

REQUEST FOR PROPOSALS

ISSUE DATE: March 16, 2010 RFP # CRD #10-01

TITLE: Shell dredging and shell planting for the York River, Chesapeake Bay and the Coastal Bays on the Oceanside of the Eastern Shore.

COMMODITY CODE: 96834/95900

ISSUING AGENCY: Commonwealth of Virginia
Marine Resources Commission
2600 Washington Avenue; 3rd Floor
Newport News, Virginia 23607-0756

WORK LOCATION: York River, Chesapeake Bay, Gloucester County and the Coastal Bays on the Oceanside of the Eastern Shore, Accomack and Northampton Counties.

PERIOD OF CONTRACT: From date of award to September 30, 2010.

SEALED PROPOSALS WILL BE RECEIVED UNTIL April 9, 2010, AT 2:00 P.M. FOR FURNISHING THE SERVICES DESCRIBED HEREIN. LATE PROPOSALS WILL NOT BE CONSIDERED.

ALL INQUIRIES FOR INFORMATION SHOULD BE DIRECTED TO:

James A. Wesson
Telephone (757) 247-2121

SEND PROPOSALS DIRECTLY TO:

Brandy L. Battle
Marine Resources Commission
2600 Washington Ave., 3rd Floor
Newport News, Virginia 23607
(757) 247-2260

OR HAND DELIVER TO:

Brandy L. Battle
Marine Resources Commission
2600 Washington Avenue, 3rd Floor
Newport News, Virginia 23607

IN COMPLIANCE WITH THIS REQUEST FOR PROPOSALS AND TO ALL THE CONDITIONS IMPOSED HEREIN AND HEREBY INCORPORATED BY REFERENCE, THE UNDERSIGNED OFFERS AND AGREES TO FURNISH, IF SELECTED, THE SERVICES DESCRIBED AT THE PRICE INDICATED IN SECTION XII, PRICING SCHEDULE.

IN ACCORDANCE WITH THE ATTACHED SIGNED PROPOSED OR AS MUTUALLY AGREED UPON BY SUBSEQUENT NEGOTIATION.

NAME AND ADDRESS OF FIRM:

_____	DATE: _____
_____	BY: _____
_____	(Signature In Ink)
_____	NAME: _____
_____	TITLE: _____
_____ Zip Code: _____	PHONE: (____) _____
FBI/FIN NO. _____	FAX: (____) _____
EMAIL: _____	

RETURN ENTIRE CONTRACT PROPOSAL TO VMRC. SIGN CERTIFICATION ABOVE.

COMPLETE SECTIONS:

- XII -PRICING SCHEDULE**
- ATTACHMENT A**
- ATTACHMENT B (if applicable)**
- ATTACHMENT C - ANNEX 7-G**

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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I. **PURPOSE:** The intent and purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified sources to dredge, grade and wash approximately 50,000 to 90,000 cubic yards of fossil oyster shells from the James River, and then transport and deploy the same oyster shells in the York River, Chesapeake Bay, and in the Coastal Bays on the Oceanside of the Eastern Shore of Virginia.

II. **BACKGROUND:** The VMRC Conservation and Replenishment Department (CRD) has the responsibility for managing and restoring the oyster resource in the State. Millions of bushels of oyster shells have been placed overboard by the CRD to serve as cultch for oyster larvae to attach (strike). In recent years, oyster reef restoration has primarily used oyster shell from local shucking houses. However, there are not sufficient quantities of oyster shell to complete all of the current projects, nor the anticipated increase in oyster restoration projects over the next few years.

The current project shall require fossil shells to be dredged from subaqueous deposits near Hogg Island in the James River. These shells shall be washed and sorted into two size categories. These dredged shells will then be transported and washed overboard (referred to as “planting shells”) with a high-pressure stream of water in areas in the York River, Chesapeake Bay and in the Coastal Bays on the Oceanside of the Eastern Shore of Virginia. All dredging, washing, transportation, and planting will be conducted according to the terms of this contract and according to existing shell dredging permits. The Marine Resources Commission is responsible for obtaining the necessary permits.

The shell dredging sites are on the north side of the James River, between Tribell Shoal and Skiffes Creek (Map (tribell2.jpg) on VMRC website http://www.mrc.virginia.gov/mrc_procurement_info.shtml).

The shell planting sites are specified and buoyed by the VMRC Conservation and Replenishment Department. The shells shall be planted on areas in the York River, Chesapeake Bay that are generally 6 to 20 acres in size. The shells shall be planted on areas of the Coastal Bays, Oceanside, Eastern Shore on areas that are in intertidal, and are 1 to 2 acres in size. Plantings are made by washing shell overboard with high pressure water as the shell barge moves around the area to give a uniform coverage.

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

III. SCOPE OF WORK:

- a) The contractor shall dredge, wash, and sort 50,000 – 90,000 cubic yards of fossil shell in accordance with permits issued by the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality (Attachment D).
- b) Shell dredging requires permits are issued by the Virginia Department of Environmental Quality and the U.S. Army Corps of Engineers. Obtaining the necessary permits is the responsibility of the VMRC – CRD. The Contractor shall dredge, wash, transport, and plant shells in accordance with the terms of the permits.

Typical conditions in the permits address topics such as: dredging equipment, dredge cut dimensions, discharge of waste sediment and shell grit, appropriate uses of shell, dredging areas and dredging times. The permits along with the contract contain the complete conditions and should be consulted.

The time period for shell dredging as specified in the permits is June 15 to December 31. The dredging sites are located in the James River and are labeled on the attached permit map (Map (tribell2.jpg) on VMRC website - http://www.mrc.virginia.gov/mrc_procurement_info.shtm).

VMRC is responsible for acquiring shell dredging permits and conducting environmental studies required by the permits.

- c) Dredge cuts are to a maximum of 30 feet mlw with spoil returned to the dredge cut after washing by means of bow and stern elephant trunk discharge pipes. The elephant trunk discharge pipes shall extend under the dredge barge.
- d) Shells shall be washed and sorted into two sizes. “Fines” are those shell pieces from 3/16” to 1” in size, and shells are those shell pieces 1 inch in size and greater (≥ 1 ”).
- e) The contractor may request approval to purchase a portion of the shell pieces or “fines”, and this value of such shell pieces shall be included as a credit against the contractor price.
- f) Shell planting: York River (Map (york.jpg; york.pdf) on VMRC website http://www.mrc.virginia.gov/mrc_procurement_info.shtm).

Shells and fines shall be transported by barge and tug to the York River, Chesapeake Bay and washed overboard from a moving barge at MRC designated sites at an approximate rate of 600 yards per acre. Water depths at planting sites area greater than 10' mlw. Planting locations are generally 6 to 20 acres and will be marked by VMRC-CRD personnel

The dredging and planting of shells shall be conducted under supervision of VMRC – CRD personnel during the period of June 15 – August 15, 2010.

Planting Areas:

- 1) York River, Aberdeen Rock, 30 acres @ 600 cubic yards per acre (18,000 cu. yds. = 279,000 Virginia bushels).

Approximate location: Latitude 37° 20' 03" Longitude 76° 36' 19"

- 2) York River, Pages Rock, 60 acres @ 600 cubic yards per acre (36,000 cu. yds. = 558,000 Virginia bushels).

Approximate location: Latitude 37° 18' 38" Longitude 76° 35' 22"

- g) Shell planting: (Coastal Bays, Oceanside, Eastern Shore (Maps (ARRA Access Maps.pdf; Boxtree – Outlet Machipongo Inlet.jpg; Bville – FowlPt Machipongo Inlet.jpg; Parramore, Green, Black Rock.jpg; Bradford – Wach.jpg; S. Hog – Machipongo Inlet.jpg; Smith Island – Fishermen Inlet.jpg) on VMRC website - http://www.mrc.virginia.gov/mrc_procurement_info.shtm).

Shells shall be transported by barge and tug to Smith Island Inlet, Great Machipongo Inlet, and Wachapreague Inlet. Barge and tug will proceed into the Coastal Bays at high tide only and will proceed to mooring and offloading sites. Shells will be offloaded onto shallow draft, small barges, and transported to the sites designated and marked by MRC-CRD personnel. Shells shall be washed overboard at a rate of 600 bushels per acres. Water dept at the planting sites are zero at low tide. Shell planting can only occur at and around high tide. Planting sites are one to two acres in size. All shells from the transport barge should be offloaded and emptied at a rate of approximately 500 – 1,000 yards per day.

The planting of shells shall be conducted under the supervision of VMRC-CRD personnel during the period from June 15 – August 15, 2010.

Planting Areas:

- 1) (Smith Island- Fisherman Inlet, 3 acres @ 600 cubic yards per acre (1,800 cu. yds. = 27,900 Virginia bushels).

Approximate location: Latitude 37° 07' 33" Longitude 75° 56' 21"

- 2) Great Machipongo Inlet, 8 acres @ 600 cubic yards per acre (4,800 cu. yds. = 74,400 Virginia bushels).

Approximate locations:

- | | | | | |
|----------------------|----------|-------------|-----------|-------------|
| a) South Hogg Island | Latitude | 37° 22' 37" | Longitude | 75° 44' 02" |
| b) Outlet | Latitude | 37° 23' 38" | Longitude | 75° 49' 44" |
| c) Brownsville | Latitude | 37° 26' 38" | Longitude | 75° 49' 13" |
| c) Boxtree | Latitude | 37° 23' 36" | Longitude | 75° 51' 37" |

- 3) Wachapreague Inlet, 8 acres @ 600 cubic yards per acre (4,800 cu. yds. = 74,400 Virginia bushels).

Approximate locations:

a) Paramore Island	Latitude	37° 30' 57"	Longitude	75° 39' 55"
b) Bradford Bay	Latitude	37° 34' 57"	Longitude	75° 41' 34"
c) Burton Bay	Latitude	37° 37' 20"	Longitude	75° 39' 38"
d) Green Channel	Latitude	37° 31' 41"	Longitude	75° 40' 51"

h) Shell Quantity

The contractor shall dredge, wash, transport, and plant oyster shell as directed by VMRC. The quantity for this contract shall be 50,000 - 90,000 cubic yards and the contractor's capabilities should provide for a daily completion rate of 3,000 to 6,000 cubic yards. The conversion factor for cubic yards to Virginia bushels is 15.5 (C.Y. X 15.5 = VA Bushels).

i) Shell Quality

Shell material is categorized as "shells" (equal to or greater than 1 inch in size) and "fines" (3/16" to 1 inch).

Shells and fines for oyster restoration projects shall be washed clean of mud and sediment by the contractor at the dredging site and be suitable for attracting spat, according to VMRC - CRD. The contractor shall sort shells from fines at the dredging site and provide either material as specified by VMRC.

j) Shell Volume Measurements

Each barge load of shells or fines shall be measured by a team consisting of at least one representative of VMRC and one representation of the contractor. The measurement technique shall be according to the Standard method below or in a few cases, the Alternative Method:

STANDARD VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

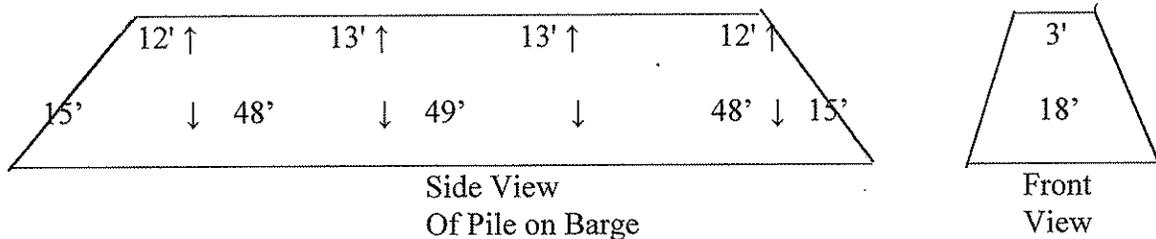
The shell or fine pile is to be of nearly uniform height along length of a barge, with sides of the piles as straight and consistent a slope along length as is practicable.

Measurements (feet and decimal fractions of feet) are to be made for height and width at a minimum of four (4) intervals along the length of the shell pile. The first and last measurements are made at the point where the pile begins sloping from its uniform height downward to the ends of the barge. Measurements between these two points should be made at nearly equal distances, avoiding extreme low points or high points of the pile.

At each interval, measurements are to be made as follows:

- * length of interval;
- * height of pile; and
- * width of pile at the base and at the peak

An example of measurements to be made is shown below:



For each interval (length), an average height and width are determined to arrive at an average volume (cubic feet) for that interval. Each sectional volume is then added to get an overall volume. The volume is converted to cubic yards and shall be the volume used when billing VMRC.

ALTERNATE VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

The volume of shells or fines may be determined by measuring the draft of a loaded barge, but only after discussion and agreement between the Contractor and VMRC to decide upon the actual method. Suitable conversion factors will be needed for the weight to volume ratio for both shells and fines under dry and wet conditions, and measuring draft will need to be done under calm conditions when wave action has negligible effect on reading the draft of a barge.

k) Equipment and Experience of Contractor:

The Contractor shall provide all equipment and personnel necessary to carry out the terms of this contract, including but not limited to dredges, washing, and sorting equipment, tugboats, barges, crane and bucket, pumps, crew, crew boats and measuring equipment. The equipment and their use must comply with the specifications of the shell dredging permit (Attachment D). The dredge must be a hydraulic dredge equipped with an elephant trunk discharge pipe which directs waste water and sediment into the cut being made. The offeror is required to provide a dredge equipped with a shell washing/sorting apparatus that can sort clean shells from clean fines and load each, simultaneously, onto barges at the dredge.

l) Dredging Site Management by the Contractor

The Contractor is responsible for damage it causes to commercial fishing gear near the dredging operation, for marking dredging sites if buoys are needed, for using discrete traffic lanes for tug and barge traffic in the immediate vicinity of the dredge and for coordinating with local watermen the removal of crab pots, eel pots, or other gear from these traffic lanes.

m) Environmental Conditions and Restrictions

The contractor shall conduct all dredging, washing, transporting and planting of shells in a manner which will attempt to minimize any environmental harm. All conditions and specifications in the dredging permit shall be followed, such as the use of a trunk discharge pipe to direct all dredging waste to the cut being made. Environmental studies, if required, will be conducted by VMRC.

n) Right of Inspection

The Contractor agrees that VMRC may station MRC-CRD personnel at its dredge or dredges all operative hours to check the quality and quantity of shells and fines, and any environmental impacts regarding fish or water quality.

o) Maintenance and Records

The Contractor agrees to keep accurate books and records showing the quantity of shells and fines dredged, the location dredged, the locations planted and the volume of each planting. All books and records shall be open to inspection and audit by VMRC, or its duly authorized representatives, at all reasonable intervals during business hours.

p) Maps of the York River and Coastal Bays (Maps on VMRC website - http://www.mrc.virginia.gov/mrc_procurement_info.shtm) show the generalized shell planting areas in the York River, Chesapeake Bay and the Coastal Bays on the Oceanside of the Eastern Shore. MRC Staff shall mark planting sites with buoys and the Contractor will plant shells only within the specified boundaries. If the planting barge moves outside of the marked area, the Contractor shall stop planting until the barge is back within the area. Planting specifications will vary and MRC will direct each planting.

IV. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

A. General Requirements

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and (3) copies of each proposal must be submitted to the VMRC. No other distribution of the proposals shall be made by the offeror.

2. Proposal Preparation:

- a. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.
- e. Each copy of the proposal should be bound or contained in a single

volume where practical. All documentation submitted with the proposal should be contained in that single volume.

- f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.
3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the VMRC. This provides an opportunity for the offeror to clarify or to elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. The VMRC will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. Specific Requirements:

1. Proposals should be as thorough and detailed as possible so that the Virginia Marine Resources Commission may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:
 - a. The return of this complete RFP and all addenda acknowledgements, signed, and fill out as required.
 - b. Complete Contractor Data Sheet (Attachment A), and if applicable, Subcontractor Data Sheet (Attachment B).
 - c. A written narrative statement to include:
 - (1) What, when, and how the service will be performed,

- (2) Description of the equipment that will be used to dredge, sort, and clean fossil shell and methods to minimize environmental impacts of the dredging operation,
- (3) Description of barges and tugboats that will be used to plant the shells in the York River, Chesapeake Bay and the Coastal Bays on the Oceanside of Eastern Shore,
- (4) Description of stationary barge that will be used to construct the reefs,
- (5) Description of the anticipated number of trips necessary to complete the project,
- (6) Complete description of any subcontractor arrangements to be used, and completion of Subcontractor Data Sheet, Attachment B.
- (7) Estimated time schedule for completion of the project,
- (8) Cost as described in Section XII, Pricing Schedule, and
- (9) Experience of company and personnel in marine contracting projects similar to oyster restoration.
- (10) Small Business Subcontracting Plan – Summarize the planned utilization of DMBE-certified small businesses which include businesses owned by women and minorities, when they have received DMBE small business certification, under the contract to be awarded as a result of this solicitation. (Attachment C - Annex 7-G)

V. **EVALUATION AND AWARD CRITERIA:** Proposals shall be evaluated by the Marine Resources Commission using the following criteria:

<u>A. Evaluation Criteria</u>	<u>Percentage Value</u>
Contractor's Project Completion Capabilities	35%
Approach to completing the project	
Equipment – Size, Condition, Type	
Likelihood of Completing Project within Time Specified	
Contractor's Experience	20%
Experience with similar marine construction projects	
Experience of Staff	

Cost	25%
Small Business Subcontracting Plan	<u>20%</u>
	100%

B. **Award Criteria:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals 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 Commonwealth 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 that 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.

VI. **REPORTING AND DELIVERY INSTRUCTIONS:** Omitted

VII. **MANDATORY PREPROPOSAL CONFERENCE:** Omitted

VIII. **GENERAL TERMS AND CONDITIONS:**

A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under “Manuals.”

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 2.2-4366*). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as

amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any 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 nondiscrimination clause.
 - b. 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.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING**: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not,

and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of 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 Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all

cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of

work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.

- S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence.
 5. Watercraft policy with a combined single limit of \$2,000,000 for protection and indemnity coverage
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the 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 the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, 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.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

IX. SPECIAL TERMS AND CONDITIONS:

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the Marine Resources Commission will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that Marine Resources Commission has purchased or uses any of its products or services, and the contractor shall not include Marine Resources Commission in any client list in advertising and promotional materials.
- B. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD OF CONTRACT:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals 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 Commonwealth 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 that 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.

- D. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- E. **PROPOSAL PRICES:** Proposal prices shall be as requested in Section XII, Pricing Schedule.
- F. **INSPECTION OF CONSTRUCTION:**
- 1) The Contracting Officer for the CRD shall be Jim Wesson or his designee.
 - 2) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to the contract requirements.
 - 3) CRD inspections and tests are the sole benefit of the CRD and do not:
 - a. Relieve the Contractor of responsibility for providing adequate quality control measures;
 - b. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - c. Constitute or imply acceptance; or
 - d. Affect the continuing rights of the CRD after acceptance of the completed work.
 - 4) The presence or absence of a CRD inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
 - 5) The Contractor shall promptly furnish, without additional charges, all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The CRD may charge to the Contractor any additional cost for inspection or tests when work is not ready at time specified by the Contractor for inspection or tests, or when prior rejection makes reinspection or retest necessary. The CRD shall perform all inspections and tests in a manner that will not unnecessarily delay the work.
 - 6) The Contractor shall, without charge, replace or correct work found by the CRD not to conform to contract requirements, unless in the public interest the CRD consents to accept work with a appropriate adjustment in contract price.

Name of Contract/Purchase Officer or Buyer Brandy Battle

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- K. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
- L. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- M. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- N. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for

the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

- O. **WORK SITE DAMAGES:** Any damage to the reef structure which has been completed or adjacent oyster beds resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.
- P. **APPLICABLE U. S. COAST GUARD LICENSES AND REGULATIONS:** Operators of all vessels used for deployment shall present, upon request, applicable U.S. Coast Guard licenses and shall obey all applicable U.S. Coast Guard regulations at all times during operations under this contract.
- Q. **HAZARD TO NAVIGATION:** Contractor shall not create a hazard to navigation while performing under this contract. Any such hazard to navigation created by the contractor while performing under this contract shall be removed or eliminated at his expense.
- R. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in one purchase order with the eVA transaction fee specified below assessed for each order.
- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

X. SPECIAL TERMS AND CONDITIONS TO BE INCLUDED IN CONTRACTS FUNDED IN WHOLE OR IN PART BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The following are Special Terms and Conditions to be used for procurements funded by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate or as required by the Federal granting agency.

1. **GENERAL:** This contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" or "ARRA") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements" or "ARRA Requirements"), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Special Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it shall comply with any such changes upon receipt of written notification from the Commonwealth of such changes. Such changes will become a material part of the contract without the necessity of either party executing an amendment to this contract. Contractor also agrees that it will provide all information and documentation required by the Commonwealth in order to comply with the Recovery Act Requirements. Contractor agrees that, to the extent ARRA Requirements conflict with Commonwealth of Virginia requirements, the ARRA Requirements shall control.
2. **D-U-N-S® NUMBER:** All Contractors are required to provide the Commonwealth of Virginia with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.
3. **JOB CREATION AND RETENTION:** The Contractor shall provide to the Commonwealth an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the Commonwealth no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED

4. **AUDITING:** The Contractor shall retain all books, records, and other documents to this contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:
 - (1) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and
 - (2) interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The Commonwealth's contracting officer and other representatives of the Commonwealth shall have, in addition to any other audit or inspection right in this contract, all the audit and inspection rights contained in this section.

5. **BUY AMERICAN:** Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver by the head of the federal agency awarding the ARRA funds under three circumstances:
 - (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
 - (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
 - (c) Applying the domestic preference would be inconsistent with the public interest.

6. **WAGE RATE REQUIREMENTS:**
 - (a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. The standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated into this contract and any subcontracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

 - (b) Inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project should be directed to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

7. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor agrees to provide the Commonwealth of Virginia with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required by the Commonwealth of Virginia to comply with ARRA reporting requirements. Section 1512 of ARRA, its implementing regulations (2 CFR §176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this contract provide guidance on what information must be reported.

8. **SUBCONTRACTOR FLOW-DOWN REQUIREMENTS:** Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.
9. **JOB POSTING REQUIREMENTS:** Contractor shall use the Virginia Workforce Connection (VWC) for the recruitment of direct jobs created by ARRA through this contract in accordance with the following provisions:
- (1) The Contractor shall use VWC to post all direct jobs available. Instruction for posting jobs is located on the VWC website: www.vawc.vec.virginia.gov. Assistance is available from the Virginia Employment Commission (VEC) by phone on (804)225-3116 or by email at StimulusJobs@vec.virginia.gov.
 - (2) For the purposes of this requirement, "direct jobs" means those jobs funded fifty percent or more by ARRA project funds.
 - (3) Posting through VWC is not required when Contractor intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee or a job candidate from a previous recruitment.
 - (4) This requirement is not intended to prevent Contractor from also seeking needed employees by other means including industry specific employment programs.
 - (5) This job posting requirement does not fulfill any ARRA reporting responsibility pertaining to jobs created or retained as otherwise required under the terms and conditions of this contract, those contained in ARRA, or other Contractor reporting required by the Federal Government or the Commonwealth of Virginia.

XI. METHOD OF PAYMENT: The contractor will be paid upon satisfactory completion of work upon submission of invoices for portion of work completed; certification of work completed to be made by Jim Wesson, VMRC, Conservation and Replenishment Department. All copies of the invoices shall be forwarded directly to the using agency or wherever otherwise designated. Payments will be made directly to the contractor, who will be responsible for payments to all subcontractors. Payments will be made in accordance with the Virginia Prompt Payment Act.

XII. PRICING SCHEDULE:

- A. _____ Cost per cubic yard to dredge, wash, sort, and deploy by water cannon approximately 54,000 cubic yards of shell in the York River, Chesapeake Bay.
- B. _____ Cost per cubic yard to dredge, wash, sort, and deploy by water cannon 11,450 cubic yards of shell in the Coastal Bays of the Oceanside of the Eastern Shore.
- C. _____ additional, 20,000 cu. yds. in the York River, Chesapeake Bay.
- D. _____ additional 4,800 cu. yds. In the Coastal Bays of the Oceanside of the Eastern Shore.
- E. _____ credit per cubic yard for "fine" shells for _____ cubic yards retained by the contractor

XIII. DELIVERY: The agency expects delivery and complete deployment from June 15 – August 15, 2010.

XIV. LAST SPECIAL TERM AND CONDITION: Agency agreement with TNC – Incorporated into this RFP the entire contract the Virginia Marine Resources Commission has with The Nature Conservancy (Attachment E). The conditions in the attached will supercede the special terms and conditions found in Section X. If a conflict is noted, please bring to the attention of Brandy Battle, Business Manger.

**ATTACHMENT A TO RFP #CRD10-01
CONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Offerors must have the capability and capacity in all respects to fully satisfy all the contractual agreements.

2. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

_____Years _____Months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>CONTACT & PHONE No.</u>

**ATTACHMENT B TO RFP #CRD10-01
SUBCONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Subcontractor must have the capability and capacity in all respects to fully satisfy all the contractual agreements.

1. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

_____ Years _____ Months

2. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>CONTACT & PHONE No.</u>

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmb.e.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ Date: _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (check only one below):

- Small Business
Small and Women-owned Business
Small and Minority-owned Business

Certification number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

VWP Permit No. 00-2042

Effective Date: July 16, 2001

Modification Date: January 13, 2004

Modification Date: July 7, 2006

Expiration Date: July 16, 2011

David K. Paylor
Director

Francis L. Daniel
Regional Director

Preston Bryant
Secretary of Natural Resources

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with Section 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the Department has determined that there is reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The Department finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

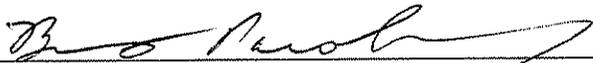
Permittee: Virginia Marine Resources Commission
Conservation and Replenishment Department
Attn: Mr. James A. Wesson, Department Head

Address: 2600 Washington Avenue, 3rd Floor
Newport News, Virginia 23607-0756

Activity Location: James River, Off Tribell Shoal Channel

Activity Description: The applicant proposes dredging of fossil oyster beds to obtain shell for restoration of oyster reefs and beds in the more productive areas of the Tangier and Pocomoke Sounds; the Rappahanock River, and Virginia's portion of the Chesapeake Bay and its tributaries.

The permitted activity shall be in accordance with this cover page, Part I - Special Conditions, and Part II - General Conditions.


Bert W. Parolari, Virginia Water Protection Permit Manager

July 7, 2006
Date

PART I - SPECIAL CONDITIONS

A. Adherence to Application

The application dated November 3, 2000, supplemental addenda dated February 15, 2001, the revised dredging appendix submitted on March 7, 2000, and the application addenda letter dated May 23, 2001 shall be adhered to.

B. Spill Control

The permittee shall employ measures to prevent spills of fuels or lubricants into State waters. If spills do occur, notification shall be provided to the Department of Environmental Quality (DEQ) Tidewater Regional Office (TRO) at 757-518-2077 or Department of Emergency Services at 1-800-468-8892.

C. Construction Activity

All construction and installation associated with the activity shall be accomplished in such a manner that construction materials or waste materials are not discharged into State waters.

D. DEQ Notification

The permittee shall advise the DEQ TRO in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic pollutants, and shall not take measures to remove the obstruction, material, or toxic pollutant, or change the location of any structure until approval by the Department is received.

E. Permit Expiration

This permit is valid for a maximum of **ten years** from the date of issuance. In accordance with the VWPP Regulation (9 VAC 25-210-80, formerly VR 680-15-02), reapplication must be made no less than 180 days prior to the expiration date of this permit.

F. Dredging and Disposal

1. The DEQ TRO shall be notified in writing not less than **ten days** prior to commencement and not more than **ten days** following completion of each dredging cycle.
2. The permittee shall implement a monitoring study to assess the effects of the dredging on the movement of anadromous fish. The permittee shall coordinate the design of this study with the Department of Game and Inland Fisheries (DGIF), and allow DGIF to observe the dredging activities and monitoring efforts. If DGIF determines, based on

the study results, that the dredging is resulting in a significant impairment to anadromous fish, DEQ may halt dredging activities and require other actions recommended by DGIF to protect this resource.

3. The permittee shall conduct activities in accordance with the time-of-year (TOY) restrictions, as recommended by the DGIF or the Virginia Marine Resources Commission. The permittee shall maintain a copy of such TOY restriction or notification that no restriction is necessary, for the duration of this project. The current TOY restriction prohibits dredging from February 15 to June 15.
4. As additional data concerning the impacts of dredging on aquatic resources becomes available, DEQ TRO may require additional water quality/biological monitoring, time of year restrictions, and/or other procedures to avoid and minimize impacts to these resources.
5. Dredging is authorized at the four locations along Tribell Shoal channel specified in the application.
6. The dredge shall be equipped with an elephant trunk four-pipe discharge system, with pipes located at both the stern and bow of the dredge. All pipes must be utilized to facilitate redistribution of dredged material into the dredge cut in a manner which limits the resuspension and disturbance of this material. The end of these pipes shall be positioned as low as possible below the bottom of the dredge hull to minimize sediment resuspension during discharge.
7. Dredging shall be accomplished in such a manner as to minimize disturbance of the bottom and minimize turbidity levels in the water column. Sediment resuspension recommendations outlined in the Corps of Engineers research documents "Sediment Resuspension Characteristics of Selected Dredges - 1984" and "Literature Review and Technical Evaluation of Sediment Resuspension During Dredging - 1991" shall be followed when applicable. Documentation of recommendations that were or were not followed and supporting explanations shall be reported in writing to DEQ TRO within **30 days** following completion of each dredging cycle.
8. Hydraulic dredging of a maximum of 722,000 cubic yards of material is authorized over the term of this permit, with approximately 361,000 cubic yards of material removed at each dredging cycle.
9. Dredging is authorized to a maximum depth of -30 feet mean low water.
10. All dredged shell will be transported by barge to permitted restoration sites in the Rappahannock River, the Pocomoke Sound, the Tangier Sound, and/or Virginia's portion of the Chesapeake Bay and its tributaries for use in oyster reef and bed

restoration. If other sites are identified for restoration, they must be approved by DEQ TRO prior to use.

11. The double handling of dredged material in State waters is prohibited.
12. State Water Quality Criteria (9 VAC 25-260-50) shall not be violated during dredging operations, unless otherwise caused by ambient conditions.
13. If evidence of impaired water quality, such as fish kills, is observed during dredging, dredging operations shall cease and the DEQ shall be notified immediately at (757) 518-2077.
14. No wetland fill or excavation is authorized by this permit.
15. An after-dredge bathymetric survey of the dredged area, using mean low water datum, shall be submitted to the DEQ TRO within **30 days** following completion of each dredging cycle.
16. All correspondence regarding this permit shall be directed to:

Department of Environmental Quality
Tidewater Regional Office
Virginia Water Protection Permit Program Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462

Include your Permit Number 00-2042 on all correspondence.



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-TS-REG
05-RP-20

REGIONAL PERMIT

Effective Date: February 6, 2006

Expiration Date: December 31, 2011

Authorized Activity: The creation of artificial reefs and dredging of old shellfish reefs when the material will be used to create new or enhance old reefs owned, operated or managed by the Commonwealth of Virginia.

Not Authorized: This permit does not authorize the construction of reefs that will be used for the introduction of non-native species (shell or fin-fish) into Waters of the Commonwealth.

The Commonwealth of Virginia is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs and to dredge historical shellfish reefs when the material will be used for the construction of new reefs in Waters of the United States provided the project complies with the provisions and conditions set forth below.

The intent of this permit is to provide a streamlined process that enables the Commonwealth of Virginia to enhance native fisheries habitat beneficial to the Citizens of the Commonwealth.

Special Conditions:

1. A complete application will be submitted to the Corps of Engineers for review.
2. A proponent of work proposed in the following waterways must obtain an easement to cross government property from our Real Estate Division (if required) before any construction can take place:
 - a. James River
 - b. Lynnhaven Inlet and Connecting Waters
 - c. All Local Cooperation Agreement areas
 - d. Dismal Swamp Canal
 - e. Albemarle and Chesapeake Canal
 - f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Division at the address on the first page of this regional permit or telephone (757) 201-7735.

3. No portion of the reef will be constructed in area where SAV's exist.

4. All material used in the construction of the reefs shall be of clean suitable material. Vessels or mechanized vehicles shall be inspected by the United States Coast Guard to ensure hazardous material will not enter the watershed.
5. Lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.
6. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party.
7. The Secretary of the Army or his authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
8. No activity may cause more than a minimal adverse effect on Navigation, both commercial and recreational.

General Conditions:

1. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.
3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
(b) Authorization of an activity by a this permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at <http://www.fws.gov/endangered/wildlife.html#Species> and <http://www.nmfs.noaa.gov/pr/species/>.
4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not

begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

7. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

8. Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

9. No activity may cause more than a minimal adverse effect on navigation.

10. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.

12. Permittees are expected to fully comply with Virginia Regulation 680-21-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.

13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.

14. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

15. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.

16. Any reef authorized shall be properly maintained, including maintenance to ensure public safety.

17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.
19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.
20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
21. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
 - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 201-7735.
22. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate.
 - c. Significant new information surfaces which this office did not consider in reaching the original decision.

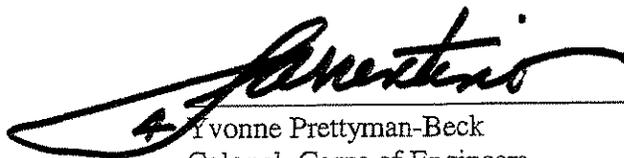
Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective

measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

26. This permit, unless further modified, suspended or revoked, will be in effect until **December 31, 2011**. Upon expiration, it may be considered for revalidation.

2.16.04

Date



Yvonne Prettyman-Beck
Colonel, Corps of Engineers
District Commander



SUBAWARD NUMBER	VCR-ARRA-VMRC-072309
ACCOUNTING INFORMATION	
Cost Center Name:	TBD
Cost Center Number:	TBD
CFDA Number:	ARRA-11.463
Source of funds:	U.S. Gov't ARRA

This is a Subaward dated August 13, 2009 by and between **The Nature Conservancy**, a District of Columbia non-profit corporation (the "Conservancy" or "TNC"), acting through its:

Conservancy Office/Department: VIRGINIA COAST RESERVE
 Address: PO BOX 158, 11332 BROWNSVILLE RD., NASSAWADOX, VA 23413
 Name and Title of Contacts: BARRY TRUITT, CHIEF CONSERVATION SCIENTIST
 BO LUSK, MARINE STEWARD
 Telephone Number: 757-442-3049

and the following person(s) and/or entities (the "Awardee"):

Name of Awardee: VIRGINIA MARINE RESOURCES COMMISSION
 Address: 2600 WASHINGTON AVE., NEWPORT NEWS, VA 23607
 Name and Title of Contact: DR. JAMES A. WESSON, DEPARTMENT HEAD,
 CONSERVATION AND REPLENISHMENT DEPARTMENT
 Telephone Number: 757-247-2121
 DUNS/CCR Number: 075509943

The Nature Conservancy, herein referred to as "the Conservancy," and Virginia Marine Resources Commission, hereinafter referred to as the "Awardee," enter into this Subaward Agreement upon the following terms and conditions. As used herein, "Subaward" shall refer to this Subaward Agreement # VCR-ARRA-VMRC-072309 and all its attachments and incorporations. "Prime Award" shall refer to Cooperative Agreement # NA09NMF4630308 (Recovery Act funds), between the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, herein referred to as "NOAA," and the Conservancy for implementation of Marine Ecosystem Restoration in the Seaside Bays of Virginia signed on July 31, 2009. A copy of the Prime Award is attached ("Attachment A") and incorporated into this Subaward. Notwithstanding the foregoing, NOAA is not a party to this Subaward and has assumed no obligation directly to the Awardee.

SECTION I - PURPOSE

The Conservancy and Awardee (collectively, the "Parties") enter into this Subaward to collaborate on a project to restore the marine ecosystem in the seaside bays of Virginia.

SECTION II- TERM OF SUBAWARD

This Subaward shall begin on date of final signature ("Commencement Date") and shall expire on December 31, 2010, ("Expiration Date"), unless further extended by amendment of the Subaward, which shall be in writing and signed by all Parties to this Subaward. The Awardee may incur pre-award costs starting August 6, 2009.

SECTION III - AMOUNT OF SUBAWARD

The Awardee shall receive an amount not to exceed One Million Two Hundred Sixty-four Thousand Six Hundred Thirteen and 00/100 Dollars (\$1,264,613.00) in NOAA funds. Funds associated with this Subaward may not be used as match to other U.S. Federal financial assistance.

In the absence of a formal amendment to this Subaward, the Conservancy shall not be obligated to reimburse the Awardee for costs that are in excess of this amount.

SECTION IV - SCOPE OF WORK

The purpose of this Grant is to fund Awardee’s Oyster Restoration work (“Program”) as described in the attached workplan and budget (“Attachment B”).

If any of the activities are to be performed on land that is owned by neither the Awardee nor the Conservancy, the Awardee shall be responsible for obtaining the landowner’s prior permission before entering upon such land.

SECTION V – REPORTS

Awardee shall submit the financial report(s) and programmatic report(s) as follows:

1. Narrative Technical Report on progress toward accomplishment of specific objectives. The report shall include:
 - Activities undertaken under the project
 - Problems experienced/changes anticipated
 - Reports on any specific project activity including:
 - Attendance lists
 - Agenda and materials distributed
 - Findings/Conclusions
 - Description of activities anticipated during the next reporting period
 - 3 copies of any publications, final outreach products including website mentions, press releases, photos, etc.

2. Financial Report on Funds Expended, showing detail on actual costs for the subject period and project-to-date, which should be compared to the budget.

3. Final Technical Report summarizing the key activities and accomplishments throughout the project period. Report must include a summary of the Program’s successes and/or failures, a general description of the program activities, a description of the methods of work used, and comments and recommendations regarding any unfinished work, program continuation, and direction. Copies of any publications not previously provided should accompany the final technical report. The final technical report must be so designated and submitted to the Conservancy no later than 45 calendar days after expiration of the Subaward.

4. Final Financial Report which outlines how the Subaward funds were used. The final financial report must be so designated and submitted to the Conservancy no later than 45 days calendar days after expiration of the Subaward.

REPORTING DUE DATES	
ARRA Reports (see Section X for details)	September 15, December 15, March 15, June 15
Narrative Technical Reports	January 15, July 15
Financial Reports	Whenever an invoice is submitted
Final Technical Report	No later than 45 calendar days after the Expiration Date
Final Financial Report	No later than 45 calendar days after the Expiration Date

All Narrative Technical Reports (including the Final Narrative Technical Report) and Published Materials shall be signed by the Awardee’s Project Manager and submitted to the Conservancy’s Project Manager at the address specified in Section VIII “Project Managers and Administrative Representatives.”

All Financial Reports (including the Final Financial Report) shall be signed by the Awardee’s Project Manager and submitted to the Conservancy’s Grants Specialist at the address specified in Section VIII “Project Managers and Administrative Representatives.”

SECTION VI - PAYMENT PROVISIONS

1. The Awardee shall separately account for payments received under this Subaward in its accounting records.
2. Disbursements shall be made to the Awardee upon receipt of an invoice and a complete and accurate financial report, representing actual costs for the subject period and project-to-date, which should be compared to the budget.
3. Payments will be sent to the Awardee by check payable to the Awardee. A completed W-9 must be submitted with the first Payment Request for payment to the Awardee.

SECTION VII – INTEREST

Interest amounts earned on Subaward funds of up to \$250 per year may be retained by Awardee for administrative expenses. Interest amounts including and exceeding \$250 must be either (a) added to Subaward funds and used to further eligible project activities, or (b) deducted from the total project cost in determining the net allowable project costs. Option (a) shall apply automatically unless there are no additional approved project expenses, in which case option (b) shall apply.

SECTION VIII - PROJECT MANAGERS AND ADMINISTRATIVE REPRESENTATIVES

	THE NATURE CONSERVANCY	AWARDEE
<i>Project Managers</i>	Barry Truitt, Chief Conservation Scientist Bo Lusk, Marine Steward	Jim Wesson, Dept Head, Conservation and Replenishment Department
<i>Address</i>	The Nature Conservancy P.O. Box 158, 11332 Brownsville Rd., Nassawadox, VA 23413	Virginia Marine Resources Commission 2600 Washington Ave., Newport News, VA 23607
<i>Telephone Number</i>	757-442-3049	757-247-2121
<i>E-Mail</i>	btruitt@tnc.org blusk@tnc.org	Jim.Wesson@mrc.virginia.gov
<i>Administrative Contact</i>	Susan Greehan, Senior Grants Specialist/Financial Analyst	Jane McCroskey, Chief, Administration and Finance
<i>Address</i>	The Nature Conservancy 11 Avenue de Lafayette, 5 th Floor Boston, MA 02111	Virginia Marine Resources Commission 2600 Washington Ave., Newport News, VA 23607
<i>Telephone Number</i>	617-542-1908 x212	757-247-2215
<i>E-Mail</i>	sgreehan@tnc.org	Jane.McCroskey@mrc.virginia.gov

SECTION IX - AWARD ADMINISTRATION

- A. The cost allowability requirements in 2 CFR Part 225 are incorporated by reference.
- B. 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Government, is incorporated by reference.
- C. In accordance with the Prime Award Special Award Conditions, Awardee shall comply with the following terms:
 1. Awardee will ensure that implementation will meet all federal, state, and local laws and regulations by obtaining all applicable permits and consultations prior to expenditure of federal funds for those activities requiring permits. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Awardee will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact TNC and the

NOAA Technical Monitor (Walter Priest, VIMS, P.O. Box 1346, Greete Road, Route 1208, Gloucester, VA 23062) if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

2. Awardee shall coordinate with TNC and NOAA on outreach plans, events, products, and media coverage associated with the project, so that NOAA Communications staff may assist with the development of outreach communications and messaging. Awardee will provide drafts of any outreach plans to TNC and NOAA staff for review and input. In particular, all press releases should be shared with TNC and NOAA in draft at least one week in advance of release to allow TNC and NOAA the opportunity to provide a quote from NOAA Administrators. Please coordinate with TNC Senior Media Relations Manager, Jonathan Schwedler, and NOAA Restoration Center's Senior Communications Specialist, Rachel Brittin (Rachel.Brittin@noaa.gov or 301-713-0174). Awardee will provide copies of final outreach products, website mentions, press materials, photos, etc., to TNC via semi-annual Narrative Technical Reports (see Section V above).
 3. Pursuant to Executive Order # 13112, recipients of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. Awardee is expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, Awardee should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.
- D. In accordance with Prime Award's Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008), Awardee shall comply with the following terms:
1. Transfer of funds among direct costs categories must be approved in writing by TNC when the cumulative amount of such direct cost transfers exceeds 10 percent of the total. The same criteria apply to the cumulative amount of transfer of funds among programs, functions, activities. The Awardee is not authorized to create new budget categories within the approved budget, or to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval from the Conservancy.
 2. This agreement is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)." Awardee shall include requirements of this section in any lower tier covered transactions.
 3. This agreement is subject to section 1352, title 31, U.S. Code, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." Awardee shall complete "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying, and shall submit the completed form within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Awardee shall include requirements of this section in any lower tier covered transactions exceeding \$100,000 in Federal funds.
 4. Section L. Environmental Requirements, of Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008) is incorporated into this Subaward.
 5. Awardee is hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.
 6. Pursuant to EO 13043, Awardee should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.
 7. Part .08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects of Section M. Miscellaneous Requirements, of Department of Commerce Financial Assistance Standard Terms and Conditions (March 2008) is incorporated into this Subaward.

SECTION X - OTHER PROVISIONS REQUIRED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

- A. By September 15, December 15, March 15, and June 15, the Awardee shall report the following for the prior three months ending August, November, February, and May, respectively:
- (a) The number of new hires and existing employees (in FTEs) paid with ARRA funds, reported by NAICS code, for the reporting period and project-to-date;
 - (b) Total amount of ARRA funds received, for the reporting period and project-to-date;
 - (c) Total amount of ARRA funds expended or obligated, for the reporting period and project-to-date;
 - (d) List of activities paid for with ARRA funds including, name, description, and completion status.
- B. The Awardee shall segregate in its accounting records all ARRA funds received under this Subaward.
- C. As applicable, for Awardees covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Awardee agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- D. As a subrecipient of ARRA funds, the Awardee is required to obtain a DUNS number (or update an existing DUNS record), and to register with the Central Contractor Registration (CCR) no later than the first submission of its quarterly report to the Conservancy. The Awardee must maintain its registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds.
- E. Any ARRA funding provided under this Award is one-time funding.
- F. The Awardee shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- G. 1. An employee of the Awardee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, to the ARRA Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:
- (a) gross mismanagement of a contract or grant relating to ARRA funds;
 - (b) a gross waste of ARRA funds;
 - (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
 - (d) an abuse of authority related to the implementation or use of ARRA funds; or
 - (e) a violation of law, rule, or regulation related to a contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.
2. The Awardee must post notice of the whistleblower rights described in (1) at all job sites using ARRA funds. The poster can be found at <http://www.oig.dol.gov/recovery/Section1553WhistleblowerProvisions.pdf>
- H. Awardee may not use any Award funds for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Any request for a waiver must be made to the Conservancy before using Award funds for non-US produced iron, steel, and manufactured goods.

SECTION XI - CONSTRUCTION/ALTERATION/REPAIRS

The Awardee agrees the U.S. Davis-Bacon Act (Act) covers this Subaward to the extent that it is for construction, alteration, or repair of public works.

(1) The Subaward incorporates 29 CFR Part 5.5 of the Code of Federal Regulations
<http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi>.

(2) The Awardee understands the summary of the Federal Regulations below does not supersede the law but is provided as a guide only.

Summary of Regulation

(a) Minimum wages. All laborers and mechanics employed by the Awardee's subcontractor(s) and working upon the site of the work as that term is defined by the Davis-Bacon Act will be paid not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)) for the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those contained in the wage determination of each employee's respective job classification set by the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Awardee's subcontractor(s) and such laborers and mechanics. Employees may work in more than one job classification. Job classifications without an existing prevailing wage determination from the Secretary of Labor shall be set in accordance with the 29 CFR 5.5(a)(1)(ii). A schedule of job classifications and wage determinations are incorporated herein.

(b) Withholding. The Conservancy and Awardee are subject to the authority of the federal agency funding this Subaward (through grant or otherwise) and the U.S. Department of Labor have authority to stop payment on the Subaward if they determine wages are not paid in accordance with the Davis-Bacon Act.

(c) Payrolls and basic records. Payrolls and basic records relating to the Davis-Bacon Act compliance shall be maintained by the Awardee's subcontractor(s) during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. They must be available to the Conservancy, funding agency or Department of Labor upon request.

(d) Weekly payrolls. The Awardee's subcontractor(s) shall pay laborers and mechanics weekly. A report of payrolls of it or any of its subcontractors for any Subaward work covered by the Davis Bacon Act shall be submitted each Tuesday by 5pm to assure the Conservancy can transmit it to the federal agency in a timely manner. Payroll information shall be submitted on Form WH-347 which is currently available for this purpose from the Department of Labor's Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(e) Compliance Statement. Each payroll submitted shall be accompanied by a "Statement of Compliance" which is incorporated into Form WH-347 signed by the Awardee's subcontractor(s) or his or her agent who pays or supervises the payment of the persons employed under the Subaward and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(f) Notices. Employee rights must be posted. The notice can be found at www.dol.gov/esa/whd/regs/compliance/posters/davis.htm

(g) Penalties. The falsification of any of the "Statement of Compliance" may subject the Awardee or subcontractor to civil or criminal prosecution under the U.S. Criminal Code, 18 U.S.C. 1001 or 31 U.S.C. 231.

(h) Subcontracts. As applicable, the Awardee shall insert in any contracts this provision and any required by the funding agency regarding Davis-Bacon Act compliance.

(i) Subaward termination. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Subaward, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

SECTION XII - TITLE TO AND USE OF EQUIPMENT AND SUPPLIES

If the purchase of equipment and supplies is supported under this Subaward, the Conservancy will provide separate written instructions to the Awardee regarding acquisition and disposition prior to such purchase.

SECTION XIII - TITLE TO AND USE OF WORKPRODUCTS AND DATA

Title to any and all Materials developed with funds from this Subaward vests in the Awardee. Notwithstanding the foregoing, the Conservancy and NOAA shall have a free, irrevocable license to use, publish, or distribute all such Materials. The Awardee shall provide the Conservancy with three (3) copies of all Materials produced under this Subaward. The word "Materials" may include, but is not limited to reports, studies, photographs (and negatives), computer programs, drawings, writings, or other similar works or documents, along with all supporting data and material, produced under this Subaward.

SECTION XIV - ACCOUNTS, AUDITS AND RECORDS

The Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Subaward (collectively "Records") to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed.

In addition, project files must be maintained for all restoration and job creation/retention activities taking place under this agreement. These files must contain, at a minimum, project work plans, copies of all federal and state permits/consultations associated with project implementation, and all available/relevant employment or economic data documenting total labor hours, individual number of jobs created/retained, and records of North American Industry Classification System (NAICS) codes associated with the Prime Award.

Unless extended by the Conservancy, these records shall be maintained for a period of three years after the final financial report is submitted and approved by the Conservancy. Notwithstanding the foregoing, Awardee agrees to maintain all Records for equipment purchased with Subaward funds for three years after the final disposition of such equipment.

The Awardee shall provide timely and unrestricted access to its books and accounts, files and other records for inspection, review and audit by the Conservancy, NOAA, and its authorized representatives.

If the Conservancy disallows any costs claimed by the Awardee related to this Subaward, the Awardee shall be responsible for reimbursing the Conservancy for any of those costs related to the work the Awardee has performed.

The provisions of this Section shall survive the expiration of this Subaward.

SECTION XV SAFETY PROVISIONS

The Awardee agrees to comply with the Safety Provision contained in the agreement to the Conservancy that is funding this Subaward which states:

Safety is a critical consideration for restoration project implementation. The grantee must have a written safety plan for management of employees, contractors, and volunteers working on this project as applicable. The plan should consider safety in and around the site during and after project construction, and take into account potential safety concerns with regard to the current and future use of the site. The grantee should also conduct a safety briefing for all project participants immediately prior to their involvement in hands-on restoration activities under this award, and require that any volunteers sign a liability release waiver. Grantees shall be responsible for exercising reasonable care and using best efforts to prevent accidents, injury or damage to all employees, contractors, persons and property, in and around the work site.

In addition, the Awardee maintains a safety program with respect to its employees and the public and has expertise in and has taken appropriate actions with regard to particular risks under this project, including but not limited to water hazards, boating safety, operation of all equipment and vehicles necessary to accomplish this project, and materials handling and storage. The Awardee will designate a representative for coordinating safety with the Conservancy and shall provide the name of that representative to the Conservancy project manager within 5 days of the Subaward start date.

SECTION XVI - ACKNOWLEDGMENTS

All projects funded through the Recovery Act shall display signage throughout the construction phase that features the Recovery Act Primary Emblem, and that acknowledges funds from NOAA and other contributing partners. The signage should be displayed in a prominent location on site. Refer to the Department of Commerce Recovery Act

Award Terms for more information on this requirement. The Awardee should also display, where appropriate and practical, a publicly visible permanent sign or plaque at the project site after construction is complete, acknowledging the contributing partners as described above.

The Awardee agrees to acknowledge NOAA and the Conservancy's support of the project, including funding contributions and sponsorship, on all information relating to the Subaward as follows:

"This project was made possible through support provided by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce and The Nature Conservancy, under the terms of Cooperative Agreement NA09NMF4630308. The content and opinions expressed herein are those of the author(s) and do not necessarily reflect the position or the policy of the National Oceanic and Atmospheric Administration U.S. Department of Commerce or The Nature Conservancy, and no official endorsement should be inferred."

The term "Information" includes, but is not limited to, news releases, articles, manuscripts, speeches, trade association proceedings, symposia.

Section IX.C.2 contains additional Subaward requirements relevant to communications and outreach.

SECTION XVII - REQUIRED ASSURANCES & CERTIFICATIONS.

By signing this Subaward, the Awardee is providing the following assurances and certifications. In the event that any material misrepresentation in these assurances and certifications is discovered during the term of this Subaward, the Awardee or the Conservancy may elect to declare this Subaward null and void and immediately terminate it. In the case of an intentional material misrepresentation, the Conservancy may, at its option, recover damages resulting from the termination. Notice of termination shall be given to Awardee's address listed for the Awardee's Project Manager in Section VIII "Project Managers and Administrative Representatives." The Awardee shall require that the language of these certifications be included in the award documents for all subawards under this Subaward and that all subrecipients shall certify and disclose accordingly.

1. **NON-DISCRIMINATION.**

To the extent that such laws apply to Awardee, Awardee agrees to abide by U.S. laws with regard to non-discrimination of U.S. citizens or legal residents working under this Subaward on the basis of race, color, religion, national origin, handicap or age.

2. **COMPLIANCE WITH LAWS**

The Awardee represents, warrants, and agrees that, in connection with the transactions contemplated by this Award: (a) the Awardee can lawfully work in the United States; (b) the Awardee shall obtain, at its own expense (except to the extent otherwise explicitly stated in this Award) any permits or licenses required for the Awardee's services under this Award; and (c) the Awardee shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the Commonwealth of Virginia, and any other jurisdiction(s) in which the Awardee is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Awardee under this Award (in each case, an "Applicable Law"). The Awardee shall not take any actions that might cause the Conservancy to be in violation of any of such Applicable Laws.

3. **LOBBYING WITH FEDERAL FUNDS CERTIFICATION.**

The Awardee certifies, to the best of the Awardee's knowledge and belief that:

- a. No U.S. Federal appropriated funds have been paid or will be paid, by the Awardee or on behalf of the Awardee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any U.S. Federal contract, the making of any U.S. Federal grant, the making of any U.S. Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any U.S. Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than U.S. Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection the underlying U.S. Federal award, the Awardee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with instructions in Section IX.D.3.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. OTHER CERTIFICATIONS.

The Awardee certifies that the Awardee will not:

- a. Attempt to influence legislation or support lobbying within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code using any of the funds granted by the Conservancy; or
- b. Use any portion of these funds to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the U.S. Internal Revenue Code.

SECTION XVIII - USE OF CONSERVANCY NAME/LOGO

The Awardee may not use the Conservancy's name and/or logo in any way without prior written consent from the Conservancy, except to the extent the work performed contemplates their inclusion in the final work product.

SECTION XIX - ASSIGNMENT

This Subaward may not be assigned by the Awardee in whole or in part without the prior written consent of the Conservancy.

SECTION XX - SUBCONTRACTS AND SUBAWARDS

Unless expressly set forth in the approved scope of work and budget, the Awardee may not subcontract or subaward any work in whole or in part without the prior written consent of the Conservancy. In addition, Awardee may not subcontract or subaward any part of the approved project to any agency or employee or DOC and/or other Federal department, agency or instrumentality, without prior written approval from the Conservancy. If subcontracting/subawarding is permitted, please consult with the Conservancy's Grants Specialist listed in Section VIII above to determine what provisions should be included in the subcontract/subaward.

SECTION XXI - TERMINATION

If at any time the Prime Award is terminated, this Subaward shall also be automatically terminated as of the termination date of the Prime award. Additionally, the Conservancy shall have the right to terminate this Subaward by giving 30 (thirty) calendar days written notice to the Awardee of intent to terminate. Upon receipt of the termination notice from the Conservancy, the Awardee shall take all necessary action to cancel outstanding commitments relating to the work under this Subaward. In the event of termination prior to the originally agreed upon expiration, the Conservancy shall pay any obligations incurred by the Awardee that could not reasonably be canceled.

SECTION XXII - LIABILITY

The Awardee agrees to be responsible, where found liable and to the extent covered by insurance or specified by statute, for the payment of those claims for loss, personal injury, death, property damage, or otherwise arising out of any act or omission of its employees or agents in connection with the performance of this work. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth of Virginia. The Awardee participates in a self-insurance program administered by the Commonwealth of Virginia, which provides liability coverage for the Awardee, its officers, employees and agents for acts or omissions resulting in legal liability. If requested, the Awardee will provide a certificate of liability insurance coverage under the Commonwealth of Virginia Risk Management Plan.

SECTION XXIII - APPLICABLE LAW

This Subaward shall be interpreted, construed and governed by the laws of the Commonwealth of Virginia and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Subaward, Conservancy and Awardee agree that litigation shall be conducted in the United States District Court for the Eastern District of Virginia, Alexandria Division. The Parties hereby agree that venue in the Eastern District of Virginia shall be proper and that the Parties are subject or will make themselves subject to personal jurisdiction in that court.

SECTION XXIV - PRECEDENCE

Any inconsistency in this Subaward shall be resolved by giving precedence in the following order:

1. 2 CFR Part 225
2. The Office of Management and Budget (OMB) Circular A-110 as incorporated into the Department of Commerce's regulations at 15 CFR Part 24;
3. The Office of Management and Budget (OMB) Circular A-133
4. The Terms of this Subaward, including, if applicable, subsequent Amendments;
5. The Prime Award including, if applicable, subsequent Amendments.

SECTION XXV - ENTIRE SUBAWARD, WAIVERS AND AMENDMENTS

This Subaward constitutes the entire Subaward between the Conservancy and the Awardee. No waiver, modification, or amendment of any of the terms or conditions stated herein shall be effective unless set forth in writing and duly signed by the Conservancy and the Awardee.

IN WITNESS WHEREOF, the parties have executed this Subaward by their fully authorized officers.

Date: 8/13/09

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation

By: Michael J. Lipford
Michael L. Lipford
Vice President and Virginia State Director

Legal approval: G.Barlow 7/30/09; H.Birle 8/11/09

Date: 8/13/09

COMMONWEALTH OF VIRGINIA,
VIRGINIA MARINE RESOURCES COMMISSION

By: Jacob McEwen
Its: Chief, administration
E. Hancock

- Attachment A: Prime Award
- Attachment B: Workplan and Budget

FIRST AMENDMENT TO SUBAWARD VCR-ARRA-VMRC-072309

between

THE NATURE CONSERVANCY

and

VIRGINIA MARINE RESOURCES COMMISSION

This First Amendment to Subaward VCR-ARRA-VMRC-072309 is made as of the 15th day of January, 2010, by and between The Nature Conservancy and Virginia Marine Resources Commission, as follows:

The parties entered into Subaward VCR-ARRA-VMRC-072309 by agreement dated August 13, 2009 (the "Agreement") and the parties now desire to amend the Agreement as follows:

1. The Reporting Due Dates in Section V – Reports for the ARRA Reports shall be revised from September 15, December 15, March 15, and June 15 to October 4, January 4, April 5, and July 5.
2. Part A of Section X – Other Provisions Required by the American Recovery and Reinvestment Act (ARRA) shall be replaced with the following:

By October 4, January 4, April 5, and July 5, the Awardee shall report the following for the prior three months ending September, December, March, and June, respectively:

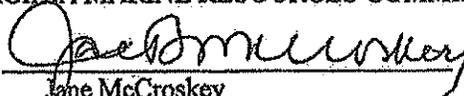
- (a) The number of new hires and existing employees (in FTEs) paid with ARRA funds, reported by NAICS code, for the reporting period and project-to-date;
 - (b) Total amount of ARRA funds received, for the reporting period and project-to-date;
 - (c) Total amount of ARRA funds expended or obligated, for the reporting period and project-to-date;
 - (d) List of activities paid for with ARRA funds including, name, description, and completion status.
3. Based on the attached September 23, 2009, determination memorandum from NOAA, Section XI – Construction/ Alteration/ Repairs is deleted.
 4. Subaward Attachment B: Workplan and Budget shall be replaced with the attached Attachment B: Workplan and Budget which has been revised to account for Year 1 completion delays.

All other terms and conditions in the Agreement not amended hereby shall remain in full force and effect.

In witness thereof, the parties have caused this First Amendment to be executed by their duly authorized representatives.

VIRGINIA MARINE RESOURCES COMMISSION

By:

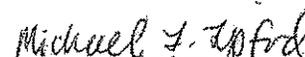


Jane McCroskey

Chief, Administration and Finance

THE NATURE CONSERVANCY

By:



Michael L. Lipford, Virginia State Director