

BID SHEET IV- THIRD PARTY INSPECTION SERVICES

Required Third-Party Inspection for three bridges LS

Sub-Total \$ _____

SPECIAL TERMS AND CONDITIONS:

- A. Failure to properly and completely fill in all blanks may be cause for rejection of this proposal.
- B. It is understood that the proposal price will be firm for a time period of 120 calendar days from the proposal opening date and that, if the undersigned is notified of acceptance of this proposal within this time period, the Bidder shall execute a contract for the above stated compensation.
- C. Work under the Agreement shall not commence until a Notice to Proceed is issued.
- F. The price shall be stated in both words and figures.

Registered MD Contractor No. _____ Date Issued _____

Federal Employer ID Number (EIN) _____

Name of Bidder _____

Authorized Signature _____ Date _____

Printed Name and Title of Individual Authorized to Bind Bidder _____

TO BE SUBMITTED WITH BID

CERTIFICATE OF REGISTRATION

- A. Bidders are required to show evidence of a Certificate of Registration before the bid may be received and considered on a general contract or subcontract of \$20,000 or more. The Bidder shall complete on his Bid Proposal Form the following information: "Registered Maryland Contractor No. _____" as well as providing this information on this form.

- B. An opinion by the Attorney General has granted an exemption to all properly qualified non-resident corporations as well as to resident General Contractors and Subcontractors. These firms need merely apply for an Exemption Certificate in order to meet the requirements of the law. Individuals, firms, partnerships and associations are required to qualify by application and submission of a financial statement. Bids on Federal projects are exempt under the law.

- C. The Bidder shall provide its Federal Employer Identification Number.

Federal EIN Number: _____

TO BE SUBMITTED WITH BID

INFORMATION REGARDING THE BIDDER

1. Name of Bidder _____
(Individual /Firm/Corporation)

Place of Business of Bidder _____

Telephone Number () _____

Email address of contact person _____

2. Please provide the following information concerning work that you have done within the last five (5) years which is similar to the Project, including work for any Maryland governmental units or agencies.

FOR WHOM PERFORMED NUMBER	CONTRACT AMOUNT	DATE COMPLETED	CONTACT'S NAME/ TELEPHONE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Bidders will answer the following questions: (The word “you” refers any individual, partnership, partner and/or corporation and it’s officers.)

a. Have you ever failed to complete any work awarded to you? _____

If yes, state where and why _____

b. Have you ever been affiliated with some other organization that failed to complete a contract? _____

If yes, state name of individual and reason therefore. _____

c. With what other businesses are you affiliated? _____

d. Please list all persons who will supervise the work under the Contract? _____

e. Identify all personnel who will be employed to prosecute the work described in the Contract Documents and list their hourly rate.

f. Provide telephone number(s) for 24 hour a day emergency contact. _____

g. Identify all subcontractors, materialmen, and suppliers that you intend to use in performing the work under the Contract, and specify the work each is expected to perform.

Dated this _____ day of _____, 2022.

Name of Bidder

By: _____

TO BE SUBMITTED WITH BID

Non-Collusion Affidavit

_____, being duly sworn on oath, deposes and says:

That he/she is the

(Owner, Partner, Title if on behalf of a Corporation)

of _____,
(Name of Business, Corporation or Partnership)

the party submitting the Proposal; that no officer of the said Corporation has nor has any person, firm or corporation acting on its behalf; agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the Proposal being submitted herewith; and that the said Corporation has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the Proposal Price of the Proposer herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the Proposal is submitted; that in making this Affidavit, the affiant represents that she has personal knowledge of the matters and facts herein stated. The Affiant hereby declares and affirms under the penalties of perjury that the foregoing is true to the best of her knowledge and information.

To be signed by a duly authorized Officer.

_____(SEAL)

Name

Title _____

Date: _____

TO BE SUBMITTED WITH BID

AFFIDAVIT WITH RESPECT TO NON-CONVICTION, NON-SUSPENSION AND FALSE PRETENSES

I hereby affirm that:

1. I am the _____ (Title) and duly authorized representative of _____ (Name of Business Entity) whose address is _____ and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

2. Except as described in Paragraph 7 below, neither I nor the Business Entity nor, to the best of my knowledge, any of its officers, directors, or partners or any of its employees directly involved in obtaining contracts with the State, or any county, bi-county or multi-county agency or subdivision of the State have been convicted, or in an official investigation or other proceeding admitted in writing or under oath, acts or omissions which constitute bribery, attempted bribery or conspiracy to bribe under the provisions of Criminal Law Article of the Annotated Code of Maryland or under the laws of any state or the federal government (conduct prior to July 1, 1977 is not required to be reported); and

3. Except as described in Paragraph 7 below, neither I nor the Business Entity nor, to the best of my knowledge, any of its officers, directors, or partners or any of its employees directly involved in obtaining contracts with the State, or any county, bi-county or multi-county agency or subdivision of the State have been convicted under a State or federal law or statute of any offense enumerated in §16-203 of the State Finance and Procurement Article; and

4. Except as described in Paragraph 7 below, neither I nor the Business Entity nor, to the best of my knowledge, any of its officers, directors, or partners or any of its employees directly involved in obtaining contracts with the State, or any county, bi-county or multi-county agency or subdivision of the State have been found civilly liable under a State or federal antitrust statute as provided in §16-203 of the State Finance and Procurement Article.

5. Except as described in Paragraph 7 below, neither I nor the Business Entity nor, to the best of my knowledge, any of its officers, directors, or partners or any of its employees who will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction have been debarred or suspended under this subtitle.

6. Except as described in Paragraph 7 below, neither I nor the Business Entity nor, to the best

of my knowledge, information and belief, any officer, director, partner, member or associate thereof; nor any of its employees directly involved in obtaining contracts with the City, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses under the laws of any state or federal government, based upon acts committed after July 1, 1981.

7. State "none" below or, as appropriate, list any suspension, debarment, conviction, plea or admission described in Paragraph 2 - 6 above, with the circumstances, date, court, official or administrative body, the individuals involved and their position with the firm, and the sentence or disposition, if any.

I acknowledge that this affidavit is to be furnished, where appropriate, to the City of College Park under Section 16-311 of the State of Maryland Finance and Procurement Article of the Annotated Code of Maryland. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the City of College Park may terminate any contract awarded and take any other appropriate actions. I further acknowledge that I am executing this affidavit in compliance with Section 16-309 of the State Finance and Procurement Article of the Annotated Code of Maryland, which ordains that any person convicted of bribery (upon acts committed after July 1, 1977) in furtherance of obtaining a contract from the State or any subdivision of the State of Maryland shall be disqualified from entering into a contract with the City.

I further affirm that the business entity is properly registered to do business in the State of Maryland, or is not required to be registered.

I do solemnly declare and affirm under the penalties of perjury that the contents of the affidavit are true and correct.

Date

Signature

Printed Name

TO BE SUBMITTED WITH BID

TENTATIVE CONSTRUCTION SCHEDULE

Please attach a tentative construction schedule (Gantt chart preferred) with the bid proposal outlining project details such as, but not limited to, utility disconnections, ordering of materials, anticipated delivery of materials, construction start date and resulting plan with an estimated date of completion. Circumstances beyond the control of either party to the Contract that significantly alter the tentative construction schedule will be taken into account, and some allowance considered for adjustment of the construction schedule.

VI. **SAMPLE CONTRACTOR AGREEMENT**

**TOWN OF KENSINGTON
MAINTENANCE AND REPAIR OF THREE BRIDGES**

THIS CONTRACTOR AGREEMENT (“Agreement”) is made this _____ day of _____, 2022, by and between TOWN OF KENSINGTON (hereinafter referred to as the “Town”), a municipal corporation of the State of Maryland, whose address is 3710 Mitchell Street, Kensington, MD 20895, and _____ referred to as “Contractor”), whose address is _____.

WHEREAS, the Town wishes to demolish, remove and replace the concrete entrance veranda and brick masonry parapet wall at the Town Hall; and

WHEREAS, the Contractor wishes to provide said services.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. **SCOPE OF WORK**

The project involves the maintenance and repair of three bridges located in the Town (“Project”). The scope of work includes the following:

A. Bridge No. M-K-04 Kent Street

- 1) Repair the spalls in the South Spandrel Wall that undermine the bridge rail post base plates.
- 2) Install traffic barrier transitions at all corners of the structure.
- 3) Install MD-SHA Type-G End Treatments on the Northwest, Southwest and Southeast Approaches. Install a MD- SHA Type-K End Treatment on the Northeast Approach.
- 4) Install object markers at all corners of the structure.
- 5) Replace the hand railings on the structure with a crash tested bridge railing.
- 6) Repair drainage pipe behind the Southeast Wingwall.

B. Bridge M-K-001 Kensington Parkway

- 1) Stabilize the Southwest Approach Embankment.

- 2) Remove debris from beneath the bridge.
- 3) Install object markers at all four corners.
- 4) Install scour countermeasures understructure.
- 5) Replace bridge railing in accordance with MD SHA standards.
- 6) Repaint stone wingwalls and spandrel walls.
- 7) Install W-beam traffic barrier along the approaches in accordance with MD SHA standards.
- 8) Install W-beam end treatment at all four corners in accordance with MD SHA standards.
- 9) Grout the gap between the arch and West Spandrel Wall.
- 10) Replace missing stones at both spandrel walls and wingwalls.
- 11) Clean and apply a protective coating to the corroded areas of the pipe arch.
- 12) Grout the full-circumference of the utility pipe where it penetrates the arch.
- 13) Remove tree adjacent to pilaster at the southeast corner of the structure.
- 14) Repair south footing, which is intermittently undermined over a length of 35'-0", up to 5" high with up to 1'-7" of horizontal penetration.
- 15) At 18'-0" from the east end, repair the south footing full-height x 1/4" wide vertical crack.
- 16) At 7'-0" from the east end, repair the north footing full-height x 1/8" wide vertical crack

c. Frederick Avenue MK-02X01

- 1) Install W-beam traffic barrier transitions at all four corners of the bridge.
- 2) Install W-beam traffic barrier end treatments at the four corners

of the bridge.

- 3) Install W-beam traffic barriers at all four corners of the bridge.
- 4) Install object markers at the four corners of the bridge.
- 5) Install advance posting sign at the East Approach at the intersection with Wake Drive.
- 6) Repair gabion baskets in the downstream channel.
- 7) Repair the edge spalling in the wearing surface along the top of the abutment backwalls.
- 8) Replace the West Abutment joint seal.
- 9) Repair the delaminated areas in both abutments.
- 10) Repair the spalls and delaminated areas in the Southeast and Southwest Wingwalls.

The required maintenance and repair of the bridges is more specifically described in the attached Montgomery County Department of Transportation 2019 Bridge Inspection reports for each bridge, which are incorporated herein by reference.

All required licenses and permits will be the responsibility of the Contractor, including without limitation, building permits and site certifications.

The Contractor shall be responsible for the cost and provision of any Third Party inspection requirements. The Contractor will be required to pay all necessary fees and post any necessary bonds to any regulatory agencies having jurisdiction for inspection or for the privilege or right to execute the Work as called for in the Contract Documents, and the Contractor shall include the cost of said fees in its bid. The Contractor shall be responsible for any "construction fees" to implement the construction of the project.

Work can be performed between 7:00 a.m. and 5:00 p.m., Monday - Friday. Work may be scheduled on Saturdays through the Project Manager. Request to work at any other time will be evaluated based on operations at the facility.

The Contractor will be responsible for all work listed above, shown on the plans and approved permits and written on the project specifications constituting the Contract Documents, and all work that is incidental thereto.

Contractor parking, dumpster storage and staging in Town rights-of-way shall be coordinated with the Project Manager.

The Contractor will be responsible for all work listed above, shown on the plans and written on the project specifications constituting the Contract Documents, and all work that is incidental thereto.

The Contractor shall furnish all of the material and perform all of the work as described in these Contract Documents.

The work required of the Contractor will be performed in coordination with the Town's Project Manager and/or designee.

A state of emergency exists in Maryland due to the COVID-19 pandemic and the Project may be impacted. In the event of delays to the critical path of the agreed Project Schedule resulting solely from the effects of the COVID-19 pandemic, the actual number of days of delay will be added to the Project Schedule as an equitable adjustment. Expected costs that may be incurred due to the need for social distancing, personal protective equipment, additional office facilities and cleaning have been included in the Contract Price.

II. DATES OF WORK

Work under the Contract shall commence on or before ten (10) days from notice to proceed. All work shall be performed pursuant to the approved Project schedule submitted by the Contractor. Permitting will be completed on or before 50 days from notice to proceed. It is understood by the parties hereto that time is of the essence in the completion of the services under this Agreement. Provision for liquidated damages for failure to comply with the Contract Time are set forth in the General Provisions.

III. CONTRACT PRICE

The Town agrees to pay to the Contractor, as consideration for the Contractor's satisfactory performance of all obligations under this Agreement, the sum of _____ Dollars (\$_____). Said Contract Price shall include all incidental costs, including, but not limited to, travel, printing, copying, drawings, diagrams and photographs. Invoices for payment under this Contract may be submitted on a monthly basis and must be accompanied by a statement of work completed and percent completed by phase and/or any other documentation required by the Town. All pricing shall be consistent with Montgomery County RFP# 1106662 Construction Services for On-Call Bridge, Culvert and Retaining Wall Repair.

IV. CONTRACT DOCUMENTS

This Agreement and the following enumerated documents form the Contract and they are fully a part of the Contract as if attached hereto:

- Request for Bid Proposals
- Bid Proposal Forms and Affidavits
- Three Bridge Inspection reports from Montgomery County Department of Transportation
- Specifications
- General Provisions
- Special Provisions
- Addenda
- Permits
- Performance Bond
- Labor and Materials Bond
- Other Documents Contained within the Bid Specifications
- Certifications and Affirmations Required by the Town
- Certificate(s) of Insurance and Endorsements
- Construction Schedule

In the event any term of the foregoing documents conflicts with the terms of this Agreement, this Agreement shall prevail over the Plans and Technical Specifications and which shall prevail over the remaining Contract Documents.

V. CAPACITY TO PERFORM

The Contractor represents that all equipment and personnel necessary for providing the described services and items will be available as needed.

VI. STATUS OF CONTRACTOR

The Contractor shall perform the services described herein as an independent contractor and not as an employee of the Town.

VII. INSURANCE AND INDEMNIFICATION

The Contractor will purchase from insurance companies, government self- insurance pools or government self-retention funds authorized to do business in Maryland, and maintain during the entire term of the contract, comprehensive general liability insurance, automobile liability insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, Contractor will name the Town as an additional insured, with the exception of the workers compensation, and will provide an additional insured endorsement.

i. Comprehensive General Liability Insurance:

Combined single limit liability insurance with a limit of \$2,000,000 each occurrence/aggregate.

All insurance shall include completed operations and contractual liability coverage. Contractor shall obtain builder's risk insurance in an amount appropriate to cover potential losses with a minimum of 100% of construction costs. The Town will not be liable for any damages during construction.

ii. Automobile Liability Coverage: Automobile insurance with a combined limit of \$1,000,000 for each occurrence/ aggregate.

iii. Workers' Compensation Insurance: Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. Contractor shall provide workers' compensation insurance meeting the statutory limits for Maryland and Employers' Liability limits of \$500,000. All corporations are required to provide Workers' Compensation Certificates of Insurance.

The Contractor will covenant to maintain insurance, in these amounts, which will insure all activities undertaken by Contractor on behalf of the Town under this Agreement. Copies of the certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the Town within ten (10) days following the execution of this contract and prior to commencement of any work. The Town shall receive 30 days prior notice of any reduction or elimination of the insurance coverage required herein.

Provision of any required insurance does not relieve Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded, or for which the Contractor may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

The Contractor shall also furnish to the Town a Certificate of Insurance and additional insured endorsement in like amounts for any approved sub-contractor prior to commencement of work in the Town.

The required insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Coverage will be primary and noncontributory with any other insurance and self-insurance.

The Contractor shall indemnify and save harmless the Town, its officers, agents, servants, and employees, from all suits, actions, and damages or costs of every kind and description arising directly or indirectly out of the performance of the Contract, including attorneys' fees, whether caused by negligent or intentional actions or omissions on the part of the Contractor, its agents, servants and employees, or to other causes.

A rider or riders to the Public Liability and/or Property Damage Insurance policy or policies to cover any special hazards which may develop in the course of the work with such companies and in such amounts as may be approved by the Town.

The Contractor shall carry, at its own expense, Builder's Risk Insurance for the full Contract amount, insuring against the perils of fire and lightning, and providing extended coverage for vandalism and malicious mischief, subject only to the minimum standard deductibles allowed by law. The Town will provide no coverage during the construction period.

Provision of any insurance required herein does not relieve Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded, or for which the Contractor may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

VIII. LICENSES, PERMITS, APPLICABLE LAWS

The Contractor will be responsible for obtaining any and all licenses and permits pertaining to performance of work under the Contract except as otherwise provided in the Contract Documents. All services and materials provided by the Contractor shall conform to all applicable laws and regulations.

IX. MATERIALS AND STANDARD OF WORK

All work performed, and material provided, pursuant to this Agreement shall be in conformance with standards adopted by the State of Maryland and Montgomery County and will be appropriate for existing conditions. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor at Contractor's expense, notwithstanding that such deficiencies have been previously accepted or were due to no fault of the Contractor. The Contractor will guarantee that materials conform to specifications herein, that the items will be free from defects, and that the items are fit for the purpose for which intended. Further, the Contractor shall, in a manner acceptable to the Town, return to original condition any property disturbed or damaged during the work.

X. ACCURATE INFORMATION

The Contractor certifies that all information provided in response to the Request for Proposals or in response to other requests for information is true and correct. Any false or misleading information is grounds for the Town to reject the bid and to terminate this Agreement.

XI. PERIODIC AND FINAL INSPECTION

The Town will make periodic inspections of the work through the Project Manager or other Town representative. A final inspection of the work shall be made by a representative of the Town and the Contractor at the end of the work and cure period to ensure that all requirements have been met.

XII. RETAINAGE

The Town will pay the Contract Price, less five percent (5%) retainage, to the Contractor upon completion of the contract work, and correction of any deficiencies discovered as a result of final inspection. The five percent (5%) retainage shall be paid to the Contractor within six (6) months following substantial completion and correction of any deficiencies. The said retainage is held as security for performance and not as liquidated damages and the forfeiture of the retainage shall not release the Contractor from any liability in excess of the retainage.

XIII. PERFORMANCE, LABOR and MATERIALS BOND

The Contractor shall give a Performance and Labor and Materials Bond within ten (10) business days after the date of the award of the Contract. The Performance and Labor and Material Bond shall be in the amount of 100% of the Contract Price.

XIV. RESTORATION OF PROPERTY

The Contractor, at its own expense, will restore or replace any property displaced or damaged as a result of work performed under this Agreement, to the satisfaction of the Town.

XV. TERMINATION FOR DEFAULT

Failure of the Contractor to deliver work, supplies, materials, or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with Contract Documents shall constitute a breach of contract. In such event, the Town may give notice to the contractor to cease work until the cause for such order has been eliminated. Should the Contractor fail to correct such default within 24 hours after receipt of notification, the Town may terminate any such contract. This provision shall not limit the Town in exercising any other rights or remedies it may have.

XVI. TERMINATION FOR CONVENIENCE

The performance of work or delivery of services may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest. The Town will be liable only for labor, materials, goods and services furnished prior to the effective date of such termination.

XVII. NOTICES

All notices to the parties may be delivered by electronic transmission, personal delivery, or by certified mail via the United States Postal Service to the following addresses:

For the Town:
Town Manager
Town of Kensington
3710 Mitchell Street
Kensington, MD 20895

For the Contractor:

XVIII. COSTS

The prevailing party as determined by a court of competent jurisdiction shall be entitled to attorney's fees and costs incurred in any actions or claims brought to enforce this Contract, or for damages hereunder.

XIX. ERRORS IN SPECIFICATIONS

The Contractor shall take no advantage of any error or omission in the specifications. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

XX. GOVERNING LAW

This Agreement is executed in the State of Maryland and shall be governed by Maryland law, excluding its conflict of law rules. The Contractor, by executing this Contract, consents to the jurisdiction of the Maryland state courts with respect to any dispute arising out of this Contract.

XXI. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

XXII. INTERPRETATION

Any questions concerning conditions and specifications shall be directed in writing to the Project Manager. No interpretation shall be considered binding unless provided in writing by the Project Manager. By execution of this contract, the Contractor certifies that it understands the terms and specifications.

XXIII. ATTORNEYS' FEES AND COSTS

The prevailing party shall be entitled to attorney's fees and costs incurred in any actions or claims brought to enforce this Agreement, or for damages thereunder.

XXIV. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. In any event, the Contractor shall not assign any right or obligation under this Agreement without the Town's express written consent, which may be withheld in the Town's sole discretion.

XXV. ENTIRE AGREEMENT

This Agreement, including all Contract Documents, constitutes the entire agreement between the Town and the Contractor. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

XXVI. COUNTERPARTS

The parties may execute this Contract in counterparts, with electronic signatures, which each such document shall, in the aggregate and when signed by both parties, constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it. This Contract shall not be valid or enforceable unless and until duly executed by a duly authorized officer of each party.

XXVII. OTHER PAYMENTS; EXPENSES; TAXES

The Town will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of services pursuant to this Agreement, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of its obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Contractor, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Contractor is deemed not to be an independent contractor by any local, state or federal governmental agency, Contractor agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST:

TOWN OF KENSINGTON

Susan Engels, Town Clerk

By:

Matthew J. Hoffman, Town Manager

WITNESS:

CONTRACTOR: _____
By: _____

Printed Name: _____

Title: _____

APPROVED AS TO LEGAL SUFFICIENCY:

Suellen M. Ferguson
Town Attorney

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, ___ hereinafter known as the "Contractor," as Principal, and _____, as Surety, are held and firmly bound unto Town of Kensington as obligee, hereinafter known as the "Owner," in the penal sum of _____ lawful money of the United States of America, to be paid to the Owner, for the use and benefit of the said obligee, and all persons, doing work or furnishing skill, tools, machinery, or materials under or for the purpose of the Contract hereinafter named, for which payment, well and truly to be made, we bind ourselves, our successors and our several respective heirs, assigns, executors, and administrators, jointly and severally, firmly by present.

AFFIXED WITH OUR SEALS THIS _____ day of _____, 20 _____.

WHEREAS, the Contractor ___ by an instrument in writing, bearing even date, with these presents, has contracted with the Owner to furnish all equipment, tools, materials, skill and labor for the completion of the work according to this Contract.

All work to be performed in strict accordance with the attached Agreement or Contract, plans and specifications, which Contract is by this reference made a part hereof.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, that is the said Contractor shall complete the work provided for in said Contract according to the terms, and shall save the obligee hereunder free from all costs and charges that may accrue on account of the doing of the work specified in the Contract, and shall comply with the laws appertaining to said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

AND THE FURTHER CONDITION OF THIS OBLIGATION IS SUCH, THAT IF _____ as Contractor, shall fully and faithfully perform work in accordance with the terms of the annexed Contract during the original term thereof and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and the plans and specifications therein referred to, and provide the materials therein called for, and replace defective work or material for a period of one year after the completion of this Contract, and if the Principal shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be null and void, otherwise they _____, as Contractor, and ___, as Surety, jointly and severally agree to pay the Owner the difference between the sum of which the said ___, as Contractor, would be entitled in the completion of the Contract, and that which the Owner, may be obliged to pay for the completion of the work by Contract or otherwise, and agree to pay any damage, direct or indirect or consequential, which said Owner may sustain on account of such work or on account of the failure of said Contractor, properly and in all things to keep and execute the provisions of the Contract.

And the said _____, as Contractor, and _____ as Surety, hereby further bind themselves, their successor, assigns, heirs, executors and administrators, jointly and severally, and agree that they shall indemnify and save

harmless and shall pay all amounts, damages, costs and judgments which may be recovered against, and all expense incurred by, the Owner and all representatives of said Owner, from or arising out of all or any suits, actions or claims of any character brought on account of any injuries or damages sustained by any persons or property in consequence of any neglect in safeguarding the work or any such claim arising from any other act, omission, negligence or misconduct of the Contractor, his agents, representatives, servants and employees in the performance of said work or of the repair or maintenance thereof or the manner of doing the same, or the neglect of said Contractor, or agents or servants, or the improper performance of the said work by the Contractor or agents or servants, or the infringement of any patent rights by reason of the use of any equipment, or material, furnished under the said Contract, and will also pay any damages for delay in performance, as stated in the Contract; further, failure to do so with such person, firms, partnership, or corporation shall give them a direct right of action against the principal and surety under this obligation.

As the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract of the work to be performed thereunder of the plans or specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract or to the work or to the plans or specifications.

Without limiting the effect of any other provision herein contained, this bond is to be construed as a statutory bond under the provision of: _____ as amended to date.

IN WITNESS WHEREOF, the said _____ has caused _____ corporate seal to be hereto affixed, and the presents to be signed in its name by _____, and the said _____ as Surety, has caused _____ corporate seal to be hereto affixed and these presents to be signed in its name by _____

(As to Contractor) _____

(Seal)

Signature
Name: _____
Title: _____

Signed, sealed and delivered in the presence of: _____

(As to Surety)

_____ SURETY (Seal)

By: _____

L.S. _____
Attorney-in-Fact

APPROVED AS TO FORM

COUNTERSIGNED

By: _____

L.S. _____
Resident Agent

Signed, sealed and delivered in the presence of: _____

NOTE: If the Principal is a corporation, the bond shall be signed by the President or Vice President, attested by the Secretary and the Corporate Seal Affixed. If the principal is a partnership, the bond shall

be signed in the partnership name by one of the general partners.

LABOR AND MATERIALS BOND

This Bond is issued simultaneously with the performance bond in favor of the Owner conditioned on the full and faithful performance of the Contract:

KNOW ALL MEN BY THERE PRESENTS: that

(Legal name of Contractor)

(Address of Contractor)

as Principal, hereinafter called Contractor, and

(Here insert full name and address of Surety)

a corporation created existing under the laws of the State of Maryland, hereinafter called Surety, are held and firmly bound unto Town of Kensington as Obligee, hereinafter called the Owner, for the use and benefit of claimants as herein below defined, in the penal sum of

(Full value of contract price in written words)

in lawful money of the United States, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has a written agreement dated _____, 202____ entered into by Contractor with Owner in the sum of _____ 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, Contractor 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, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, 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 Contractor or with a

Subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being constructed 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 Contractor 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 we furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum of 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 Contractor, shall have given written notice the Contractor, 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, starting with substantial accuracy the amount claimed and the name of the a 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 Contractor, Owner and Surety, and 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 Contractor 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 state court of competent jurisdiction in and for the County or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated and not elsewhere.
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 or recorded against said improvement, whether or not the claim for the amount of such lien be presented under and against this bond.
5. The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or

to the specifications. No final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Signed and sealed this _____ day of _____, 2022

IN THE PRESENCE OF:

(Principal)

(Seal)

By: _____

Title: _____

Surety

(Seal)

By: _____

Title _____