



TOWN OF MIDDLEBURG, VIRGINIA

Issued: June 16, 2026

REQUEST FOR PROPOSALS FOR ELECTRONIC AGENDA/MEETING MANAGEMENT SYSTEM

PURPOSE

The purpose of this Request for Proposals (RFP) is to secure proposals from vendors on available electronic agenda/meeting management systems (“Meeting Systems”) for meetings of elected and appointed bodies of the Town of Middleburg, Virginia. At a high level, the Meeting System shall offer electronic agendas and documents to be viewed by each respective body, as well as by the public. It will need to facilitate mobile access and have the ability to create roles, define permissions, and keep certain information secure from unauthorized access. In addition, the information provided in response to this RFP will need to detail all, if any, associated hardware required for the system’s use by the Town of Middleburg staff, Council and committees in our offices and Council Chambers, and state whether such hardware is proprietary or off-the-shelf. Attached is a list of specific requirements the Meeting System must meet.

POINT OF CONTACT

Please refer all inquiries to:

Rhonda S. North, MMC
Town Clerk
Town of Middleburg
P. O. Box 187
Middleburg, Virginia 20118
Phone: (540) 687-5152
Email: rnorth@middleburgva.gov

Any RFP addenda/updates will be made available on the Town’s website www.middleburgva.gov and at eVA, Virginia’s procurement website. Questions must be submitted in writing.

PERTINENT DATES/SUBMISSION OF PROPOSAL INFORMATION

Final questions must be submitted no later than 10:00 a.m. on Tuesday, June 30, 2026.

Submissions must be submitted by 11:00 a.m. EST, Monday, July 20, 2026 to:

If via USPS
Town of Middleburg
P. O. Box 187
Middleburg, Virginia 20118
Attn: RFP – Agenda Management Software

If via Delivery Service
Town of Middleburg
10 West Marshall Street
Middleburg, Virginia 20117
Attn: RFP – Agenda Management Software

If via electronic submission

Via instructions on eVA – the Commonwealth of Virginia’s procurement website. It is the Offeror’s responsibility to register with the Commonwealth of Virginia to utilize their eVA system and submit their proposal through the site. eVA is operated solely by the Commonwealth of Virginia. The Town of Middleburg has no ability to register users or assist in the submission of proposals via eVA.

All Proposals shall include the title of the RFP (RFP – Agenda Management Software) on the outside of the envelope, along with the name and address of the Offeror.

All Proposals must be received by the date and time shown above at the above address. Any proposal received after the stated time and date will remain unopened and the Offeror will be notified that it is available for pick-up. Offerors are responsible for ensuring proposals are received by the Town before the submission deadline.

An authorized representative of the Offeror must sign any submitted proposal. All required information should be submitted. If the Offeror fails to submit all information requested, the Town may require prompt submission of missing information after the receipt of the proposal. Failure to submit all required information may result in the elimination of the proposal from consideration by the Town. Mandatory requirements are those required by law or regulator or are such that they cannot be waived and are not subject to negotiation.

Proposals should be prepared simply and economically, providing a straightforward concise description of capabilities to satisfy the requirements of this RFP. The proposals shall be as thorough and detailed as possible so the Proposal Evaluation Team can properly evaluate the Offeror's capabilities to provide the required services.

The Offeror is responsible for all costs of proposal preparation. The Town is not liable for any costs incurred in preparing a response to this RFP.

SCOPE

The Town of Middleburg has been using Granicus' Peak Agenda software as its electronic agenda management and distribution platform since 2018. The Town has four (4) primary boards for which the Meeting System is used – the Town Council, Planning Commission, Historic District Review Committee and Board of Zoning Appeals. It also has other advisory committees who use the agenda management system. These boards receive their agenda packets electronically and desire to be able to make/share notes related to the agenda items.

Currently, members of these boards use Apple iPad devices to access content through the existing Meeting System. It is the Town's intent that any successful proposer will be able to integrate fully and seamlessly with the Apple iPad.

In addition, the selected system must be capable of integrating with our Swagit/Granicus livestream/video system. Swagit/Granicus currently integrates the meeting's agenda into the meeting video, allowing for easy access to sections of the meeting, viewing of staff reports, and tracking of the agenda.

Any proposal should identify any hardware, software, services, etc. necessary for the design, installation, operation and maintenance of the system. The Town intends to issue a five-year contract, and annual costs for this timeframe should be included.

GENERAL REQUIREMENTS

Interested vendors must submit a proposal containing, at a minimum, the following information:

1. Brief history of your firm.
2. Brief description of past experiences providing similar services/supplies for commercial and Government customers (Local, State, Federal).
3. Estimated timeframe for installation and activation of the system if awarded a contract.
4. Description of the warranties/maintenance/support services provided with services/supplies, including response times.

5. Cost proposal, to include initial acquisition costs and annual renewal/maintenance costs for a minimum of a five year period, with annual renewals thereafter.
6. Identification of any hardware needed for the system to operate as designed.

RESPONSE FORMAT

Vendors should respond in a straightforward and concise manner, with specific information provided to the requested information. In order for submissions to be considered complete, the vendor must provide:

1. A transmittal letter (identify any proprietary information if applicable)
2. Response to General Requirements Section
3. Any other information which may assist the Town in reviewing the responses to the RFP

INFORMATION PROVIDED TO VENDORS

The Town has identified a list of needs and/or desires for such a system (Attachment 1). Vendors are encouraged to recommend changes to the project if, based on their experience, they believe there is a better approach.

The Town has a sample contract that it uses with its vendors (Attachment II). Vendors are encouraged to review the proposed contract and to identify any issues/concerns.

VENDOR PRESENTATIONS

The Town of Middleburg may request that vendors provide a presentation of the functionality of the system proposed in response to this RFP. Presentations may be web-based in nature, such as a web conference. All costs associated with such presentation will be borne by the vendor. Promotional items may not be provided at these presentations.

PROPOSED SCHEDULE

The Town's current contract with Granicus is scheduled to expire January 29, 2027. As such, this will be a time is of the essence contract in that the selected system must be in place and fully operational no later than December 1, 2026.

DISCLOSURE OF PROPOSAL CONTENTS/PROPRIETARY INFORMATION

All records pertaining to this procurement are open to inspection by the public under the Virginia Freedom of Information Act unless specifically exempted under Virginia Code § 2.2-4342. If you want portions of your proposal to be confidential, you must comply with § 2.2-4342(F), which requires that you (i) specifically invoke the protections of § 2.2-4342(F) before or upon submission of the data, (ii) identify the specific data to be protected, and (iii) state the reasons why protection is necessary. You cannot mark pricing information as confidential. If the Town cannot tell which *specific* parts of the proposal are marked as confidential, if the entire proposal is marked as confidential, or if you do not completely comply with § 2.2-4342(F), the entire proposal is public information and the Town will release it in response to a valid records request, in accordance with the timelines specified in § 2.2-4342(D).

The classification of the entire proposal document and/or pricing information as proprietary or trade secrets is not acceptable.

CANCELLATION OF RFP

The Town may cancel this Request for Proposal or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the Town determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

GENERAL TERMS

These are mandatory and non-negotiable terms applicable to any contract awarded under this Procurement.

A. Assignment. Contractor will not assign or otherwise transfer any of its rights, obligations, or interests in this contract without the written permission of the Town.

B. Audit. Contractor will retain all records related to this contract for 5 years after final payment or until audited by the Town, whichever comes first. The Town may inspect these records upon reasonable notice to Contractor.

C. Authorization to do Business in Virginia. Contractor is authorized to do business in Virginia as a domestic or foreign business entity under Title 13.1 or Title 50 of the Virginia Code. Contractor will not allow its existence to lapse or its certificate of authority or registration to do business in Virginia to be revoked or cancelled during the term of this contract.

D. Choice of Law, Venue. This contract is governed by Virginia law. The Circuit Court of the County of Loudoun, Virginia, is the exclusive venue for any litigation regarding this contract.

E. Claims. Contractor must notify the Town in writing of its intention to file a claim at the time of the occurrence or beginning of the work upon which the claim is based. All claims must be submitted less than 60 days after the final contract payment.

F. Default. The Town is in default 1) if it fails to pay any amount due to Contractor; or 2) upon any other material failure to comply with the terms of the contract. Contractor is in default upon any material failure to comply with the terms of the contract. A party alleging that the other party is in default must provide the allegedly defaulting party with written notice specifying the alleged default and allow 30 days for the default to be cured.

1. Remedies for Default. If the Town does not cure a default after receiving notice, Contractor may a) terminate this contract, and b) exercise all remedies available at law.
2. If the Contractor does not cure a default after receiving notice, the Town may a) terminate the contract, and b) exercise all remedies available at law. If the default is a failure to provide required goods or services, the Town may, upon written notice to Contractor, procure those goods or services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs.

F. Drug-Free Workplace. Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violating that prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the terms of this section in every subcontract or purchase order of over \$10,000, so that the terms will be binding upon each subcontractor and vendor.

G. Ethics in Public Contracting. Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase 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 was exchanged.

H. Force Majeure. No party to this Agreement shall be liable or responsible to the other party for any failure, interruption, or delay in fulfilling any of its obligations under this agreement, due to events beyond the affected party's control, including natural disaster, act of God, war, armed conflict, pandemic, epidemic, public health crisis, or state of emergency, provided that the affected party gives the other party prompt written notice of the occurrence of the event, stating the period of time the occurrence is expected to continue. The affected party shall use diligent efforts to end the failure, interruption, or delay and ensure the effects of the Force Majeure Event are minimized.

I. Freedom of Information Act. All records pertaining to this contract are open to inspection by the public under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et. seq) unless specifically exempted under the Act (including records properly exempted under Code of Virginia § 2.2-4342).

J. Immigration. Contractor does not, and will not during the performance of this contract, knowingly employ an unauthorized alien as defined in federal Immigration Reform and Control Act of 1986. Contractor will register for and participate in the federal E-Verify Program if required to do so under Code of Virginia § 2.2-4308.2. Contractor will provide the Town with a copy of their E-Verify "Maintain Company" page to the Town upon request. Failure to comply with E-Verify requirements subjects Contractor to automatic disbarment from Town procurement until the requirements are met.

K. Indemnification. Contractor will save, defend, hold harmless, and indemnify the Town, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with Contractor's negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor in performance or nonperformance of its work under the contract. This indemnification survives the termination of the contract.

L. Insurance. Contractor will maintain the following insurance coverage, provided by insurance companies authorized by the Virginia SCC to offer insurance in Virginia, during the entire term of the contract. Contractor will provide copies of its Certificates of Insurance to the Town.

1. Workers' Compensation—as required by law.
2. Employer's Liability--\$100,000.
3. Commercial General Liability--\$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Town must be named as an additional insured on this policy.
4. Professional Liability (i.e. Errors and Omissions)— \$2,000,000 per wrongful act,

M. Licensing. Contractor will maintain all licenses and certifications required by applicable federal, state, and local governmental entities for provision of the goods and services to be provided under this contract.

N. Modifications. Only the Town Manager may modify this contract on behalf of the Town. Only the original signatory of the contract on behalf of Contractor, or another individual authorized in writing by Contractor to modify the contract, may modify the contract on behalf of Contractor. Modifications to this contract can only be authorized in accordance with Code of Virginia § 2.2-4309. Modifications can only be authorized by the following methods:

Town and Contractor may agree in writing to modify the terms of the contract. Any additional goods or services to be provided must be of a sort that is ancillary to, or within the same broad product or services categories as those provided for in the original contract. The Town may issue written change orders for changes such as services to be performed, methods of packing or shipping, and place of delivery or installation. If Contractor determines that the change order will not necessitate a change in compensation or schedule, Contractor will comply with the change order upon receipt. If Contractor determines that the change order will necessitate a change in compensation or schedule, Contractor will notify the Town of that determination, and only proceed to comply with the change order upon the Town's written approval.

The contract may be renewed by agreement if provided for in the description of the contract term.

Contractor shall not require any employee or agent of the Town other than the Town Manager to execute any additional contract, license, or other agreement pertaining to this contract.

O. Non-appropriation. All funds for payments after June 30 of the current fiscal year are subject to appropriation by the Town Council. If Council does not appropriate the required funds, the Town will terminate this contract on June 30 of the then-current fiscal year.

P. Non-Discrimination. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. Contractor will post in conspicuous places, available to employees and applicants for employment, notices stating the terms of this section. Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that the contractor is an equal opportunity employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation are sufficient for the purposes of this section. Contractor will include the terms of this section in every subcontract or purchase order of over \$10,000, so that the terms will be binding upon each subcontractor and vendor. Contractor will conform to the Federal Civil Rights Act of 1964, the Virginia Fair Employment Contracting Act of 1975, the Virginians with Disabilities Act, and the Virginia Public Procurement Act.

Q. Notices. Any notices pertaining to this contract must be sent by first-class mail or email to:

To the Town:

First Class Mail

Bryan Foster, Interim Town Manager and
Rhonda S. North, MMC, Town Clerk
P.O. Box 187
Middleburg, Virginia 20118

EMail

bfoster@middleburgva.gov
rnorth@middleburgva.gov

To the Contractor:

The address listed on Contractor's Proposal or Bid. Contractor may change its address for notices by notifying the Town in writing of the change.

R. Payments. Contractor must provide its federal employer identification number and VA W-9 to the Town before requesting payment. Contractor will submit itemized invoices, with appropriate documentation, to the Town, at the payment address shown on the contract. All invoices must show the Town contract and Contractor's federal employer identification number. No invoice may include any cost other than those listed in the contract. The Town will pay invoices within 30 days of receipt. Any invoice not paid within 30 days will accrue 1% interest per month. When payment is made by mail, the date of the postmark will be considered the

date of payment. The Town will notify Contractor within 30 days of invoice of any charges it determines to be unreasonable. Payment for those charges will be suspended until a settlement is reached. Contractor will not take legal action concerning the charges unless a settlement is not reached within 30 days of notification.

S. Relation to Town. Contractor is an independent contractor of the Town. This contract does not create an employment relationship between the Town and Contractor or any of its employees.

T. Severability. If any provision of this agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of the agreement remain in full force, if the essential terms and conditions of the agreement for each party remain valid, binding, and enforceable.

U. Strict Performance. The failure of a party to insist upon the other party's strict performance of the terms of the contract is not a waiver of the right to insist upon strict performance of those terms at a later time.

V. Termination. The Town may terminate this contract for any reason upon 30 days' notice to Contractor. The Town will promptly pay all amounts already earned by Contractor and reasonable expenses incurred in reliance upon the contract, up to the effective date of the termination. Receipt of the notice does not affect Contractor's obligations under the contract, including fulfillment of outstanding orders, up to the effective date of termination. The parties can agree to terminate this contract at any time.

W. Cooperative Procurement. Public bodies other than the Town of Middleburg may purchase goods and services from Contractor under the terms of this contract, under Virginia Code § 2.2-4304.

X. Confidentiality. Contractor will hold confidential any information provided by the Town under this contract. Contractor will not disclose this information to any third party, during or after the term of this contract, unless required to do so by valid court order or subpoena.

Y. Project Manager. Contractor shall designate an employee as project manager for this contract. Contractor shall not assign any duties to the project manager that would conflict with the manager's responsibilities under this contract. Contractor will only designate a different project manager with the Town's written permission, which will not be unreasonably withheld.

The project manager is responsible for coordination of all of Contractor's work under the contract, such as overall control over Contractor's work, communication with the Town's point-of-contact, securing required approvals and permissions (work orders, etc.) from the Town, attending meetings with the Town, and consulting with the Town as requested.

Z. No Other Costs. Contractor warrants that the Town will incur no costs either on a one-time or continuing basis, other than those specified in this contract.

AA. Assessment Reviews. Contractor and the Town shall meet weekly through the contract term at the Town or via phone conference, to review the planning and implementation of the project. Contractor's project manager shall attend all these meetings. Contractor shall respond promptly to any concerns raised by the Town at the meetings.

BB. Ownership of Documents. All information submitted by the Town into this system under this contract remains the sole property of the Town. Upon termination of the contract, the Town shall have sixty (60) business days to retrieve the data contained in the system. Contractor assigns to Town the copyrights to all work prepared, developed, or created under this contract, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public; and 4) display the work publicly.

CC. Advertising. Contractor will not make any news or advertising releases pertaining to this contract for any purpose, specifically including use for marketing references, without advance written permission from the Town.

DD. Title II of the Americans with Disabilities Act and Virginia Technology Access Act. All Information & Communications Technology (ICT) and accessible digital services pertaining to this contract must meet the accessibility requirements set forth in Title II of the Americans with Disabilities Act (ADA) and Virginia Technology Access Act (Virginia Code Chapter 35). In this case, (1) "Information & Communications Technology" or "ICT" shall mean any website, application or other product or service primarily intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display via the Internet; and (2) "accessibility" shall mean the alignment of federal Section 508 standards and Section 255 guidelines adopted pursuant to 29 U.S.C. Section 794d and 47 U.S.C. Section 255, and 28 C.F.R. Section 35.200. Currently, the Web Content Accessibility Guidelines (WCAG) Version 2.1, Level AA is the technical standard that local government's web content and mobile apps must meet. All web content and mobile apps shall be updated to satisfy the standard found in WCAG Version 2.1 Level AA, according to the requirements of 28 C.F.R. Section 35. Web content is defined as the information and experiences available on the web, like text, images, sound, videos, and documents. Mobile apps are software applications that are downloaded and designed to run on mobile devices like smartphones and tablets. The vendor must certify that any product provided under this contract conforms with accessibility standard WCAG Version 2.1 Level AA or updated versions of this accessibility standard as required by state or federal regulations. If the vendor cannot certify conformance with accessibility of the product being procured, the Town may require the vendor to provide a current vendor-paid and completed Accessibility Conformance Report indicating the level of conformance with accessibility for ICT being procured. Any areas of noncompliance shall be documented with a vendor-paid and completed Vendor Accessibility Roadmap highlighting areas requiring improved accessibility, including a timeline for each nonconforming area's completion. Vendor shall fully comply with state and federal accessibility laws, regulations, and guidelines and agrees to indemnify the Town for any issues arising from and related to the same. This requirement shall extend to any and all goods, services, products, websites or applications procured under future contract extensions or additionally procured under this contract.

ATTACHMENT 1

List of Required Capabilities for Town of Middleburg

- Front End
 - Ability for the public to access documents on the internet from any location
 - Ability for elected and appointed officials to access documents via a dedicated software program that may contain, but not limited to, the following capabilities on an Apple iPad:
 - Viewing the agenda
 - Viewing staff reports and attachments
 - Making notes, comments, or other annotations which are saved to that particular user's account
 - Ability to only see files the user has privileges for (e.g., Planning Commission members should not be able to see the Town Council's confidential – or Closed Session – materials)
- Back End
 - Web-based platform accessible on the internet from any location
 - Ability to simply create meetings, including recurring meetings, up to 1 year in advance
 - Standard agenda templates for easy creation and editing of meetings
 - Ability to load reports from Word .docx and Adobe PDF file types
 - Permissions on who may or may not add, edit, or delete agendas and files
 - Capability for multiple users to edit one meeting
 - Ability to create users by meeting body (Town Council, Planning Commission, etc) and limit their rights to see other bodies' confidential documents
 - Archival feature and ability to view past agendas
 - Ability to create PDF files of both a "short agenda" (listing of agenda items and links to associated documents) and "complete packets" for both public packets and packets that contain confidential documents (combined file with all reports and attachments included, ideally with pre-set bookmarks for viewing in a PDF reader)
 - Ability to amend published agendas without breaking existing links or duplicating files
- Integration
 - Apple iPad
 - Web-platform
 - Swagit/Granicus livestream/video system for integrating agenda into video platform
- Security
 - Use of proper security measures to prevent unauthorized access from front-end users or back-end users
 - Proper redundancy and back-up of all materials
 - Version control
- Workflow (ideal, not required)
 - Ability to create approval mechanisms for addition of items to the agenda, review of documents, and publication of agenda
 - Notification of workflow steps/changes via email or other means
 - Tracking of all agenda items to create report of outstanding reports
- ADA Compliance
 - Must comply with Americans with Disabilities Act and Virginia Information Technology Access Act requirements. Must meet WCAG 2.1AA standards.
- An integrated calendar for staff, Committees and Council

List of Additional Desired Capabilities, but not Required

A framework for creating, as needed by the Town after implementation, IT enabled workflows in the system

**ATTACHMENT 2
SAMPLE TOWN CONTRACT**

TOWN OF MIDDLEBURG
STANDARD CONTRACT FOR GOODS, SERVICES, CONSTRUCTION OR INSURANCE

This Contract is entered into on and as of its Effective Date by and between the TOWN OF MIDDLEBURG, a municipal corporation of the Commonwealth of Virginia (hereinafter, “Town”), and _____ (hereinafter “Contractor”), for Goods, Services, Construction and/or Insurance identified herein, on the following terms and conditions:

SOLICITATION TITLE: RFP – Electronic Agenda/Meeting Management System

SOLICITATION NUMBER: 26-06-16

CONTENTS

I)	FORMATION.....	3
A)	Conditions Precedent to Formation.....	3
B)	Parties.....	4
C)	Authority to Execute	4
D)	Incorporation of Documents.....	4
E)	Effective Date.....	5
II)	PERFORMANCE	5
A)	Notice to Proceed	5
B)	Contacts.....	5
C)	Acceptance of Work	5
D)	Warranty.....	5
E)	Invoices.....	6
F)	Payment.....	6
III)	TERM AND TERMINATION	7
A)	Base Term and Extensions.....	7
B)	Termination for Default.....	7
C)	Termination for Convenience.....	8
D)	Termination for Non-Appropriation	8
IV)	STATUTORY REQUIREMENTS.....	10
A)	Employment Discrimination.....	10
B)	Ethics	10
C)	Drug-Free Workplace	10
D)	Faith-Based Organizations	11
E)	Foreign And Domestic Businesses Authorized to Transact Business in the Commonwealth.....	11
V)	DISPUTES	12
A)	Governing Law	12
B)	Hold Harmless	12

C)	Conditions Precedent to Pursuit of Legal Remedies	12
D)	Venue	13
E)	Limitations on Actions	13
F)	Waiver of Jury Trial	13
VI)	MISCELLANEOUS	13
A)	Definitions	13
B)	Time of the Essence	14
C)	Integration Clause; Modifications to the Contract	16
D)	Examination of Records	17
E)	Assignment of Rights	17

I) FORMATION

A) Conditions Precedent to Formation:

Before any Contract between the Town and the Contractor is effective, the following conditions precedent must be satisfied. Satisfaction of these conditions is the responsibility of the Contractor. If, after performance under the Contract, the Town learns that a condition precedent was not met, the Town may, if permitted by law, ratify the Contract by affirmative recorded vote or may disclaim it, in its sole discretion.

- 1) Insurance: If the Solicitation requires certain insurance, the Contractor must provide proof of insurance in the amounts required by the Solicitation with an insurance company licensed to do business in the Commonwealth of Virginia.
 - a) Unless the Solicitation states otherwise, the Town shall be made an additional insured on all required policies of insurance.
 - b) No change, cancellation (other than noted below), or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the Town Manager. Notice for cancellation due to nonpayment of premium would be fifteen (15) days. The Contractor shall furnish anew certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate of insurance is grounds for termination of the contract.
 - c) Insurance coverage required hereunder shall be in force throughout the Contract period. Should the contractor fail to provide acceptable evidence of current insurance within ten (10) days of written notice at any time during the contract term, the Town shall have the absolute right to terminate the contract.
 - d) Compliance by the Contractor and any subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor or any subcontractors of their liabilities and obligations under this Contract.
 - e) The Town may and will, if requested by Contractor, reasonably accept insurance certificates provided by subcontractors or partners of the Contractor covering risks and hazards relating to work to be performed by such subcontractor and partners, in lieu of insurance certificates provided by Contractor. However, the Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the Subcontractors.
 - f) If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and ". but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.

- 2) Bonds: If the Solicitation requires payment or performance bonds, then bonds with surety satisfactory to the Town attorney shall be submitted to the Contract Administrator for approval.
- 3) Permits and licenses: If the procurement of the Goods, Services, insurance or Construction that is the subject of this Contract requires possession of any licenses or receipt of any permits other than construction permits, then Contractor shall obtain those licenses and permits.
- 4) Certification of the Contractor: The Contractor must submit the attached Criminal Conviction Certification Form regarding criminal convictions of its employees.
- 5) Payment of Debts: Contractor must pay all amounts shown as due to the Town on the Town's accounts, even if a dispute exists as to the debt's validity or enforceability.

B) Parties

- 1) The sole parties to this Contract are the Town of Middleburg and the Contractor.
- 2) Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the Town in advance. No assignment without such permission will relieve the Contractor of any responsibility under this Contract.
- 3) There are no intended third-party beneficiaries of this Contract, unless it is made available by rider for other governmental entities to use. Making the Contract available to them by rider is the sole extent of the intended third-party benefit.
- 4) If this Contract is made available by rider for other governmental entities to use, any contracts formed between the Contractor and such other governmental entities shall be solely between those parties. The Town shall not be a party to any of these Contracts.

C) Authority to Execute

By executing this Contract on behalf of Contractor, the Contractor's Representative warrants that he or she has full authority to do so.

D) Incorporation of Documents

The Contract consists of the following documents, which are hereby incorporated by reference and fully made a part of the Contract. This Contract and the incorporated documents describe the subject of the procurement, the particulars of its performance, the process and time for payment, and the rights and remedies of the parties (collectively, "the terms"). In case of any conflict between those documents' terms, the documents shall be given precedence in the following order, from highest to lowest:

- 1) The specifications section of or attachments to the Solicitation (if any) with matching identification number to this Contract;

- 2) This Contract;
- 3) The general provisions section of the Solicitation (if any) with matching identification number to this Contract;
- 4) The bid submission form or proposal with matching identification number to this Contract; and
- 5) For Construction contracts only, the Town-provided construction terms and specifications not included in section I)D)1), above.

If there was no formal Solicitation, the specifications must be attached to this Contract for it to be valid.

E) Effective Date

The Effective Date of this Contract shall be the last to occur of (1) the date on which the Contractor's Representative signs the Contract, (2) the date on which the Town Manager signs the Contract, and (3) the date that all conditions precedent to formation are satisfied or expressly waived in writing by the Town.

II) PERFORMANCE

A) Notice to Proceed

After execution of the Contract and receipt of any documents required by the Contract Administrator before the Effective Date of this Contract, the Contract Administrator shall send the Contractor notice to proceed with the Contract as of a date convenient to the Town.

B) Contacts

In addition to the Contract Administrator and the Contractor's Representative, the parties may designate additional contacts for exchange of information.

C) Acceptance of Work

Performance of the work and delivery of all Goods shall be conducted and completed in accordance with recognized and customarily accepted industry practices, and shall be considered complete when the services are approved as acceptable by the Contract Administrator. In the event of rejection of any deliverable, the Contractor shall be notified and shall have fourteen (14) calendar days from date of issuance of notification to correct the deficiencies and resubmit the deliverable.

D) Warranty

The Contractor warrants that all Services it performs and all Goods, insurance, and Construction it delivers to the Town will be of good quality and meet the specifications of this Contract and of all Literature supplied by the Contractor as part of the selection process

which led to the award of this Contract. "Literature" as used in this provision means any and all brochures, fliers, catalogs, Proposals, web sites, email, or other information, in whatever written form, relating to the quality, utility, economic advantages, or composition of the Goods or Services. This warranty is in addition to and does not substitute for the Contractor's warranties of title, against infringement, of merchantability, and of fitness for particular purpose under Virginia Code §§ 8.2-312, 8.2-314, and 8.2-315, which the parties expressly agree apply to this Contract.

E) Invoices

- 1) Unless otherwise provided in the Solicitation, Contractor will submit all its invoices for payment in the fiscal year in which the Goods, Services, insurance or Construction were provided or within thirty days thereafter. Late invoices are subject to rejection if no appropriated funds are available for their payment.
- 2) The invoice must be in the name of the Contractor unless an assignment has been received and approved by the Town.
- 3) Tasks shall be billed to the Town upon completion. 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 Contract, 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 Town shall have no obligation to reimburse, pay directly or otherwise satisfy any taxes or other expenses of the Contractor in connection with the performance of its obligations under this Contract except as stated herein. If 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.

F) Payment

- 1) In return for the goods, services, construction and/or insurance that are the subject of this Contract, and subject to paragraph III)D) of this Contract relating to "Non-appropriation of Funds," the Town shall compensate the Contractor within thirty (30) days after receipt of proper invoice for the amount of payment due or thirty (30) days after receipt of the goods or services, whichever is later.
- 2) With Construction contracts, the Town shall retain 5% of the amount earned for work done and materials delivered as retainage, to be paid in the final payment to the Contractor.
- 3) Within seven days after receipt of amounts paid to the Contractor by the Town for satisfactorily completed performance, the prime contractor agrees to:
 - a) Pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under that contract; or

- b) Notify the Town and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

If the Contractor after having received payment from the Town fails to pay each subcontractor its proportionate share of the total payment, the Contractor shall be obligated to pay interest to each subcontractor on all amounts that remain unpaid after the seven days following receipt by the Contractor of payment from the Town except for amounts properly withheld as allowed under Section 3)b).

- 4) Unless otherwise provided under the terms of this Contract or by statute, interest shall accrue at a rate of one percent per month against the Contractor on any unpaid amounts owed to each subcontractor.
- 5) The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- 6) A Contractor that is an individual must provide his or her social security number and a Contractor that is any form of business entity must provide its federal employer identification number to the Contract Administrator before payment can be made.

III) TERM AND TERMINATION

A) Base Term and Extensions

- 1) The base term for this Contract shall be for the period identified in the Solicitation or other specification.
- 2) This contract may be extended as provided in the Solicitation or by change order or amendment. If this is a fixed price contract, however, no extension may increase the price by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without a recorded affirmative vote of the Town Council. The Town may extend the term of this contract for services to allow completion of work undertaken but not completed under its original term.

B) Termination for Default

- 1) Either party may terminate this Contract, without further obligation, upon the default of the other party.
- 2) With the exception of an emergency endangering life, safety, or the operation of the Town government, a default will only exist after the party claiming a default shall have provided notice and an opportunity to cure the default to the other party as follows:
 - a) A written 30 day business Notice of Default shall be given setting forth the grounds for default and the steps demanded to cure the default.

- b) If the party receiving the Notice of Default fails to cure the default before the end of the thirty (30) day period then that party shall be in default under the terms of the Contract and the non-defaulting party shall have the right to terminate the Contract by sending a written Notice of Termination to the defaulting party.

C) Termination for Convenience

- 1) The Town may terminate this Contract or any work or delivery required hereunder from time-to-time either in whole or in part, whenever the Contract Administrator, with the concurrence of the Town Manager, determines that such termination is in the best interest of the Town.
- 2) Termination may occur in whole or as to any discrete part of the Contract. A partial termination shall set forth the portions of the Contract which are terminated.
- 3) The effective date of the termination shall be thirty days after issuance of a Notice of Termination signed by the Contract Administrator and Town Manager and its mailing or delivery to the Contractor, or any later date specifically set forth in the Notice of Termination.

D) Termination for Non-Appropriation

- 1) If funds are not appropriated for purposes of this Contract for any succeeding fiscal year subsequent to the one in which this Contract is entered into, then the Town may terminate this Contract upon thirty (30) days written notice to the Contractor. The notice shall set forth the grounds for termination and its effective date.
- 2) If the Town terminates for non-appropriation, the Town shall be liable only for payments due through the effective date of termination.
- 3) Until the effective date of the termination, the Contractor shall continue to perform its duties under the Contract and is not excused from performance related to any portion of the Contract.

E) Claims Upon Termination

- 1) Upon receipt of a Notice of Termination, the Contractor shall:
 - a) Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice of Termination;
 - b) Place no further orders with any subcontractors except as may be necessary to perform any portion of the Contract not subject to the Notice of Termination (i.e. in the case of partial termination);
 - c) Terminate all subcontractors except to the extent necessary to complete work which was not subject to the Notice of termination (i.e., in the case of partial termination);

- d) Settle on reasonable terms all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Contract Administrator; and
 - e) Use its best efforts to mitigate any damages which may be sustained by the Contractor or any of its subcontractors as a consequence of termination under this clause.
- 2) After complying with the foregoing provisions, the Contractor shall submit a termination claim within thirty days unless an extension is granted by the Contract Administrator. This termination claim shall document all amounts due under this provision.
- a) Upon receipt of the Contractor's termination claim, the Contract Administrator, with the approval of the Town Manager, shall pay from the Using Department's budget the reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the goods or services not delivered, or those goods or services not provided. The calculation of the amount to be paid the Contractor shall be documented and made a part of the Contract file.
 - b) If the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Contract Administrator shall pay the Contractor from the Using Department's budget the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:
 - i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - Cost of the goods delivered or work performed; and
 - The reasonable cost of settling and paying any claims as provided above; and
 - A sum as profit on work performed determined by the Town's Procurement Officer to be fair and reasonable.
 - ii) The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of goods or services not terminated.
 - c) If the Contractor is not satisfied with any payments which the Contract Administrator determines to be due under this provision, the Contractor may make a claim in accordance with paragraph V(C) 1), Submission of Disputes.
- 3) The Contractor shall include similar provisions for termination in any subcontractors and shall require subcontractors to make reasonable efforts to mitigate damages if the

Contract is terminated. Failure to include such provisions shall bar the Contractor from any recovery from the Town whatsoever for loss or damage sustained by a subcontractor as a consequence of termination.

IV) STATUTORY REQUIREMENTS

A) Employment Discrimination

In all contracts, regardless of contract amount, the Contractor will abide by the provisions of the Americans with Disabilities Act, and will require each sub-contractor to do so. If this Contract is for a consideration in excess of Ten Thousand Dollars (\$10,000.00), then during the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) 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.
- 4) The Contractor will include the provisions of this Contract section in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor.

B) Ethics

The provisions contained in Chapter 43, Article 6, Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, apply to this contract. The provisions of Article 6 of Chapter 43 supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

C) Drug-Free Workplace

During the performance of this contract the contractor agrees to:

- 1) Provide a drug-free workplace for the Contractor's employees.
- 2) Post in conspicuous places, available to employees and applicants for employment a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 3) State in all solicitations or advertisement for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
- 4) Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, or so that the provisions will be binding upon each subcontractor.

D) Faith-Based Organizations

The Town of Middleburg in procuring goods and services, or in making disbursements pursuant to this section, shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except funds provided for expenditure pursuant to contracts with public bodies shall not be spent on religious worship, instruction, or proselytizing, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursement.

E) Foreign And Domestic Businesses Authorized to Transact Business in the Commonwealth

- 1) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- 2) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this contract. Notwithstanding any other provision of this Contract, the Town may void any contract with a business entity if the business entity fails to remain in compliance with this provision.

F) Immigration Reform and Control Act of 1986

The Contractor also affirmatively states that it does not currently and shall not during the performance of this Contract knowingly employ an unauthorized alien as defined by the Federal Immigration Reform and Control Act of 1986.

V) DISPUTES

A) Governing Law

This Contract is governed by the law of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act (VPPA), Sections 2.2-4300 et seq. of the Code of Virginia (1950), as amended. This Contract is also governed by the applicable Town Policies.

B) Hold Harmless

- 1) To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town from any and all claims, judgments, suits, losses, damages, payments, costs, fines and/or fees levied against the Owner and expenses of every nature and description, including attorney's fees, arising out of, connected or associated with or resulting from the lack of performance or the negligent performance of work as described in this Contract, Contract Documents or any agreement that results from this Contract. Further, if the Contractor subcontracts for work, it will require in its subcontracts that each subcontractor indemnify, defend, and hold harmless the Town and its officers, agents, employees and community representatives, from any and all claims and losses accruing or resulting from the negligent performance of work as described in any agreement that results from this Contract.
- 2) To the fullest extent permitted by law, the Contractor shall also indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town against all costs, including reasonable attorney's fees, arising from liens encumbering the Town's Property filed by subcontractors, sub-subcontractors, material suppliers, and all other persons and entities acting for and under the Contractor, and the Contractor shall immediately discharge or bond such liens off.
- 3) Virginia is a Dillon Rule state. Unless specifically permitted by statute, indemnification or any attempt to have the Town hold others harmless is invalid and unenforceable as an impermissible waiver of the Town's sovereign immunity which may create potential future debt in violation of Virginia Constitutional and statutory requirements. The Town cannot waive its sovereign immunity.

C) Conditions Precedent to Pursuit of Legal Remedies

Before the Contractor may exercise any legal remedy it may have in relation to rights arising out of this Contract, it must comply fully and strictly with each of the applicable conditions below. Failure to comply fully and strictly with an applicable condition precedent bars the Contractor from exercising any legal remedies it may otherwise have in relation to this Contract unless it complies with the condition precedent or the Town knowingly and intentionally waives the condition precedent.

- 1) Submission of Disputes: A Contractor must submit any dispute arising out of this Contract to the Town for adjustment. In doing so, it shall provide all relevant evidence that bears on the Town's liability for the amount claimed or responsibility to grant any non-monetary relief requested. Claims are forever barred unless (a) written notice of the Contractor's intention to file a claim is given at the time of the occurrence or beginning of the work upon which the claim is based and (b) the claim and all relevant evidence that bears on the claim is submitted to the Town within 60 days of receipt of final payment.
- 2) Disputes by the Contractor with respect to this Contract shall be decided within fifteen (15) days from submission by the Town Manager's designee, who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within five (5) days from the date of such decision the Contractor mails or otherwise furnishes the Town Manager a written appeal. The Town Manager shall consider the appeal and render his or her written decision within seventy (70) days. The decision of the Town Manager shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or as not supported by any evidence. Pending a final determination of the claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the Town Manager's designee or the Town Manager, as the case may be.
- 3) The Town does not have administrative procedures under Virginia Code § 2.2-4365.

D) Venue

Any action brought under this Contract must be brought in the state courts for the Town of Middleburg and may not be removed to the Federal Court system.

E) Limitations on Actions

Any action brought under this Contract, except an action for breach of warranty, shall be brought within the shorter of the statutory limitations period and the period of three years from the date of final payment without any tolling of this statutory limitations period for any reason whatsoever.

F) Waiver of Jury Trial

In any action brought under this Contract, the parties expressly waive their right to trial by jury and agree to submit all questions of fact to the judge as trier of fact.

VI) MISCELLANEOUS

A) Definitions

Capitalized terms that are defined in the VPPA, Town Policy, or the Town’s Solicitation have the same meanings in this Contract as are given in that law, policy, or Solicitation. Capitalized terms not defined in those sources but used in this Contract have the following meanings, unless the context clearly requires otherwise. Undefined terms have their common meanings appropriate to their context.

- 1) “Contract Administrator” means the person designated by the Town Manager to administer the Contract for the Town. The initial Contract Administrator is Rhonda S. North, Town Clerk/Project Lead but the Town Manager may designate a new Contract Administrator by notice to the Contractor.
- 2) “Contractor's Representative” means the person who is responsible for the performance obligation of the Contractor under this Contract. The initial Contractor’s Representative is _____ but the Contractor may designate a new Contractor’s Representative by notice to the Town.
- 3) “Drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- 4) “Notice of Default” means a notice sent to the other party’s designee (Contract Administrator for the Town, Contractor’s Representative for the Contractor) setting forth the facts showing that party to be in default under the Contract.
- 5) “Notice of Termination” means a notice sent to the other party’s designee (Contract Administrator for the Town, Contractor’s Representative for the Contractor) informing that party of the termination of the Contract as of a particular date.
- 6) “Solicitation” means the Invitation to Bid, Request for Proposal, or small purchase procedure request for quotes or bids which led to the formation of this Contract.
- 7) “Town” means the Town of Middleburg, Virginia, the Town Manager, or the Town Manager’s designee assigned responsibility for this Contract.
- 8) “Using Department” for purposes of this Contract shall mean Town of Middleburg.

Commented [MC1]: Replace blank with name of initial contractor’s representative.

B) Time of the Essence

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

- 1) If the Contractor at any time finds that the schedule will not be met for any reason, the Contractor shall immediately provide written notice to the Town setting forth all facts and circumstances related to the delay.

- 2) Where the Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions the Contract Period will be extended in an amount calculated as stated in Paragraph VI)B)5) below if a Claim is made therefor in writing and provided to the Town within the time frame and in the manner prescribed and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Period under the Contract Documents.
- 3) Contractor acknowledges and agrees that adjustments in the Contract Period will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the Town of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one day. Such an adjustment of time shall be Contractor's sole and exclusive remedy for the delays described in this Section.
- 4) Actual adverse weather delay days must prevent work on critical activities outdoors for fifty percent (50%) or more of Contractor's scheduled workday in order to be counted. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. Where Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions, the Contract Period will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided herein. Abnormal weather conditions occur only if the total number of actual adverse weather days exceeds the standard for that month as shown in the following table:

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
7	7	8	7	8	7	8	8	6	6	6	6

- 5) Upon commencement of on-site activities and continuing throughout construction, Contractor shall record daily the occurrence of adverse weather and resultant impact to normally scheduled work and within 30 days of the last day of any month (hereinafter referred to as the "Reporting Month"), Contractor shall submit a written adverse weather report, including copies of Contractor's daily weather reports and applicable climatological data from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location, unless the Town allows, in writing, an additional period of time for the submission of said report. Notwithstanding any other provisions, failure to submit the required written report within the time specified above shall be deemed to be and shall constitute a waiver by Contractor of any and all claims for delay due to adverse weather conditions occurring during said Reporting Month.
- 6) The Town shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs)

sustained by Contractor on or in connection with any other project or anticipated project.

- 7) The Contractor further agrees that the Town will be substantially damaged in amounts that will be difficult or impossible to determine if a delay occurs. Therefore, the parties have agreed on sums which the parties agree are reasonable as liquidated damages for such delay. If Contractor fails to meet the completion deadlines specified in this Contract, as it may be extended under this section of the Contract or as set forth in any agreed written extension, then Contractor shall, in place of actual damages, pay to the Town as fixed, agreed, and liquidated damages, and not as a penalty, for each calendar day of delay the sum of Five Hundred and 00/100 Dollars (\$500.00). It is further understood and agreed that the payment of the liquidated damages is in lieu of actual damages for such occurrences. Contractor hereby voluntarily and intelligently waives any and all defenses as to the validity of any liquidated damages stated in this Contract as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Alternatively, in Town's sole discretion, if performance is so delayed, the Town may terminate this Contract in whole or in part and in that event, the Contractor shall be liable for fixed, agreed and liquidated damages accruing until the time the Town may reasonably obtain performance of similar services. The liquidated damages shall be in addition to any increased costs incurred by the Town in completing the work and shall be paid to the Town upon demand.

Contractor shall not be entitled to an adjustment in Contract Price or Contract Period for delays within the control of Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.

C) Integration Clause; Modifications to the Contract

- 1) This Contract, including its incorporated documents, contains the whole agreement between the parties as to its subject, and no prior or contemporaneous communications, representations, or agreements, written or verbal, may alter, add to, or contradict any provision in it. There are no promises, terms, conditions, or obligations related to the subject of this Contract other than those contained herein.
- 2) All modifications and changes to the Contract shall be in writing and signed by the party to be charged, or its authorized representative.
- 3) The Contract Administrator, with the concurrence of the Town Manager, shall have the authority to order changes in this Contract, which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order."
 - a) Such orders shall be limited to reasonable changes in the supplies, services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such

changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

- b) Contractor need not perform any work described in any Change Order unless it has received a written certification from the Town that there are funds budgeted and appropriated sufficient to cover the cost of such changes.
- c) The Contractor shall make a demand for payment for completed changed work within 30 days of completion of Change Order, unless such time period is extended in writing, or unless the Contract Administrator requires submission of a cost proposal prior to the initiation of any changed work or services.
- d) No claim for changes made by Change Order shall be considered if made after final payment in accordance with the Contract.

D) Examination of Records

- 1) The Contractor agrees that the Town or any duly authorized representative of the Town may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. This right shall expire on the third anniversary of the issuance of final payment under this Contract.
- 2) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the Town or any duly authorized representative may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such subcontractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. This right expires on the third anniversary of the issuance of final payment to the subcontractor.

E) Assignment of Rights

- 1) Antitrust: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Town all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town under said contract.
- 2) Warranty: By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the Town all warranties related to Goods provided to the Town under this Contract.

IN TESTIMONY WHEREOF, the Town of Middleburg has caused its name to be hereunto subscribed by _____, its _____, pursuant to authority heretofore duly granted by the Town Council of the Town of Middleburg; and

Contractor has caused its name to be hereunto subscribed by Contractor's Representative, and (if a Corporation) has caused its corporate seal to be duly affixed and attested by the person authorized to do so, signifying that it intends to be bound by this Contract.

TOWN OF MIDDLEBURG

By:

Authorized Official

Bryan Foster, Interim Town Manager

Approved As To Form:

Town Attorney

CONTRACTOR

By:

Contractor's Representative

Type Name and Title