

**INVITATION FOR BIDS**  
**IFB# 2016-154-01**



**Issue Date:** March 17, 2016

**Title:** Essex County Courthouse Square Drainage Improvements

**Issuing Agency:** Essex County  
Purchasing Office  
202 S. Church Lane  
Tappahannock, VA 22560

**Period of Contract:** From April 13, 2016 through June 17, 2016 which is the final completion date of work.

**Sealed bids** will be received until **3:00 p.m. on April 4, 2016** for furnishing the services described herein.

Sealed bids may be **delivered via United Parcel Service, FedEx, or hand delivered** to the issuing agency shown above. **The United States Postal Service will not deliver to the physical address shown above.**

All inquiries for information and clarification regarding IFB forms and related procurement process questions should be directed to: Pam Smith, Purchasing Office, 804-443-8155 not later than five business days before the bid closing date.

All inquiries for information and clarification regarding the plans and specifications of this IFB shall be directed to: Alwyn W. Davis, Jr., Essex County Environmental Officer, 804-443-4951 or [awdavis@essex-virginia.org](mailto:awdavis@essex-virginia.org).

Note: The signed bid and all attachments shall be returned

In compliance with this invitation for bid and to all conditions imposed herein, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed bid.

Name and Address of Firm:

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print)

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

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

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

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

Fax: \_\_\_\_\_

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

**Invitation for Bids**  
**Essex County Courthouse Square Drainage Improvements**  
**IFB Number 2016-154-01**  
**Essex County, Virginia**

**Instructions to Bidder**

**A. Introduction**

The County of Essex requests the submission of bids from qualified bidders to provide drainage and surficial improvements to the Essex County Courthouse Square located at in front of building number 309 Prince Street, Tappahannock, VA 22560. Bids must be submitted in sealed envelopes marked "Sealed Bids for Essex County Courthouse Square Drainage Improvements" and the date and time of bid opening. Sealed bills will be received at the Essex County Purchasing Office, 202 S. Church Lane, Tappahannock, Virginia 22560 until 3:00 p.m. ("Bid Submittal Deadline") on April 4, 2016 in accordance with the specifications set forth herein.

Bids must be delivered by the Bid Submittal Deadline. Bids arriving after the specified hour will not be accepted. Mailed bids which are delivered after the specified hour will not be considered regardless of the postmarked time on the envelope. All bids must be originals and in writing. Faxed or e-mailed proposals are not acceptable. Bids will be publicly opened and read aloud at 3 p.m. or as soon as possible thereafter as practical on April 4, 2016. Bids will be opened in the office of the Director of Facilities Management.

Every Bid must provide the pricing and all other requested items in the specifications and must contain the full name of every person, firm or corporation interested in the bid and the address of the person, firm or the president or secretary of the corporation bidding. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to commit corporation) and the corporate seal must be affixed and attested by the secretary or assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Bids by limited liability companies or partnerships must be executed by the managing member of the limited liability company or a partner of the partnership with authority to bind the company.

It is incumbent upon the contractor to make arrangements during the bid period to physically inspect the site before submitting a bid. Inspection dates/times may be arranged with the Essex County Environmental Officer, Alwyn W. Davis, Jr. Contact Mr. Davis by phone at 804-443-4951.

An optional Pre-Bid Conference will be conducted at the site on March 24, 2016 at 10:00 AM.

The following bid documents are part of this procurement:

**Appendix A – “Bid or Proposal Conditions”**

**Appendix B – “General Terms & Conditions”**

**Appendix C – “Bid Form”**

**Appendix D – “Bid Declaration”**

**Appendix E – “Contract”**

**Essex County Courthouse Square Drainage Improvements Plans dated March 1, 2016 consisting of Sheets C001, C101, and C201**

## **B. Bid Terms**

The general terms of the bidding process are found in Appendix A (“Bid or Proposal Conditions”). In addition to these terms, the following apply to this procurement process:

### **1.) Intent of IFB**

The intent of this invitation for bids is to procure the services of qualified bidders to provide labor, equipment, and supervision necessary to perform repairs as described herein on the facilities listed in Bid Form. To be deemed “qualified” the bidders must have the necessary labor, equipment, materials, organization, experience, technical skills and financial resources to competently fulfill the terms of the resulting contract and must have supplied and successfully completed like services for other Hardscape and Drainage Improvements for at least five years.

### **2.) Total Cost Bid**

The bid shall include the cost of each line item specified in the scope of work. None, any or all of the items may be chosen by the County for award.

### **3.) Bid Form**

The attached Bid Form and accompanying worksheet shall be completed in their entirety.

### **4.) References**

Contact information for at least three current or recent clients (“references”) of an equal dollar magnitude must be included in the bid package. The list of references shall be attached to the Bid Form. These references may be contacted prior to the County entering into a final contract.

### **5.) Experience**

Bidders shall include evidence with their bid that they have (i) at least five (5) years prior experience in providing this type of labor/repair work and (ii) the necessary labor, equipment, materials, organization, experience, technical skills and financial resources to provide such service to the County.

### **6.) Compliance with Federal and State Employment and Licensing Laws**

The bidder shall certify that it is in compliance with all federal and state employment and licensing laws including but not limited to minimum wage, equal employment opportunity, and immigration. If the bidder has been found to be in violation of an employment law within the past five years, the bidder shall provide a description of the non-compliance determination.

## **7.) Interpretations and Requests for Submission**

Any bidder in doubt as to the true meaning of any part of the procurement documents may submit a written request to Essex County for an interpretation. The bidder submitting the request will be responsible for its prompt and actual delivery. Any interpretation or approval will be made by written addendum duly issued to all who have received a copy of the Invitation for Bids. A copy of such addendum will be mailed or delivered to each bidder receiving a set of such documents. No oral interpretations or approvals are authorized or will be made. Essex County will not be responsible for any oral or other explanations or interpretations of such documents which anyone presumes to make.

Every request for interpretation or substitutions regarding the work covered shall be submitted in writing to Alwyn W. Davis, Jr., Essex County Environmental Officer at [awdavis@essex-virginia.org](mailto:awdavis@essex-virginia.org).

## **8.) Method of Award**

The award of a contract by the County will be to the lowest responsible and responsive, qualified bidder. Award will be made using the total bid price of the items selected for completion as stated on the Bid Form.

## **9.) Performance, Payment Bonds**

Upon the award of a public construction Contract resulting from this IFB which exceeds \$100,000 awarded to the successful Bidder(s) (Contractor(s)), the Contractor shall furnish to Essex County Performance and Payment bonds. If a contract is under \$100,000 the County may request the bonds in accordance with the Essex County Procurement Policy. The following bonds shall be furnished to Essex County:

1. A Performance Bond in the penal sum of 100 percent of the dollar value of the contract conditioned upon the faithful performance of the Contract in strict conformity with the Plans, Specifications, and Terms and Conditions of the Contract. Said bond for the faithful performance of the Contract shall remain in existence for the duration of the Contract performance time period until final acceptance of the project by Essex County.
2. Payment Bond in the sum of the Contract amount. Such bond shall be for the protection of Claimants who have and fulfill contracts to supply labor or materials to the Contractor to whom the Contract resulting from this IFB was awarded or to any Subcontractors, in the prosecution of the Work provided for in such Contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the Work. Labor or materials shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the Work Site.
3. Each of the above bonds shall be executed by one or more surety companies, selected by the Contractor, which are legally authorized to do

business in Virginia. Bonds shall be payable to Essex County. The Contractor shall present the Performance Bond and Payment Bond to the Essex County Purchasing Office within 15 days after receipt of a fully executed Contract and prior to any Site Work. The Performance Bond shall remain in existence for the duration of the Contract performance time period, and the Payment Bond shall remain in existence for one year after final acceptance of the Work by Essex County. In lieu of payment or Performance Bonds, the Contractors may furnish a certified check or cash escrow in the face amount required for each of the bonds and which will be held for the statutory period as applicable for each bond.

10.) **Term of Contract**

Improvements may begin upon contract ratification by the Essex County Board of Supervisors. Work must be completed by June 17, 2016.

11.) **Payment**

Payment will be made no later than thirty (30) days after the County deems the project 100% complete.

12.) **Site Security**

It is the contractor's/sub-contractor's sole responsibility to secure equipment and interim construction on and around the site during the contract period. Liability for theft and/or vandalism during construction will be insured by the contractors/sub-contractors.

**C. Specifications**

All work is to be completed in accordance with "Essex County Courthouse Square Drainage Improvements" plans dated March 1, 2016, prepared by Draper Aden Associates. Work is to include: site demolition, grading and draining (and installation of associated erosion and sediment control measures), building gutters, downspouts and drywell, sodding, and surficial improvements as shown and detailed and noted on the plans.

1. Contractor shall obtain a Land Disturbing Permit from the Essex County Building and Zoning Department. The permit fee will be waived.
2. The Contractor shall obtain a Demolition and/or Building Permit for the Essex County Building and Zoning Department. The fee for these permits will be waived.

**Invitation for Bids**  
**IFB # 2016-154-01**  
**Essex Courthouse Square Drainage Improvements**

**Bid or Proposal Conditions**

All of the procurement documents, including Appendices A-F, and the response of the bidder/offeror, **(the “Bidder”)** will be incorporated into resulting contract as fully and completely as if set forth in such contract in its entirety. The following are the conditions for submission of a bid that will apply to all procurements done by the County of Essex **(the “County”)**. In the event of a conflict between any of the following conditions and requirements with any other conditions or requirements set forth in an Invitation for Bid, Request for Proposal or other Solicitation, the conditions and requirements set forth herein shall take precedence and control.

**Bid or Proposal Conditions:**

1. All forms, blanks and questions must be completed fully and on the forms provided by the County. Failure to do so may be cause for rejection of bid or proposal.
2. A Bidder may withdraw or cancel a bid or proposal at any time prior to the date set for opening unless otherwise stated in the bid or proposal documents. After such time, the Bidder may not withdraw the bid or proposal for a period of sixty (60) calendar days. A Bidder may be required to clarify his bid or proposal or acknowledge by written confirmation that the minimum requirements of request for bid or proposal are included in the Bidder’s submittal.
3. Bids or proposals on separate bid or proposal solicitations must not be combined on the same forms or placed in the same envelope. Such bids or proposals will not be considered.
4. Any Invitation to Bid, a Request for Proposal, any other Solicitation or any and all bids or proposals may be cancelled or rejected when it is determined that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the contract file. Any bid or proposal that is incomplete, conditional, obscure, or not in conformance with the bid Specifications may be rejected, or any such irregularities if they do not affect quality, quantity, price, or delivery schedule may be waived at the sole option of the County.
5. The County reserves the right to award in part or in whole, or to reject any and all bids or proposals, and does not commit itself to accepting the lowest bid or proposal.

6. The award, if any, will be made by the County to the Bidder who shall be determined in accordance with rules and regulations governing purchases or contracts adopted and established by the County and in accordance with all applicable provisions of the *Code of Virginia*, 1950, as amended ("the Code"), and the County Code.
7. All warranties shall commence from the date of Essex County's acceptance of the completed work. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades. Work not conforming to these warranties shall be considered defective. This warranty of materials and workmanship separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract. The minimum warranty period for the construction and related accessories shall be at least one year and shall start from the date of Essex County's acceptance of the completed work.
8. In any Invitation to Bid, if more than one bid is received for the same total amount or unit price, quality and service being equal, preference shall be given to goods produced in or provided by persons, firms, or corporations falling within the provisions of the § 2.2-4324 of the Code.
9. In any Invitation for Bid, if the lowest acceptable bid exceeds available funds, the County at its sole option may negotiate with the lowest Bidder to obtain a contract price within available funds. The negotiations shall be confined to a reduction in the contract price and shall not include material changes in the contract requirements. The procedure to be followed is:
  - A. The County Administrator shall advise the lowest responsible Bidder, in writing, that the proposed purchase exceeds available funds. He shall further suggest amendment of the proposed purchase price and invite the lowest responsible Bidder to amend its bid or proposal based upon the proposed amendment.
  - B. Repetitive informal discussions with the lowest responsible Bidder for purposes of obtaining a contract within available funds shall be permissible.
  - C. The lowest responsible Bidder shall submit an addendum to its bid or proposal, which addendum shall include any change in the purchase price.
  - D. If the proposed addendum is acceptable to the Board, the Board may award a contract within funds available to the lowest responsible Bidder based upon the amended bid or proposal.
  - E. If the Board and the lowest responsible Bidder cannot negotiate a contract within available funds, all bids or proposals shall be rejected.



10. Except in the case of an emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. This paragraph shall not apply to contracts of insurance or prepaid coverage as set forth in § 2.2-4331 of the Code. Public contracts may be awarded on any other basis.
11. With the following exceptions, all procurement documents are subject to the Virginia Freedom of Information Act ("FOIA"):
  - A. Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be opened to public inspection.
  - B. Bid and proposal records shall be opened to public inspection only after the award of the contract. Any Bidder may be allowed to inspect the bid or proposal records prior to award unless the County decides not to accept any bids and reopen the contract.
  - C. Trade secrets or proprietary information submitted to the County may not be protected from disclosure under FOIA unless so identified with specificity and a request is made. Any such request must identify what is to be protected on a page by page basis and must state the reasons therefor. The County shall make the determination of whether the information is, or is not, subject to disclosure.
12. Any Bidder submitting a Bid proposal to the County subjects himself to the decision of the County Administrator as to the quality of what is offered, responsiveness of the bid or proposal, responsibility of the Bidder, and the qualifications of any Bidder. The County Administrator in his or her sole discretion will evaluate bids or proposals and in all cases the decision shall be final. Every offeror submitting a bid or proposal agrees to abide by the decision of the County Administrator as a condition precedent to the submission of the bid or proposal.
13. All bids or proposals submitted shall have included in the price the cost of any business or professional licenses, permits or fees required by the County or the Commonwealth of Virginia.
14. By submission of bid or proposal, the Bidder certifies that the merchandise to be furnished will not infringe on any valid patent or trademark and the successful Bidder will, at his own expense, defend any and all actions or suits charging such infringement, and will save the County harmless in case of any infringement.
15. Samples of items, if requested, shall be furnished without charge and if not destroyed shall, upon request within sixty (60) days after bid or proposal opening, be returned at the Bidder's expense. After sixty (60) days, unclaimed items will become the property of the County.
16. Envelopes containing bids or proposals will be sealed and marked in the lower left-hand corner with the invitation for bid number, commodity classification or bid title, and date and hour of opening of the bid or proposal. Failure to do so may be cause for rejection.

17. All bids or proposals shall be submitted exclusive of direct federal, state and local taxes. However, if the Bidder believes that certain taxes are properly payable by the County, he may list such taxes separately in each case directly below the respective item bid or proposal price. The County's tax exemption certificate will be furnished upon request.
18. The County is exempt from payment of state sales and use tax on all tangible personal property purchased or leased for its use or consumption. Certificate of exemption will be furnished upon request.
19. The County shall not be obligated to purchase or pay for commodities, supplies, equipment or services covered by this Solicitation unless and until they are ordered by, delivered to or performed for the County.
20. Method of payment unless otherwise set forth in the solicitation will be determined upon award with successful bidder.
21. All deviations from the bid specifications must be noted in detail by the Bidder, in writing, at the time of submittal of the formal bid or proposal. The absence of a written list of specification deviations at the time of submittals of the bid or proposal will hold the Bidder strictly accountable to the County to the specifications as written.
22. Once an Invitation to Bid or Request for Proposal has been advertised, should a prospective Bidder find any discrepancy in or omissions from the bid or proposal documents, or should there be a doubt as to the meaning of terms or requirements, the Bidder shall at once notify the contact person identified in the solicitation documents, or if none is listed, the County Administrator, who will send written instructions to all Bidders. The County will not be responsible for any oral instructions.
23. The provisions of Sections 2.2-4305, 2.2 4311, 2.2-4312, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2 4338, 2.2-4340, 2.2-4341, 2.2-4363 and 2.2-4367 through 2.2-4377 of the Code are incorporated into these conditions by reference as fully as if set forth herein.
24. The County reserves the right to require a bid or proposal, performance or payment bond. The requirement for such bond shall be clearly stated in the bid or proposal documents.
25. The County reserves the right to require the successful Bidder to furnish a performance bond in the amount of the contract before the award of contract. If no bond can be furnished by the successful Bidder, the County reserves the right to award the contract to the next lowest, responsive, responsible Bidder. If a performance bond is specified on the Invitation to Bid or Request for Proposal, the Bidder shall pay the cost thereof.

26. Unless expressly waived in the solicitation documents, the County reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, immediately upon written notice.
27. By submitting a bid or proposal, the Bidder agrees and warrants that he has examined all the bid or proposal documents, has visited the site and become familiar with the conditions applicable to the project, and, if appropriate, the subject of the bid or proposal and, where the bid Specifications require a given result to be produced, that the Specifications are adequate and the desired results can be produced under the Specifications in the bid or proposal. Omissions from the Specifications shall not relieve the Bidder from the responsibility of complying with the general terms of the contract as indicated by the Specifications. Once the Bid has been opened, failure to have read all the conditions, instructions, and Specifications will not be a cause to alter the original bid or proposal or for the Bidder to request additional compensation.
28. The company, corporate or individual name of the Bidder must be signed in ink in the space provided for the signature on the page following these conditions. In the case of a corporation the title of the officer signing must be stated and each officer must be duly authorized to sign. In the case of a partnership or limited liability company, the signature of at least one of the partners or managing members must follow the firm name using the term “member of the firm,” or equivalent.
29. When competitive sealed bidding is used, the following factors shall be considered in addition to price when determining the lowest responsible Bidder and the responsiveness of the bid or proposal:
  - A. The “best value” or overall combination of quality, price and various elements of required services that in total are optimal relative to the needs stated in the Invitation to Bid.
  - B. The ability, capacity and skill of the Bidder to perform the contract or provide the services required, including without limitation, the proximity to the County of the location of the office of the Bidder that will perform the services.
  - C. Whether the Bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
  - D. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder.
  - E. The quality of performance of previous contracts or services.
  - F. The previous and existing compliance by the Bidder with laws and ordinances relating to the contract or service.
  - G. The sufficiency of financial resources and ability of the Bidder to perform the contract or provide the service.

- H. The quality, availability and adaptability of the goods or services to the particular use required.
  - I. The ability of the Bidder to perform future maintenance and service for use of the subject of the contract.
  - J. The number and scope of conditions attached to the Bid.
  - K. Any other condition or criteria included in the invitation for bids or the instructions to Bidders.
- 30. Requests for bid results must be made in writing and include a self-addressed, stamped envelope.
  - 31. The County does not accept the responsibility for maintaining a bid or proposal list and will not accept the responsibility for the failure of any prospective Bidder to receive a solicitation directly from the County.
  - 32. It is not the responsibility of the County to ensure delivery of a bid or proposal or correspondence to a vendor to any other address than that on the current bid list. If mail is returned for any reasons, it will become a part of the County's bid solicitation file. After two returns the company will be removed from the bid list.

END OF APPENDIX A

**Invitation for Bids**  
**IFB # 2016-154-01**  
**Essex County Courthouse Square Drainage Improvements**

**General Terms and Conditions**  
**(Including Insurance and Indemnity)**

**1. General Provisions**

These General Terms and Conditions shall be attached to and made a part of any written contract (the "Contract") between Essex County, Virginia, and its contractors. In the event of any conflict between any provision of these General Terms and Conditions and the Contract, the Contract shall take precedence and control. Nothing in the Contract or any document executed in connection therewith shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service contained therein. Unless defined herein, capitalized terms shall have the meaning defined and used in the Contract. "Contractor" shall refer to all parties to the Contract other than the County.

**2. Laws of the Commonwealth**

- A. The Contract shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The Contractor providing goods or services to the County under this Contract represents and warrants to the County that it is:
1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
  2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986;
  3. Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
  4. In full compliance with the Virginia Conflict of Interest Act.
- B. In every contract of over \$10,000, the Contractor agrees during the performance of the Contract that:
1. The Contractor (a) will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin, except where religion, sex or national origin is a *bona fide* occupational qualification reasonably necessary

to the normal operation of the Contractor, (b) will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and (c) will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor under this Contract. All notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section; and

2. The Contractor will include the provisions of the foregoing subparagraph 2,B,1 in every subcontract or purchase order under the Contract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. In every contract of over \$10,000, the Contractor agrees during the performance of the Contract that:

1. The Contractor shall (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation; (c) state in all of its solicitations or advertisements for employees that it maintains a drug-free workplace; and (d) include the provisions of this subparagraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or vendor.

2. For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a the Contractor in accordance with the provisions of the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

D. In addition to the provisions contained in sub-paragraph C pertaining to drug-free workplaces, the Contractor shall comply with the federal Drug Free Workplace Act.

E. Pursuant to Section 2.2-4343.1 of the *Code of Virginia* of 1950, as amended (the "Code") in all invitations to bid, requests for proposals, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

### **3. Certifications**

The Contractor certifies that:

- A. The bid or offer (1) is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;
- B. The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- C. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or condition upon which the contract resulting from the acceptance of his bid proposal is to be performed;
- D. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and
- E. The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

### **4. Warranties**

The Contractor represents and warrants that it has the requisite experience, skills, capabilities and manpower to perform the Services as provided for in the Contract

Documents in a good and workmanlike fashion, that it is a corporation chartered or authorized to do business in Virginia having all necessary licenses required by law, that the person signing the Contract has been fully authorized to do so, and his signature will legally bind the Contractor to the Contract. Any goods or services furnished by the Contractor under the Contract shall be new and covered by the most favorable warranties provided by the Contractor to any customer. The rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the County. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

**5. Modifications, Additions or Changes**

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County; however, no fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the Contract or \$50,000, whichever is greater, without the express approval of the Essex County Board of Supervisors by action taken in an open meeting. The amount of this Contract may not be increased for any purpose without adequate consideration provided to the County.

**6. Hold Harmless**

The Contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify the County, its Board of Supervisors members, officers, employees and agents against and save them harmless from all claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the Services, whether or not due to any act of his or their employees, servants or agents and whether or not due to any act of omission or commission including negligence, except sole negligence, of Essex County, its Board of Supervisors members, officers, employees, and/or agents. Compliance by the Contractor with the insurance provisions hereof shall not relieve the Contractor from liability under this provision.

**7. Assignment**

The Contract may not be assigned, sublet, or transferred without the written consent of the County.

**8. Default**

In the case of default or breach by the Contractor or the failure of the Contractor to perform the Services in conformance with the specifications in the Contract, the County shall give written notice to the Contractor specifying the manner in which the Contract has been breached. If the County gives such notice of breach and the Contractor has not corrected the breach within seven (7) days of receipt of the written notice, the County shall have the right to immediately rescind, revoke or terminate the Contract and in addition to any other remedies available at law to procure such services from other sources and hold the Contractor responsible for any and all excess cost occasioned thereby.



**9. Audit**

The Contractor hereby agrees to retain all books, records, and other documents relative to this Contract for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The County and its authorized agents, state auditors, the grantor of the funds to the County, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Contract for the purpose of making audits, examinations, excerpts or transcriptions.

**10. Ownership of Documents**

Any reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of its obligations under this Contract shall be remitted to the County by the Contractor upon completion, termination or cancellation of this Contract. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Contractor's obligations under this Contract without the prior written consent of the County. The County shall own the intellectual property rights to all materials produced under this Contract.

**11. Payment and Performance Bond**

If required by law, the Contractor shall furnish to the County performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the Code and shall otherwise fully comply with the requirements of such sections of the Code.

**12. Required Payment**

Pursuant to Section 2.2-4354 of the Code, the Contractor covenants and agrees to:

- A. Within seven (7) days after receipt of any amounts paid to the Contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the Services under the Contract performed by such subcontractor, or (ii) notify the County and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
- B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract;
- C. Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Contractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for Services performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 12a. above; and

- D. Include in its contracts with any and all subcontractors the requirements of A, B, and C above.

**13. Liability Coverage**

The Contractor shall take out and maintain during the life of the Contract such bodily injury, liability and property damage liability insurance as shall protect it and the County from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this Contract. Such insurance shall at least have the coverages and be in the amounts set forth in Section 16 "Insurance and Bond Requirements" set forth below and shall name Essex County and the Essex County Board of Supervisors as Additional Insureds. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best's Key Rating of A:V1. The Contractor shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days' notice prior to cancellation or other termination of such insurance.

**14. Loss or Damage in Transit**

Delivery by the Contractor to a common carrier does not constitute delivery to County. Any claim for loss or damage incurred during delivery shall be between the Contractor and the carrier. The County accepts title only when goods are received regardless of the F.O.B. point. The County will note all apparent damages in transit on the freight bill and notify the Contractor. Discovery of concealed damages or loss will be reported by the County to the carrier and the Contractor within seven days of receipt and prior to removal from the point of delivery if possible. The Contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the Contract. It shall be the Contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the County, the Contractor may deduct the amount of damage or loss from his or her invoice to the County in lieu of replacement.

**15. Termination for Default**

In case of default by the Contractor for failure to deliver or perform in accordance with the Contract's specifications or terms and conditions, the County may procure the articles or services from other sources and hold the defaulting the Contractor responsible for any resulting additional purchase and administrative costs. The County will normally repurchase from the next low bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to the County, a letter will be sent to the defaulted the Contractor requiring payment for additional costs. When repayment is requested, the Contractor will be removed from future bidding until the repayment has occurred. The Contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a Contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the Contractor.

## 16. Insurance and Bond Requirements

The Contractor shall maintain the following insurance to protect it from claims under the Workmen's Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under this Contract, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
Workers' Compensation and Employer's Liability including coverage under United States Longshoremen's and Harbor Worker's Act where applicable	Statutory, including Employer's Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee
Comprehensive General Liability endorsement coverages.	Including the Broad Form C.G.L.
Premises – Operations Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Including: Underground Hazard (U) Explosion and Collapse Hazard (XC)	
Independent Contractors – Owner's Protective Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Completed Operations - Products Liability Bodily Injury Liability and Property Damage Liability Combined for five (5) years after payment	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Contractual Bodily Injury Liability and Property Damage Liability Combined in accordance with Contract between Owner and Contractor	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Personal Injury with Employee's Exclusion C deleted	\$1,000,000 Aggregate

Automobile Bodily Injury Liability and Property Damage Liability Combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned, or hired by the Contractor	\$1,000,000 Per Accident
Umbrella/Excess Liability	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Professional Liability Insurance	\$1,000,000 Limit of Liability

- A. The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
- B. The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

**17. No Waiver**

Any failure of the County to demand rigid adherence to one or more of the terms and provisions of the Contract, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the County of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this Contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

**18. Termination**

The County may terminate the Contract for its convenience at any time upon written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's Services under this Contract.

**19. Choice of Law**

To ensure uniformity of the enforcement of the Contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, the Contract is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

**20. Severability**

If any provision of the Contract, including this Appendix, is held to be illegal,

invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the Contract, and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the Contract.

## **21. Contractual Claims Procedure**

- A. Contractual claims or disputes by the Contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that the Contractor shall give the County written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of the Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but it shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the Contractor files such written notice, the Contractor shall proceed with the Services as directed. If the Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.
- B. The County, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.
- C. If the Contractor disagrees with the decision of the County concerning any pending claim, the Contractor shall promptly notify the County by written notice that the Contractor is proceeding with the Services under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the County or under a written notice of the Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the County, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- D. The decision on contractual claims by the governing body of the County shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

## **22. Subject to Annual Appropriation**

The Contract is subject to annual appropriation by the Board of Supervisors of Essex County. Neither the Contract nor any amount due or to become due under the Contract shall be deemed to constitute a debt or pledge of the faith and credit of the

Commonwealth of Virginia or any political subdivision thereof, including the County. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the County, shall be obligated to pay any amount due or to become due under this Contract except from funds annually appropriated by the Board of Supervisors of Essex County for such purpose.

In the event of non-appropriation of funds for the items under this Contract, the County may terminate this Contract as to the Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after such action is taken.

**23. Forum Selection**

The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract and agree that service by certified mail to the addresses set forth in the Contract shall constitute sufficient service of process for any such action. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue in the Circuit Court of Essex County, and shall be brought only in such Court.

**24. Notices**

All requests, notices and other communications required or permitted to be given under the Contract shall be in writing and delivery thereof shall be deemed to have been made five (5) business days after such notice shall have been duly mailed by certified first-class mail, postage prepaid, return receipt requested, one (1) business day after being deposited with any nationally recognized overnight courier service, or when delivered if delivered by hand delivery, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

Notices to the Contractor shall be sent to the address set forth in the Contract, and notices to the County shall be sent to:

Mr. A. Reese Peck, County Administrator  
Essex County  
202 South Church Lane  
P.O. Box 1079  
Tappahannock, VA 22560; with a copy to

Andrew R. McRoberts, Esquire  
Sands Anderson PC  
1111 E. Main Street, Suite 2300  
P.O. Box 1998  
Richmond, VA 23218

END OF APPENDIX B

**BID FORM**

DATE: \_\_\_\_\_

PROJECT TITLE: Essex County Courthouse Square Drainage Improvements

PROJECT LOCATION: TAPPAHANNOCK, VIRGINIA

ESSEX CO. IFB NO.: IFB# 2016-154-01

TO: Mr. Reese Peck, County Administrator  
Essex County  
Tappahannock, VA 22560

In compliance with your Advertisement for Bids, the undersigned proposes to furnish all labor and materials and perform all work necessary for construction of the referenced project, in strict accordance with all the contract documents, dated March 16, 2016 including any addenda noted below, as prepared by the Essex County, for the consideration of the following amounts:

	Quantity	Unit	Unit Cost	Extension
<b>A. General Site Work</b>				
Mobilization	1	LS	\$ _____	\$ _____
Construction Surveying	1	LS	\$ _____	\$ _____
Erosion & Sediment Control and Safety Fence	1	LS	\$ _____	\$ _____
Earthwork	1	LS	\$ _____	\$ _____
Brick Pavers (installed complete per plan (section))	3030	SF	\$ _____	\$ _____
Brick Restraints	560	LF	\$ _____	\$ _____
Planting Bed Aggregate	420	CF	\$ _____	\$ _____
Benches	2	EA	\$ _____	\$ _____
Sodding	880	SF	\$ _____	\$ _____
<b>Subtotal A</b>				<b>\$ _____</b>
<b>B. Drainage</b>				
Pea Gravel (Dry Wells)	5	CY	\$ _____	\$ _____
VDOT #57 Stone (Dry Wells)	21	CY	\$ _____	\$ _____
4" HDPE Pipe	135	LF	\$ _____	\$ _____
6" HDPE Pipe	12	LF	\$ _____	\$ _____
Building Downspouts	3	EA	\$ _____	\$ _____
Building Guttering	120	LF	\$ _____	\$ _____
<b>Subtotal B</b>				<b>\$ _____</b>
<b>TOTAL BASE BID (A + B)</b>				<b>\$ _____</b>

Quantities shown are estimates for the purposes of bidding only.  
Final amounts shall be adjusted upward or downward based on actual quantities authorized.

**TOTAL BASE BID AMOUNT (A + B) is:**

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

This Base Bid Amount is for the entire work, complete, and in accordance with the contract documents.

The undersigned understands that time is of the essence and agrees that, based on a notice authorizing Work to proceed received April 13, 2016, the date for Substantial Completion shall be **sixty (60) consecutive calendar days** from receipt of said "Notice to Proceed" and the date of Final Completion shall be achieved within **seven (7) consecutive calendar days** after the date of Substantial Completion as noted in the Contract Documents. Total Contract time is **sixty-four (64) consecutive calendar days**.

The undersigned acknowledges that failure to complete the Work within the Contract Time, or extension of time granted by the Owner, will result in liquidated damages assessed in the amount of **one hundred dollars (\$100)** per day for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

The undersigned acknowledges receipt of the following addenda and dates received:

Addenda #	Date of Receipt
_____	_____
_____	_____
_____	_____

Bid guarantee in the sum of \$\_\_\_\_\_ in the form of \_\_\_\_\_ is submitted herewith in accordance with the Instructions to Bidders.

If notice of acceptance of this bid is given to the undersigned within 90 days after the date of opening of bids, or any time thereafter before this bid is withdrawn, the undersigned will execute and deliver an Agreement in the prescribed form within 15 days after the Agreement has been presented to him / her for signature. The required bonds and certificates of insurance shall be furnished to the Owner in accordance with the Instructions to Bidders.

**IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The undersigned certifies that it does not and will not during the performance of the Contract for this project violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

**DISQUALIFICATION OF CONTRACTORS:** By signing this bid or proposal, the undersigned certifies that this Bidder or any officer, director, partner or owner is not currently barred from bidding on contracts by any Agency of the Commonwealth of Virginia, or any public body or agency of another state, or any agency of the federal government, nor is this Bidder a subsidiary or affiliate of any firm/corporation that is



currently barred from bidding on contracts by any of the same. We have attached an explanation of any previous disbarment(s) and copies of notice(s) of reinstatement(s).

I certify that the firm signing this Bid and registered under that name is legally qualified to perform all Work included in the scope of the Contract as determined by the Commonwealth of Virginia, Department of Commerce, State Board for Contractors, in granting the registration.

Virginia License No. \_\_\_\_\_

Bidder \_\_\_\_\_  
(Name of Firm)

Contractor Class: \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

Specialty: \_\_\_\_\_

\_\_\_\_\_  
(Typed Name)

Valid until: \_\_\_\_\_

Title \_\_\_\_\_

FEIN/SSN: \_\_\_\_\_

If Partnership (List Partners' Names)

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

If Corporation affix Corporate Seal & list State of Incorporation:

State: \_\_\_\_\_

(Affix Seal)

Business Address:

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

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

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

**Invitation for Bids  
Essex County Courthouse Square Drainage Improvements  
IFB # 2016-154-01**

**Bid Declaration**

TO THE BOARD OF SUPERVISORS:

The undersigned hereby declares, represents and warrants that

1. The Bidder is the only person (firm) interested in this bid/proposal; that it is made without any connection with any person making another bid/proposal for this same contract; that the bid/proposal is in all respects fair and without collusion or fraud; and that no official of the County or any department of the County or any person in the employ of the Board of Supervisors is directly or indirectly interested in the bid/proposal or any portion of the profit thereof;

2. The specifications and all annexed instructions and contracts in the Invitation for Bid or Request for Proposal have been carefully examined.

3. All the required services will be performed and all the terms of the bid/proposal will be fulfilled, if selected; and

4. The Bidder is in compliance with all federal and state employment and licensing laws, including but not limited to, minimum wage, equal employment opportunity, and immigration laws and has not been found to be in violation of any such laws within the past five (5) years.

Name of Bidder: \_\_\_\_\_

Address of Principal Place of Business: \_\_\_\_\_

\_\_\_\_\_

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

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

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

Name of Sales Representative, if any: \_\_\_\_\_

Name and Title of Person Signing Bid: \_\_\_\_\_

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

**AGREEMENT FOR SERVICES**

**THIS AGREEMENT** is made as of the 13th day of April, 2016 by and between \_\_\_\_\_, **(the “Company”)** located at \_\_\_\_\_, Virginia, \_\_\_\_\_ and the **COUNTY OF ESSEX, VIRGINIA (the “County”)**, a political subdivision of the Commonwealth of Virginia, and it recites and provides as follows.

**WHEREAS**, pursuant to the Virginia Public Procurement Act, the Authority issued an Invitation to Bid bearing IFB number 2016-154-01, dated March 17, 2016, for the procurement of Essex County Courthouse Square Drainage Improvements **(the “IFB”)**; and

**WHEREAS**, the Company submitted a response to the IFB on \_\_\_\_\_, 2016, on the Bid Form required by the IFB **(the “Bid”)**; and

**WHEREAS**, the Bid has been accepted by the County for the services described in the IFB **(the “Services”)**;

**NOW THEREFORE**, in consideration of the premises, the mutual benefits, promises, and undertakings of the parties to this agreement, and other good and valuable consideration, the sufficiency and receipt of which are acknowledged by the parties, the parties to this agreement hereby covenant and agree as follows.

**1. Incorporation by Reference.** The terms, conditions and provisions of the County's IFB and the Bid are incorporated herein by this reference thereto.

**2. Contract Term.** The term of this agreement shall commence on the date of this agreement and end on June 17, 2016, unless sooner terminated as provided for herein.

**3. Compensation.** The Authority shall pay to the Company for all Services provided to it hereunder the sum of \$ \_\_\_\_\_ **(the “Contract Price”)**. The Contract Price shall include all Services, supplies, materials, and consumables used in performing the Services.

**4. Payment.** The Contract Price shall be paid by the County to the Company within thirty (30) days after delivery to the County of an invoice from the Company for the Services to be provided hereunder.

**5. Rights and Obligations.** The rights and obligations of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express written consent of the other party. Any approved assignee or successor to this agreement shall be bound by all the terms included herein.

**6. General Terms and Conditions.** The Company hereby accepts, agrees to, and shall comply with, during the term of this agreement, the General Terms and Conditions set forth in Exhibit A attached hereto (the “**General Terms and Conditions**”), which are a part of this agreement.

**7. Termination.** The County may terminate this agreement for its convenience at any time upon written notice to the Company as provided for herein and in the General Terms and Conditions. The Company shall not be paid for any expense incurred by it after receipt of such notice except as provided for herein and in the General Terms and Conditions.

**8. Subject to Annual Appropriation.** This agreement is subject to annual appropriation by the Board of Supervisors of the County. Neither this agreement nor any amount due or to become due under this agreement shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the County. The County shall not be obligated to pay any amount due or to become due under this agreement except from funds annually appropriated by the Board of Supervisors of the County for such purpose.

In the event of non-appropriation of funds for any Services under this agreement, the County may terminate this agreement as to any work for which funds have not been appropriated, subject only to the payment provisions of paragraph numbered

7. Written notice will be provided to the Company as soon as practicable after such action is taken.

**9. Liquidated Damages. [Reserved.]**

**10. Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and this agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this agreement.

**11. Notices.** All requests, notices and other communications required or permitted to be given under this agreement shall be in writing and delivery thereof shall be deemed to have been made five (5) business days after such notice shall have been duly mailed by certified first-class mail, postage prepaid, return receipt requested, one (1) business day after being deposited with any nationally recognized overnight courier service, or when delivered if delivered by hand delivery, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the Company shall be sent to the address on the first page of this agreement, and notices to the County shall be sent to:

Mr. A. Reese Peck  
County Administrator  
Essex County  
202 South Church Lane  
P.O. Box 1079  
Tappahannock, VA 22560; with a copy to:

Andrew R. McRoberts, Esquire  
Sands Anderson PC  
1111 East Main Street, Suite 2300  
P.O. Box 1998  
Richmond, VA 23219

**12. Miscellaneous.**

a. All pronouns used herein shall refer to every gender. Headings or titles in this agreement are only for convenience and shall have neither meaning nor effect upon the interpretation of the provisions of this agreement.

b. This agreement, together with the Essex County Courthouse Square Drainage Improvement Plans dated March 1, 2016, the IFB and the Bid, are the entire agreement between the parties and may not be amended or modified, except in writing, signed by each party.

c. Time shall be of the essence of all provisions of this agreement.

d. This agreement is made and intended to be performed, at least in part, in the Commonwealth of Virginia and shall be construed and enforced according to the laws of that state without regard to its conflict of laws principles. Jurisdiction and venue for all legal actions arising out of this agreement shall lie in the Circuit Court of Essex County, Virginia, and such legal actions shall be brought only in such court.

e. In the event of any default under or breach of this agreement by the Company, the County shall be entitled to pursue all remedies available to it at law and in equity, whether or not expressly set forth in this agreement, and furthermore, it shall be entitled to reimbursement of all costs and expenses, including without limitation legal fees and expenses, incurred in enforcing any provision of, or any rights under, this agreement.

f. In the event of any conflict between the terms of this agreement, the IFB, the Bid and the General Terms and Conditions, the order of precedence and control of such documents over one another shall be as follows: this agreement, the General Terms and Conditions, the IFB, and the Bid.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized officers, have caused this agreement to be executed as of the day, month and year first above written.

**[INSERT COMPANY NAME]**

By: \_\_\_\_\_(SEAL)

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

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

**COUNTY OF ESSEX, VIRGINIA**

\_\_\_\_\_(SEAL)

A. Reese Peck  
County Administrator

Approved as to form:

\_\_\_\_\_  
County Attorney