

INVITATION FOR BIDS (IFB)

Issue Date: May 13, 2015

Sealed Solicitation Title:
Demolition of the White Lion Motel

Issuing Office: City of Williamsburg
 Department of Public Works
 2nd Floor
 401 Lafayette Street
 Williamsburg, Virginia 23185-3617
 Voice (757)220-6140 Fax (757)259-3798



IFB NO: 02-4101-16
Pre-Bid Conference: May 18, 2015 @9:00am Local Time
CLOSING DATE: June 1, 2015
CLOSING TIME: 2:00 pm Local Time
PROCUREMENT OFFICER: Julie Phares PHONE: 757-220-6181

Location Of Where Work Will Be Performed: _____
White Lion Motel
 912 CAPITAL LANDING ROAD _____
 WILLIAMSBURG, VA 23185

Demolition to be completed 120 day after Notice to Proceed.

Sealed Bids Will Be Received Until the Date and Time Noted Above For Furnishing the Goods/Services Described Herein And Then Opened In Public.

All Inquiries for Information Should Be Directed To the Public Works Department Noted Above

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING OFFICE NOTED ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO:

401 Lafayette Street Williamsburg Municipal Building 2nd Floor

In Compliance With This Invitation For Bids And To All The Conditions Imposed Therein, The Undersigned Offers And Agrees To Furnish The Goods/Services At The Price(s) Indicated In Section VII, Pricing Schedule.

Name And Address Of Firm:

 _____ Zip Code: _____
 FEI/FIN NO. _____
 Fax Number: (____) _____
 E-Mail Address: _____

Date: _____
 By: _____
 (Signature In Ink)
 Name: _____
 (Please Print)
 Title: _____
 Telephone Number: _____

PRE-BID CONFERENCE: A Pre-bid conference will be held on May 14, 2015 @ 9:00 a.m. Location will be at 924 Capital Landing Road, Williamsburg, VA. Bidders may contact Ralph Patterson, Project Manager, Williamsburg Department of Public Works at (757) 220-6140.

RETURN THIS PAGE WITH YOUR BID OFFER

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I. PURPOSE

It is the intent of this solicitation to secure through competitive sealed bidding, a complete demolition of the White Lion Motel, located at 912 Capital Landing, Williamsburg, Va.

II. SCOPE OF WORK

The contractor shall furnish labor, materials and equipment to accomplish the following described tasks.

The City of Williamsburg Department of Public Works is seeking Invitation for Bid for demolition of the White Lion Motel, located at 912 Capital Landing, Williamsburg, VA 23185.

Specifications:

1. Responsible for necessary permits (i.e. Demolition and Land Disturbance permits) and any additional fees
2. Demolition and removal of all above ground structures, asphalt, concrete and underground tanks. ~~Footings greater than 3 foot below the surface~~ are to be removed a depth of 3 feet. All holes and trenches are to be filled with select material and compacted. Any and all sanitary sewer connections to the City are to be located, cut and capped at the property line and witness stakes installed. The water service is to be cut at the property side of the meter. Grade site to drain, add 4" topsoil to the disturbed areas, fertilizer, lime and seed.
3. The existing pool is to be demolished to 3 feet below the surface and filled with VDOT 21A stone to an elevation of 4" below the finished surface. The stone is to be compacted in 8" lifts. The bottom of the pools is to be broken in a number of places to allow for drainage.
4. Grade site to drain, add 4" topsoil to the disturbed areas, fertilizer, lime and seed.
5. A Phase I Environmental Site Assessment and an Asbestos Survey was done for the site by ECS. The Asbestos Survey is attached.

III. PRE-BID CONFERENCE

A Pre-bid conference will be held on May 18, 2015 @ 9:00 a.m. Location will be at 924 Capital Landing, Williamsburg, VA. Bidders may contact Ralph Patterson, Project Manager, Williamsburg Department Public Works at (757) 220-6140.

IV. GENERAL TERMS AND CONDITIONS

- A. **VENDOR'S MANUAL**: This solicitation is subject to the provisions of the City of Williamsburg Purchase Procedures Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the Office of the Purchasing Agent, 401 Lafayette Street, Williamsburg, Virginia 23185, Telephone (757) 220-6181.
- 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 Contractor shall comply with applicable federal, Virginia and City of

Williamsburg laws and regulations.

- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City of Williamsburg 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 (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/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 submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or 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 City of Williamsburg 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 City of Williamsburg under said contract.

- H. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:**

1. **Invitation For Bids:** Failure to submit a bid on the official form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the invitation for bid may be cause for rejection of the bid; however, the City of Williamsburg reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such bid as non responsive. As a precondition to its acceptance, the City of Williamsburg may, in its sole discretion, request that the Bidder withdraw or modify non responsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
2. **Request For Proposals:** Failure to submit a proposal on the official 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 City of Williamsburg 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 (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/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 City of Williamsburg 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 City of Williamsburg 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 City of Williamsburg, 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 City of Williamsburg.

K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions 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 (BIDDERS/OFFERORS):** The City of Williamsburg may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City of Williamsburg all such information and data for this purpose as may be requested. The City of Williamsburg reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City of Williamsburg further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City of Williamsburg that such (bidder/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 City of Williamsburg 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 City of Williamsburg.

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 City of Williamsburg 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 City of Williamsburg 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 City'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 City of Williamsburg with all vouchers and records of expenses incurred and savings realized. The City of Williamsburg 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 City of Williamsburg within thirty (30) days from the date of receipt of the written order from the City of Williamsburg. 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 City of Williamsburg *Purchase Procedures 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 City of Williamsburg 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 City of Williamsburg, 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 City of Williamsburg may have.

Q. **MISCELLANEOUS:**

A. **Notices.** All notices required to be given under the terms of this Contract shall be in writing and shall be deemed to have been duly given when personally delivered to the addressee in person (and receipted on a copy of such notice) or upon receipt when properly addressed, return receipt requested, and delivered by the United States Postal Service or other letter delivery service to the address listed below:

To City:

City of Williamsburg
c/o Director of Public Works
401 Lafayette Street
Williamsburg, VA 23185

To Contractor: _____

or to any such other address as the party to receive the notice shall advise by due notice given in accordance with this section 16A.

B. **Severability.** If any clause or provision of this Contract is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Contract shall not be affected thereby, and in lieu of each such clause or provision of this Contract that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

C. **Attorney's Fees.** If either party shall default in the performance of any of the terms and conditions of this Contract, the non-defaulting party shall be entitled to recover all costs, charges, and expenses of enforcing this Agreement including reasonable attorneys' fees, paralegal fees and costs including, but not limited to attorneys' and paralegal fees incurred in any trial or appellate proceeding.

D. **No Assignment.** Contractor may not assign this Contract or any right, liability, or obligation hereunder without the prior written consent of City, which consent may be withheld by City in its sole discretion. Any purported assignment in violation of this provision shall be null and void. Any assignment to which City consents, which consent must be in writing, shall not release Contractor from any obligation or liability hereunder unless such release is provided in writing signed by City.

R. **TAXES:** Sales to the City of Williamsburg 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 City's excise tax exemption registration

number is 54-6001680.

- S. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages 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 bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

At all times during the life of this Contract, Contractor shall maintain the following insurance coverages:

- Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability for loss of life or damage or injury to persons or property arising out of or relating to Contractor's performance of this Contract, whether such performance is by Contractor, or by a subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall otherwise bear responsibility therefore. Minimum limits of liability for this coverage shall be \$2,000,000 combined single limit for any one occurrence.
- Broad form Contractual Liability insurance including the indemnification obligation set forth in this Contract.
- Workers' Compensation insurance covering the Contractor' statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.
- Automobile Liability insurance. The minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

All insurance coverages shall meet the following requirements:

- Contractor shall furnish to City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles, the amount of such deductible being subject to City's approval.
- The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Williamsburg, Virginia."
- The required certificate or certificates of insurance shall name the City of Williamsburg, its officers, agents, employees, and volunteers as additional insureds.
- Insurance coverages shall be in form and with an insurance company approved by the City which approval shall not be unreasonably withheld. All insurance companies providing coverage under this Contract must be authorized to do business in the Commonwealth of Virginia.

Contractor shall indemnify and hold harmless City, and City's officers, agents, employees, and other representatives, against any liability, loss or expense (including the loss of use of the Facility), due to any act or omission of Contractor or any of its subcontractors or of any of their respective employees in connection with the performance of this Contract.

Contractor shall fill out accident report forms regarding any injuries to persons or property that occur at the Facility or that in any way relate to the performance of this Contract by Contractor and its personnel and

subcontractors employed by Contractor and personnel of such subcontractors, and deliver such completed forms to City as soon as is reasonably possible following the occurrence.

T. **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 City of Williamsburg will publicly post such notice on the public posting notice board on the first floor, in the City of Williamsburg Municipal Building at 401 Lafayette Street for a minimum of 10 days.

U. **DRUG-FREE WORKPLACE:** During the performance of this Contract, Contractor agrees to (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the 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 paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a subcontractor in accordance with Title 11, Chapter 7 of the Code of Virginia (1950), as amended, (the "Virginia Public Procurement Act").

V. **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, or disability, or against faith-based organizations. 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.

W. **PERFORMANCE BOND**

Bond No. _____
Amount: \$ _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____ of _____, hereinafter called the Contractor and _____ a corporation duly organized and existing under and by virtue of the laws of the State of _____, hereinafter called the Surety, and authorized to transact business within the Commonwealth of Virginia as the Surety, are held and firmly bound unto **the City of Williamsburg, Virginia** as Owner, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for payment of which, well and truly be made to the Owner, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has executed and entered into a certain Agreement, hereto attached, with the Owner dated _____, 20__, for **Demolition of the White Lion Motel IFB No. 02-4101-16**

NOW THEREFORE, if the Contractor, and its successors and assigns, shall at all times duly, promptly, and faithfully perform the Work and any alteration in or addition to the obligations of the Contractor arising thereunder, including the matter of infringement, if any, of patents or other proprietary rights, and shall assure all guarantees against defective workmanship and materials, including the guarantee period following final completion by the Contractor and final acceptance by the Owner and comply with all the covenants therein contained in the Specifications, Drawings, and other Contract Documents required to be performed by the Contractor, in the manner and within the times provided in the Agreement, and shall fully indemnify and save harmless the Owner from all costs and damage which it may suffer by reason or failure to do so,

and shall fully reimburse and repay it all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work to be performed thereunder, or payment thereunder before the time required therein, or waiver of any provision thereof, or assignment, subletting or transfer thereof or any part thereof, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, addition to the terms of the Contract Documents or any such payment, waiver, assignment, subcontract or transfer.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Whenever Contractor shall be declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Owner shall have the right, at its option, to require the Surety to promptly proceed to remedy the default within 30 days of notice by proceeding or procuring others to proceed with completing the Agreement with its terms and conditions; and all reserves, deferred payments, and other funds provided by the Agreement to be paid to Contractor shall be paid to Surety at the same times and under the same conditions as by the terms of that Agreement such fund would have been paid to Contractor had the Agreement been performed by Contractor; and Surety shall be entitled to such funds in preference to any assignee of Principal of any adverse claimant. Notwithstanding the above, the Owner shall have the right, with the approval of the Surety which shall not be unreasonably withheld, to take over and assume completion of the Agreement and be promptly paid in cash by the Surety for the cost of such completion less the balance of the Contract price.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

By: _____(Seal)
Name: _____
Title: _____

Attest

SURETY

By: _____(Seal)

Attest

APPROVED AS TO FORM: _____, 20____

OWNER

NOTE: Date of Bond shall not be prior to the date of the Agreement. If the Contractor is a partnership, all partners shall execute the Bond.

IMPORTANT: The Surety named on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent shall be accompanied by a certified copy of the authority to act for the Surety at the time of signing of this Bond.

V. SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Williamsburg will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City of Williamsburg has purchased or uses its products or services.
- B. **ADDITIONAL USERS:** The City of Williamsburg is conducting this procurement on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract.
- C. **AWARD OF CONTRACT:** The City of Williamsburg will make the award on a total sum basis to the lowest responsive and responsible bidder. The City of Williamsburg reserves the right to conduct any test it may deem advisable and to make all evaluations. The City of Williamsburg also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the City of Williamsburg to be in its best interest. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards.
- D. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for sixty (60) calendar days after the closing date for this Invitation for Bids. At the end of the sixty (60) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- E. **DELIVERY:** State your earliest firm delivery or performance date on the IFB/RFP Cover Page. This date may be a factor in making the award.
- F. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal shall be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Bidder/Offeror	Due Date	Time
Street or Box Number	IFB No./RFP No.	
City, State, Zip Code	IFB/RFP Title	

Name of Contract/Purchase Officer or Buyer _____

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

Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

- G. **MAINTENANCE MANUALS: Not Applicable for this Solicitation.**

- H. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the City of Williamsburg reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the City of Williamsburg whenever such low bid exceeds the City's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the City of Williamsburg for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The City of Williamsburg shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the City of Williamsburg wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.
- I. **PREBID/PREPROPOSAL CONFERENCE:** A Pre-bid conference will be held on May 14, 2015 @ 9:00 a.m. Location will be at 924 Capital Landing, Williamsburg, VA. Bidders may contact Ralph Patterson, Project Manager, Williamsburg Department Public Works at (757) 220-6140
- J. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the City of Williamsburg to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered non responsive.
- K. **WARRANTY INFORMATION:** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the City of Williamsburg by any other clause of this solicitation. Copies of all proposed warranties shall be furnished with the bid/proposal.
- L. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete delivery and installation of the equipment ready for the City's use, and shall include all applicable charges; extra charges will not be allowed.
- M. **ACCEPTANCE TESTING AND PROOF OF PERFORMANCE:** Following delivery, performance and operation tests shall be performed to verify the proper operation of all components in full compliance with these specifications.
- N. **TRAINING: Not Applicable for this Solicitation.**
- O. **EXCEPTIONS TO SPECIFICATIONS:** A full explanation of the rationale for any exception to these specifications must be itemized and included in the bid.
- P. **SILENCE OF SPECIFICATIONS:** The City cannot be familiar with all various technical details of all bidders'/offerors' products. Any and all materials/equipment required to provide a functional unit meeting the needs of the City of Williamsburg not specifically mentioned herein shall be provided by the successful bidder without claim for additional payment; it being understood that the Invitation for Bid/Request for Proposal contemplates and requires delivery of safe and efficient equipment.
- Q. **METHOD OF PAYMENT:** Payment will be made within thirty (30) days of receipt of final approved invoice. Invoices for items ordered, delivered and accepted shall be submitted **IN DUPLICATE** directly to the payment address shown on the purchase order/contract upon satisfactory acceptance of the proposed equipment by the City of Williamsburg. All invoices and other correspondence relating to this project shall show purchase order number.
- R. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the City of Williamsburg, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the City of Williamsburg or to failure of the City of

Williamsburg to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

VI. METHOD OF PAYMENT

See Section V. SPECIAL TERMS AND CONDITIONS, Paragraph Q. METHOD OF PAYMENT

VII. PRICING SCHEDULE

The City of Williamsburg will make the award on a total sum basis to the lowest responsive and responsible bidder. Please state your bid price below, with the full understanding that it shall address all of the tasks identified in Section II. SCOPE OF WORK of this IFB.

\$ _____

Additional Pricing:

Because of possible unknowns the following items have been added for the purpose of unit prices.

Boiler Insulation (3 story building)	\$ _____	LS
Roof flashing sealants for penetrations all buildings	\$ _____	EA
Vapor barrier material under floor slabs and basement walls+/- 7500 SF.	\$ _____	SF
Waterproofing material below and around swimming pool +/- 1400 SF.	\$ _____	SF
Transite electrical components and cloth electrical wiring insulation	\$ _____	EA

RETURN THIS PAGE WITH YOUR BID OFFER

VIII. ATTACHMENTS

| **RETURN THIS PAGE WITH YOUR BID OFFER**

**CONTRACT FOR PERFORMANCE OF CONSTRUCTION
TO THE CITY OF WILLIAMSBURG, VIRGINIA**

This AGREEMENT, dated this _____ day of _____, 20____, by and between the CITY OF WILLIAMSBURG, a Virginia municipal corporation, hereinafter called the City; and _____(a corporation, limited liability company, or an unincorporated organization organized and existing under the laws of the State of _____ or, an individual trading under the above name) hereinafter called the Contractor.

WITNESSETH: The Owner and Contractor, for the consideration stated herein, agree as follows:

1. SCOPE OF WORK; TYPE OF GOODS; SERVICES

The Contractor shall perform all required Work and shall provide and furnish all labor, materials, necessary tools, expendable equipment and utility and transportation service and all else required to complete the construction of the Demolition of the White Lion Motel project all in strict accordance with the Drawings and Specifications, including any and all Addenda, and in strict compliance with the Contract Documents, the terms of which are incorporated herein by reference. It is understood and agreed that said labor, materials, tools, equipment and service shall be furnished and said Work performed and completed under the direction and supervision of the Contractor and subject to the approval of the City or its authorized representative.

2. CONTRACT PRICE

Depending upon the nature of the Work the City shall pay the Contractor as follows: As just compensation for the satisfactory performance of the Work, subject to any additions or deductions as provided in the Contract Documents, the unit and/or lump sum price as contained in the Bid Schedule attached hereto. The Contract Price is _____ (\$ _____) based upon unit and/or lump sum prices extended as herein contained.

3. TIME

The Contractor agrees to commence Work within _____ Days after the date of Notice to Proceed and further agrees to substantially Complete all Work under this Contract within _____ Days from the date of the Notice to Proceed and to reach Final Completion of all Work under this Contract within _____ Days from the date of the Notice to Proceed.

4. PAYMENT:

The following applies to payments to be made by the City to the Contractor and by the Contractor to its subcontractors, material men and suppliers:

- 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 City 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 City of Williamsburg 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).

• To Subcontractors:

a. The Contractor shall:

(1) Pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the City of Williamsburg for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) Notify the City 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 City of Williamsburg, 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 City of Williamsburg.

5. CONSTRUCTION GUARANTEE. If this Contract is for Construction, the Contractor guarantees that all materials and equipment, furnished by the Contractor, and all construction involved in this Contract shall be free from defects owing to faulty materials or workmanship for a period of one year

after date of Substantial Completion of the Work. All Work that proves defective, by reason of faulty material or workmanship within said period of one year, shall be replaced by the Contractor free of cost to the Owner. These guarantees shall not operate as a waiver of any of the Owner's rights and remedies for default under or breach of this Contract which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.

6. WARRANTIES; GOODS AND SERVICES. The following warranties apply to the furnishing of goods and services:

a. Contract for Sale of Goods: Unless otherwise provided in the award of bid signed by the City and the Contractor, the Contractor shall be bound by all warranties furnished to the City as part of its response to the City's IFB/RFP. If no warranties are furnished, then in addition to all warranties implied and expressly accorded by applicable law and not in limitation thereof, the Contractor warrants that such goods conform in all respects to the specifications and other requirements stated in the IFB/RFP and further warrants such goods against defects by reason of faulty materials or workmanship for a period of one year from the date of the City's acceptance thereof.

b. Contract to Provide Services: In addition to all warranties implied and expressly accorded by applicable law, and not in limitation thereof, the Contractor warrants that the Work performed under this Contract will meet and fully comply with all requirements and specifications set forth in the City's IFB/RFP, and that all Work shall be performed free of negligence and in accordance with generally standards for such Work and that such Work shall be fully satisfactory for the proposes intended.

7. FORCE MAJEURE. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Agent may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Agent.

8. INCORPORATION OF TERMS: Unless otherwise provided in a writing signed by the City and the Contractor, all terms and conditions contained in the Solicitation pursuant to which this Contract is awarded are incorporated in the Contract.

9. IMMIGRATION REFORM AND CONTROL ACT OF 1986: The Contractor certifies that it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended. The Contractor hereby reconfirms such certification.

10. OBLIGATIONS OF CITY AND CONTRACTOR: The City shall furnish to the Contractor all available information as listed in the Solicitation that may be useful for the Contract Work. To the extent that performance of the Work here contracted for so requires, the City shall assist the Contractor in obtaining access to enter upon public and private property as required to perform the Contract Work. The City shall designate a representative who shall serve as the principal contact and give direction to the Contractor throughout the duration of the Contract. The Contractor represents that it has, or shall secure at its expense, all personnel, including subcontractors, required to satisfactorily perform and fully complete the Contract Work.

11. CONFIDENTIALITY AND OWNERSHIP OF DATA: Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the Contractor in the performance of the Contract Work, shall not be made available to any individual or organization by the Contractor without prior written approval of the City. All such items shall become the property of the City upon payment of fees as required by the Contract.

12. REPORTS OF WORK: The City and the Contractor shall schedule progress meetings at

appropriate intervals throughout the duration of the Contract in order to provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred or are anticipated.

13. ASSIGNMENT OF CONTRACT: This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the City of Williamsburg.

14. CHANGES TO THE CONTRACT: Changes can be made to the Contract in any of the following ways:

A. 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.

B. The City of Williamsburg 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 City of Williamsburg a credit for any savings. Said compensation shall be determined by one of the following methods:

i. By mutual agreement between the parties in writing; or

ii. 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 City's right to audit the Contractor's records and/or to determine the correct number of units independently; or

iii. 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 City of Williamsburg with all vouchers and records of expenses incurred and savings realized. The City of Williamsburg 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 City of Williamsburg within thirty (30) days from the date of receipt of the written order from the City of Williamsburg. 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 City of Williamsburg *Purchase Procedures 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 City of Williamsburg or with the performance of the Contract generally.

15. CONTRACTOR RESPONSIBILITY FOR CITY PROPERTY: The Contractor shall be responsible for damages to City property caused by Work performed by the Contractor or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the City, at the Contractor's expense.

16. COPYRIGHTS OR PATENT RIGHTS: The Contractor certifies that there has been and shall be no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services

shipped or ordered as pursuant to this Contract or in its bid/proposal submitted in pursuit of this Contract. The Contractor shall at its own expense, defend any and all actions or suits charging such infringement, and will save the City of Williamsburg, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

17. INDEPENDENT CONTRACTOR: In its performance of this Contract, the Contractor is acting as an independent contractor and neither the Contractor nor its employees shall, under any circumstances, be considered servants or agents of the City of Williamsburg. At no time shall the City be responsible for any negligence or other wrongdoing by the Contractor, its employees or agents. The City shall not withhold from payments to the Contractor under this Contract, any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor, its employees or agents. Further, the City shall not provide to the Contractor or its employees or agents, any insurance coverage or other benefits, including Worker's Compensation.

18. SUBCONTRACTS: No portion of the Work shall be subcontracted without prior written consent of the City's Purchasing Agent. In the event that the Contractor wishes to subcontract some part of the Work, the Contractor shall furnish the Purchasing Agent the names, qualifications and experience of the proposed subcontractor(s). Any consent to subcontract shall not waive the Contractor's responsibility and liabilities for the full, timely and satisfactory performance of this Contract and the Contractor shall remain fully liable and responsible for the Work to be done by its subcontractors and shall assure compliance with all requirements of the Contract.

19. INDEMNIFICATION: The Contractor hereby binds itself and its successors to indemnify, defend, and save harmless the City of Williamsburg, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or Contractor's agents in the performance of the Contract, including any and all liability, loss, or expense occasioned by any violation of any copyrights or patent rights by the Contractor or any of its subcontractors in the performance of the Contract Work, and that the whole or so much of the moneys due to the Contractor under and by virtue of this Contract, as such or may be considered necessary by the City, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the City. The said Contractor further agrees to indemnify and save harmless the City of Williamsburg against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

20. HOLIDAYS: In the case of construction performed under this Contract, the Contractor must obtain advance approval from the City to perform Work on the following holidays:

New Year's Day	1 st day of January
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day in November
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving	4 th Friday in November
Christmas Eve	24 th day in December
Christmas Day	25 th day of December

21. TAXES: Sales to the City of Williamsburg are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries under this Contract shall usually be free of Federal excise and transportation taxes. The City's excise tax exemption registration number is 54-600168073.

22. USE OF BRAND NAMES: Unless otherwise provided in the solicitation for bids/proposals, the name of a certain brand, make or manufacturer does not restrict the Contractor to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the product desired. Any product which the City, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Contractor 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 City to determine if the product offered meets the requirements of the solicitation. Such submission is required even if offering the exact brand, make or manufacturer specified.

23. TRANSPORTATION AND PACKAGING: Freight charges quoted in the Contractor's bid for FOB destination shall include 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.

24. SHIPPING INSTRUCTIONS-CONSIGNMENT: Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under this Contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.

25. RESPONSIBILITY FOR SUPPLIES TENDERED: The Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the Contractor's expense promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense or dispose of them as its own property.

26. TESTING AND INSPECTIONS: The City reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at a destination herein specified, the City will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the City for such materials or supplies as are not in accordance with the specifications.

27. COMPLIANCE: Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the Contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.

28. POINT OF DESTINATION: All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.

29. REPLACEMENT: Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of the Contract, shall be replaced by the Contractor at no cost to the City.

30. PACKING SLIPS OR DELIVERY TICKETS: All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

- Purchase Order Number/Contract Number
- Name of product and Stock Number
- Quantity Ordered,
- Quantity Shipped,
- Quantity Back Ordered,
- The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

31. INSURANCE: Upon entering into the Contract and throughout the term thereof, the Contractor shall maintain in force the following insurance coverages. 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 Contractor further certifies that it and any subcontractors shall maintain in force the required insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Workers' Compensation - Statutory requirements and benefits.
2. Employer's Liability - \$100,000.
3. Commercial General Liability – \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The City of Williamsburg must be named as an additional insured when requiring a contractor to obtain Commercial General Liability coverage. When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, these coverages are to include Products, Completed Operations Coverage and Garagekeeper's Liability.

4. Automobile Liability - \$500,000 - Combined single limit. (If motor vehicle is to be used in the Contract.) In addition, various Professional Liability/Errors and Omissions coverages are required in soliciting those services as follows:

<u>5. Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Doctors, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,650,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$ 500,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$ 100,000 per occurrence, \$ 300,000 aggregate

The above coverages are required of all contractors performing work or services in or on City of Williamsburg facilities. The limits are minimums and may be increased. The requirement for Professional Liability/Errors and Omissions coverage and limits applies only to the professions/services show above. All other providers of services are specifically exempted from the requirement for providing Professional Liability/Errors and Omissions coverage under these General Terms and Conditions.

32. ANTI-DISCRIMINATION: The Contractor certifies to the City that it 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 this 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 City. (*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.

33. DRUG-FREE WORKPLACE: During the performance of every contract over \$10,000, 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.

34. CONFLICT OF INTEREST/ANTI-KICKBACK. Contractor warrants that, apart from the normal bidding or proposal procedures as provided by the City in the General Terms and Conditions and Instructions to Bidders or the City's Purchasing Manual, no person has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee and that neither Contractor nor any officer, employee or agent of Contractor has any interest, financially or otherwise, in the City or with any of its employees. For breach or violation of this warranty, the City shall have the right to terminate for cause, without liability or to allow such Agreement to remain in force, subject to the deduction or reimbursement hereinafter provided. In event of Contractor's breach or violation of the foregoing warranty if the City elects to allow the Agreement to remain in force, the City shall be entitled to deduct from the Agreement consideration, the full amount of such commission, percentage, brokerage, or other contingent fee and if such deductions are insufficient to fully reimburse the City, the Contractor shall promptly reimburse the difference to City. If the City elects to annul the Agreement, City shall have no further liability to make payments to Contractor and the Contractor shall within thirty (30) days of receipt of notice of annulment pay to the City the full amount of all commissions, percentage, brokerage or contingent fees paid by the City.

35. TERMINATION: Subject to the provisions below, the City may terminate the Contract upon thirty (30) days advance written notice to the Contractor. Upon receipt of a notice of termination, the Contractor shall cease all Work underway unless advised by the City to do otherwise. In the event of termination, the Contractor shall be compensated only for the services as set forth in the Contract that have been performed/provided to the City's satisfaction and expenses incurred as of the date of termination. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

a. Termination for Convenience: In the event that the Contract is terminated upon request and for the convenience of the City, without the required thirty (30) days advance notice, then the City shall be responsible for payment of services up to the termination date.

b. Termination for Cause: Termination by the City for cause, default or negligence on the part of

the Contractor shall be excluded from the foregoing provisions and termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the City may hold the Contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the City by reason of the Contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the Contract shall be canceled.

36. DEFAULT: In case of failure to deliver goods or services, or to perform construction work in accordance with the Contract terms and conditions, the City of Williamsburg, 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 City may have.

37. DISPUTES; CLAIMS. Written notice of a contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the City's Purchasing Agent no later than sixty (60) days after final payment. The Purchasing Agent shall give written notification of the final decision on such claim to the contractor within thirty (30) days of the date the claim was received. The contractor may not institute legal action before receiving the Purchasing Agent's final written decision, unless the Purchasing Agent fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

38. COMPLIANCE WITH ALL LAWS. The Contractor shall comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, in the performance of this Contract. The Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional license and permits necessary for performance of this Contract prior to the initiation of Work. If the Contractor is a corporation or limited liability company, the Contractor further expressly represents that it is in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Contract. The Contractor shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of the contract Work.

39. APPLICABLE LAWS AND COURTS: This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns and 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 Circuit or General District Courts of the City of Williamsburg and City of James City, Virginia. The Contractor shall comply with applicable federal, Virginia and City of Williamsburg laws and regulations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and first above written in (_____) counterparts each of which shall for all purposes be deemed an original.

CITY:

CITY OF WILLIAMSBURG

By: _____
Name

Title: _____

Address: _____

CONTRACTOR:

Insert Name of Contractor

By: _____
Name

Title: _____

Address: _____

Contractor's Registration

No.: _____

(If Contractor is a corporation or an unincorporated organization, attach evidence of authority to sign)

[Corporate Seal]

Attachments:
Contract