

Sealed Invitation for Bids (IFB):

Waller Mill Park Multi-Use Trail Resurfacing
(IFB) 03-7102-18



Issue Date: January 17, 2018

Issuing Office: City of Williamsburg – Parks and Recreation Department

Location of where work will be performed:

Waller Mill Park
901 Airport Road
Williamsburg, VA 23188

Period of Contract: One year from date of award.

NON-MANDATORY PRE-BID CONFERENCE: February 1, 2018 at 2:00 p.m. at Waller Mill Park (901 Airport Road, Williamsburg, VA 23188).

Proposals will be received until the closing date and closing time
No proposals will be accepted after the closing date and time.

All technical inquiries for information should be directed to Michael VanAudenhove, Parks Superintendent mvanaude@williamsburgva.gov All questions must be in writing and will be accepted up to five (5) business days prior to the closing date.

Sealed IFB – 03-7102-18 Waller Mill Park Multi-Use Trail Resurfacing
CLOSING DATE: February 21, 2018
CLOSING TIME: 2:00 p.m.
Non-Mandatory Pre-Bid Conference: February 1, 2018 2:00 p.m.
PROCUREMENT OFFICER: Julie Phares PHONE: 757-220-6181 jphares@williamsburgva.gov
TECHNICAL CONTACT: Michael VanAudenhove mvanaude@williamsburgva.gov

IF PROPOSALS ARE MAILED, SEND TO: City of Williamsburg - Finance Office, c/o Julie Phares Purchasing Agent, 401 Lafayette Street, Williamsburg, VA 23185.

IF PROPOSALS ARE HAND DELIVERED, DELIVER TO: Same as above.

SUBMISSIONS BY EMAIL WILL NOT BE ACCEPTED.

PROPOSALS SHALL BE CLEARLY MARKED “Waller Mill Park Multi-Use Trail Resurfacing (IFB) 03-7102-18.”

In compliance with this request for proposals and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

_____ Date: _____

_____ By: _____

(Signature in Ink)

_____ Zip Code: _____ Name: _____

(Please Print)

FEI/FIN NO. _____

Fax Number: (____) _____ Title: _____

E-Mail Address: _____ Telephone Number: _____

RETURN THIS PAGE WITH YOUR PROPOSAL

City of Williamsburg

Waller Mill Park Multi-Use Resurfacing

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I. Sealed Invitation For Bids (IFB 03-7102-18):

PROJECT: Waller Mill Multi-Use Trail Resurfacing

LOCATION: **City of Williamsburg, Virginia**

DATE: **January 17, 2018**

The City of Williamsburg, Virginia will receive sealed Bids for the above titled project at the Finance Office, c/o Julie Phares, Purchasing Agent, located at 401 Lafayette Street, Williamsburg, VA 23185 until **2:00 p.m.** local time on **Wednesday, February 21, 2018**, at which time the Bids will be publicly opened and read aloud. Any Bids received after the specified time and date will not be considered.

The Work under this Project generally consists of:

Scope of Work consists of milling the existing asphalt to a depth of 2 inches by 10 feet wide along the existing multi-use path and placing 2 inches of bituminous concrete to the same dimension of the current path, all at specific sections. Also included shall be the removal of all existing bollards at roadway and driveway intersections and placement of one bollard in the middle of the path on both sides of existing roadway crossings at Mooretown Road, Waller Mill Park entrance (both sides), and Rochambeau Road. Access to the path by the contractor shall be at Mooretown Road entrance, Waller Mill Park entrance road, and the access road off Airport Road at Station 46+10. No other access is allowed unless approved by the Owner.

Item #1: **Mobilization/Demobilization** – Contractor will be advised of storage/laydown areas for equipment, vehicles, and other supporting items necessary to complete the work. Contractor is required to return all disturbed areas to existing or better conditions as approved by the Owner. Also included shall be the temporary removal and re-installation of any existing fences, signs, or other obstacles within the work area. Any traffic control such as signs, flaggers, barrels, barricades, etc. shall be included with this Item. This includes traffic control at path intersection with Mooretown Road, Rochambeau Road, Waller Mill Park entrance road, and driveway crossing at Station 41+50. All erosion and sediment control shall be included in this item to include silt fencing and tree protection.

Item #2: **NS Flexible Pavement Planning** – shall include but not limited to all labor, materials, and equipment required for the removal of a maximum 2 inches of

existing pavement at a width of 10 feet for the distances provided below. Legal and proper disposal of all milled material shall be included in this Item. Saw cutting of existing pavement to allow for a smooth transition from existing to new asphalt surface shall be included in this Item.

Item #3: **Asphalt Concrete, Type SM-9.5** – shall include but not limited to all labor, materials, and equipment required for the placement of asphalt within the milled sections of the multi-use path. Preparation of subbase, tack coat, and any other work necessary for the placement of the asphalt shall be included in this section. New asphalt shall be a minimum 2 inches thick placed on top of existing subbase.

Item #4: **Removal of Existing Bollards** – shall include but not limited to all labor, materials, and equipment required for the removal of the bollards, placing approved compacted material within holes, and placement of bollards at a location identified by the Owner.

Item #5: **Resetting of Bollards** – shall include but not limited to all labor, materials, and equipment required for providing a hole and setting an existing bollard at a location determined by the Owner. One bollard will be placed at the center of the multi-use path at a point indicated by the Owner on both sides of the path at the intersection of the Park entrance and at the intersection of the path with Moorestown and Rochambeau Roads.

Contractor will be allowed storage of equipment, vehicles, and materials at a location indicated by the Owner and agreed upon.

Contractor shall provide signage indicating closure of the path during the construction period. Contractor shall be allowed to close the multi-use trail from Mooretown Road to Waller Mill park entrance road from Monday at 7:00 AM to Friday at 4:00 PM. The trail shall be passable in a safe accessible condition from Friday at 4:00 PM to Monday at 7:00 AM. Signage shall be covered or removed during the periods the trail is required to be open for public use. Cost of signage for closure of the trail shall be included in Item #1.

Contractor shall be responsible for repairing any damage to the existing path or surrounding areas caused by the work being performed by the Contractor. The Owner will determine the extent of the damage and approve all repair work prior to the Contractor leaving the work area. This includes damage to existing pavement not indicated for milling and paving, vegetation, fences, signs, and drainage within and adjacent to the work area.

Contractor shall place new asphalt as soon as practicable; milled areas shall not be left open during the periods the trail is required to be open for public use, unless otherwise approved by Owner.

This project shall be constructed in accordance with: the plans; the Virginia Department of Transportation *Road and Bridge Specifications*, dated 2016; and the Virginia Department of

Transportation *Road and Bridge Standards*, dated 2008; the 2011 edition of the *Virginia Work Area Protection Manual*; the 2009 edition of the *MUTCD*. All work shall be completed by within sixty (60) calendar days from Notice To Proceed.

Bid Security in the amount of **five percent (5 %)** of the Bid shall be submitted with each Bid.

A NON-MANDATORY PRE-BID CONFERENCE will be held on **Thursday, February 1, 2018, at 2:00 p.m.** Local Time at the Waller Mill Park Operations Building, 901 Airport Road. All questions must be in writing and will be accepted up to five (5) business days prior to the closing date. Emails are an acceptable form of written documentation.

Contractor registration in accordance with Title 2.2 Chapter 43, Code of Virginia is required. The Bidder shall include in its Bid the following notation: "Licensed Virginia Contractor No. _____."

Withdrawal of Bids due to error shall be subject to and in accordance with Section 2.2-4330 of the Code of Virginia and the Contract Documents.

The Owner reserves the right to reject any and all Bids and to waive any minor non-substantive errors in the Bid.

The City of Williamsburg does not discriminate in the solicitation or awarding of contracts on the basis of race, religion, faith-based organizations, color, national origin, age, disability or any other basis prohibited by state or federal law.

By: Robbi Hutton

Director of Parks and Recreation

City of Williamsburg

II. BID FORM

Bids to be opened: **February 21, 2018**
 Time **2:00 p.m.**
 Contract time limit Complete in 60 days
Performance Bond: 100%
Payment Bond: 100%
Bid Security: 5%

To: **City of Williamsburg**
Attn: Julie Phares, Purchasing Agent
401 Lafayette Street, Finance Office
Williamsburg, VA 23185

A. BID PROPOSAL

In compliance with this Document, titled Waller Mill Multi-Use Trail Resurfacing, and all Addenda issued to date all of which are part of this Bid, the undersigned hereby proposes to furnish all items including materials, supervision, labor, and equipment in strict accordance with, said Document, for the total base bid sum of:

NO.	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Mobilization/demobilization	LS	1		
2	NS Flexible Pavement Planning	Ton	587		
3	Asphalt Concrete Type SM-9.5A	Ton	587		
4	Removal of Existing Bollards	EA	16		
5	Resetting of Bollards	EA	4		
TOTAL OF ALL PRICES (BASE BID)					
(IN WORDS)				(\$	

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Document. The prices quoted shall include without exception all materials, supervision, labor, equipment, appliances, clean-up, incidental items, applicable sales, use and other taxes, insurance, building permit or fees, and the Contractor's labor, overhead, profit, mobilization and other mark-ups, and in full accordance with the Document. Include allowance for waste where appropriate. The unit prices shall be maintained throughout the Contract Time.

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B. ADDENDA

The undersigned acknowledges receipt of the following addenda:

Addendum No. _____ Dated: _____.

Addendum No. _____ Dated: _____.

Addendum No. _____ Dated: _____.

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- C. It is expressly agreed by us that the **City of Williamsburg**, Virginia shall have the right to reject any and all Bids and to waive any minor non-substantive errors in the Bid. Award shall be based on the lowest responsive and responsible **Total Base Bid**.
- D. Attached is a bond conforming to the requirements of the current Road and Bridge Specifications, it being understood that such bond is to be forfeited as liquidated damages if, upon acceptance of the terms of this proposal, I/we fail to execute the contract and furnish bond as provided in the current Road and Bridge Specifications.
- E. I/we declare that no other person, firm, or corporation is interested in this proposal.
- F. I/we have carefully examined the special provisions, job specifications, current Road and Bridge Specifications, and all other documents pertaining thereto and thoroughly understand the contents thereof.
- G. I/we meet the prequalification requirements for bidding on this proposal. VDOT Prequalified Contractors and/or Subcontractors are required for all work performed on the Project. Prequalification of Contractors and/or Subcontractors is in accordance with VDOT Road and Bridge Specifications, Section 102.
- H. I/we understand that the plans, provisions, and current Road and Bridge Specifications are a part of this proposal; that all of the quantities shown herewith are a part of this proposal; that all the quantities shown herewith are approximate only.
- I. I/we have examined the location of the proposed work and source of supply of materials.
- J. I/we agree to bind myself/ourselves upon award of the **City of Williamsburg** under this proposal to a contract with necessary surety bond to start work within 15 days of notification of the contract execution or as excepted by other contract language permitted by project specifications, and to complete all work in accordance with the plans, job specifications and current Road and Bridge Specifications within the time limit set forth in the contract.
- K. [This applies to projects over \$200,000 unless otherwise indicated]. I/We elect to utilize the Escrow Account Procedure described in the provision of this bid if determined to be the successful low Bidder. _____ (write "Yes" or "No")
 _____ Bid total does not qualify for escrow
 account option

L. CONTRACTOR'S REGISTRATION

Registered Virginia Contractor Class and No. _____

(NOTE: FAILURE TO INCLUDE CONTRACTOR'S REGISTRATION NUMBER IS GROUNDS FOR REJECTION OF THE BID.)

M. SIGNATURE

Contractor _____

Signed _____

Date _____

Title _____

NOTE: If Bidder is a corporation, write state of incorporation under signature.

VENDOR#/FIN# _____

MAILING ADDRESS AND TELEPHONE NUMBER OF BIDDER:

_____ () _____ [Telephone]

IF CORPORATION, PROVIDE NAME AND MAILING ADDRESS AS REQUIRED BELOW.

PRESIDENT

SECRETARY

TREASURER

IF PARTNERSHIP, PROPRIETORSHIP, LIMITED LIABILITY COMPANY OR OTHER FIRM, PROVIDE NAME AND MAILING ADDRESS OF EACH PARTNER, PROPRIETOR, OR MEMBER OF FIRM.

II. BID BOND

KNOWALL MEN BY THESE PRESENTS, that we, the undersigned, _____ Principal,
and _____ as
Surety, are hereby held and firmly bound unto **City of Williamsburg, Virginia** as OWNER in
the penal sum of _____ (5%)
for the payment of which, well and truly to be made, we hereby jointly and severally bind
ourselves, successors and assigns.

Signed, this _____ day of _____, 2018.

The Condition of the above obligation is such that whereas the Principal has submitted to the
OWNER a certain BID, attached hereto and hereby made a part hereof to enter into a Contract in
writing, for the project entitled: Waller Mill Park Multi-Use Trail Resurfacing.

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a Contract in the
attachment hereto (properly completed in accordance with said BID) and shall furnish a
BOND for faithful performance of said Contract, and for the payment of all persons
performing labor or furnishing materials in connection therewith, then this obligation shall be
void, otherwise the same shall remain in force and effect; it being expressly understood and
agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety
and its BOND shall be in no way impaired or affected by any extension of the time within which
the OWNER may accept such BID; and said Surety does hereby waive notice of any such
extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals,
and such of them as are corporations have caused their corporate seals to be hereto affixed and
these presents to be signed by their proper officers, the day and year set forth above.

Principal

Surety

By: _____
Attorney-in-Fact

IMPORTANT - Surety companies executing BONDS shall appear on the Treasury Department's
most current list (Circular 570 as amended) and be authorized to transact business in the
Commonwealth of Virginia.

IV. CERTIFICATION REGARDING DEBARMENT

This is to certify that this person/firm/corporation is not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred.

Name of Official

Title

Firm or Corporation

Date

V. AGREEMENT

**CONTRACT FOR PERFORMANCE OF CONSTRUCTION
OR THE FURNISHING OF GOODS AND/OR SERVICES
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

Construction: 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 _____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.

Goods: The type(s) and quantity(ies) of goods to be furnished are: _____

Services: The services to be provided are: _____

2. CONTRACT PRICE Depending upon the nature of the Work The City shall pay the Contractor as follows:

Construction: 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.

Goods: The Price for goods contracted for is _____ Dollars(\$ _____) determined as follows: _____

Services: As just compensation for the satisfactory performance of the services contracted for is _____ Dollars (\$ _____), determined as follows _____

3. TIME

Construction: 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.

Goods: All goods shall be delivered to the designated location not later than the ___ day of _____, 20__.

Services: All services shall be provided in accordance with the following schedule: _____

4. PAYMENT:

Construction: The following applies to payments to be made by the City to the Contractor and by the Contractor to its subcontractors, materialmen 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.

Goods: City shall pay Contractor for Goods delivered in compliance with this Contract as follows: _____

Services: City shall pay Contractor for services provided under this Contract as follows: _____

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. The workers' compensation policy shall include the City as an alternate employer.
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>Profession/Service</u>	<u>Limits</u>
Accounting aggregate	\$1,000,000 per occurrence, \$3,000,000
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.

All insurance policies providing the coverages required under paragraphs 1, 2, 3, 4 and 5 above shall require thirty (30) days' advance written notice of cancellation [ten (10) days in case of failure to pay premiums] to the City.

The above stated requirements regarding alternate employer, advance notice of change or cancellation, completed operations and advance notice of policy change or cancellation must be met by either the policies themselves, in which case a true copy of the policies must be furnished to the City or by policy endorsements, copies of which must be delivered to the City. The following properly completed endorsements will be acceptable:

- Workers' Compensation:
 1. Certificate of Coverage
 2. Alternate Employer Form WC 00 03 01 A
 3. Material Coverage Change or Cancellation Form WC 99 00 10 01 10A.
- Additional Insured: Form No. CG 20 10 11 85.
- Completed Operations: Form No. CG 20 37 07 04.
- Material Change or Policy Cancellation Notice: IL 60 05 VA 01 10 and Form No. CA 02 03 12 05.

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. Federal Immigration Reform and Control Act of 1986: Contractor shall not during the performance of this agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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).

39. 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.

40. 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]

APPROVED AS TO FORM:

City Attorney

Attachments:

General Terms and Conditions

Contract

Performance Bond

Payment Bond

GENERAL TERMS AND CONDITIONS AND INSTRUCTIONS TO BIDDERS

DEFINITIONS

Bid: The term “bid” as used herein includes written substantive response to a Request for Quotes, Invitation to Bid or Request for Proposals.

Bidder: one who submits a bid (defined above) pursuant a written Request for Quotes, Invitation to Bid or Request for Proposals issued by the City’s Purchasing Agent.

Competitive Bidding: The offer of firm bids submitted in response to an Invitation for Bids, Request for Quotes or Request for Proposals.

Competitive Negotiation: A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP). Negotiations are conducted with selected bidders.

Invitation for Bids (IFB): A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services. This type of solicitation is also referred to as an Invitation to Bid (“IFB”).

Late Bid: A bid which is received at the place designated in the Invitation for Bids or Request for Proposals after the deadline established by the solicitation.

Potential Bidder: A person who, at the time the City awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia, § 2.2-4301*).

Request for Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with bidders (to include prices) as distinguished from competitive bidding in response to an Invitation for Bids.

Responsible Bidder: A bidder who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia, § 2.2-4301*).

Responsive Bidder: A bidder who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia, § 2.2-4301*).

Specification: A description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. A specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. Specifications for service contracts normally take the form of a statement of work.

Vendor: One who sells goods or services.

PURCHASING MANUAL: This solicitation is subject to the provisions of the City of Williamsburg Purchasing Manual and any changes or revisions thereto, which are hereby

City of Newport News	York County Public Schools
City of Norfolk	Christopher Newport University
City of Portsmouth	College of William & Mary
City of Virginia Beach	Norfolk State University
City of Williamsburg	Tidewater Community College
County of Gloucester	Jamestown/Yorktown Foundation
County of James City	Southeastern Public Service Authority
County of King William	County of York
Thomas Nelson Community College	Portsmouth Redevelopment & Housing
Newport News Redevelopment & Housing Authority	CAS Norfolk Regional Office
	DDS Tidewater Regional Office

AUTHORITY AND COOPERATIVE PURCHASING: The City Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the City of Williamsburg. The City Purchasing Agent may be assisted by assigned buyers in the discharge of these responsibilities. Unless specifically delegated by the City Purchasing Agent, or by the City Manager no other City officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the City of Williamsburg for any indebtedness for the purchase of supplies or services. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the City shall not be bound thereby.

2. COMPETITION INTENDED: The City intends that Bid solicitations afford reasonable opportunities for competition. Bidders shall be responsible to advise the Purchasing Agent in writing if in the Bidder's opinion any language, requirement, specification, etc., of a solicitation stifles competition or inadvertently restricts or limits the requirements stated in the solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for submission of the bids.

BIDDING REQUIREMENT AND CONDITIONS

3. USE OF CITY BID FORM; CONDITIONS OF USE AND ACCEPTANCE: Failure to submit a bid in response to an IFB 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 IFB or the official bid form may be cause for rejection of the bid if the price, quality, quantity, delivery, necessary assurances, performance of the contract or other factors deemed by the City as important to the solicitation will be affected. The City 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 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 any contract awarded under the solicitation shall be effective unless reduced to writing and signed by the parties. The City will not be responsible for any errors or omissions of a Bidder. The solicitation must be signed by a representative authorized to legally bind the Bidder. By signing the solicitation, the Bidder shall be deemed to agree to the terms and conditions of the solicitation and to certify that the Bidder has inspected the job site(s) and is aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the City.

4. PRECEDENCE OF TERMS; CLARIFICATION OF TERMS: 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. Any prospective Bidder that

has questions about the specifications or other solicitation documents should contact the Purchasing Agent whose name appears on the face of the solicitation. Such contact must be made no later than five working days before the date set for bid opening or receipt of proposals. Questions must be submitted in writing. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.

5. BID ACCEPTANCE PERIOD: Any bid in response to a solicitation shall be valid for sixty (60) calendar days after the closing date stated in the IFB. At the end of the sixty (60) days the bid may be withdrawn at the Bidder's written request. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

6. IDENTIFICATION OF BID/PROPOSAL ENVELOPE: The signed bid shall be returned in a separate envelope or package, sealed and identified as follows:

From: _____ Name
of Bidder

Street or box number:

City, State & Zip Code

IFB No _____

Project Name

City Purchasing Agent: Julie Phares

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

Bids may be hand delivered to the location designated in the solicitation. No other correspondence or other bid or proposal should be placed in the envelope. Sealed Bids received after the closing date and time will not be accepted. Electronic Bids will not be accepted.

7. DELIVERY: The Bidder should state its earliest firm delivery or performance date on the IFB/RFP Cover Page. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, the Bidder should state the earliest reasonable delivery date, as this may be a factor considered in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders placed as a result of the bid, the City reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

8. WARRANTY INFORMATION: By submitting its bid, the Bidder shall be deemed to agree that the goods or services furnished under any award resulting from the solicitation shall be covered by the most favorable commercial warranties that the Bidder gives to 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 by any other clause of the solicitation. Copies of all

proposed warranties shall be furnished with the bid.

9. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS: Any bid or modification received at the place designated in the solicitation after the exact time specified therein for receipt thereof shall be considered a Late Submission.

The City is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the Bidder's sole responsibility to ensure that the Bidder's Submission reaches the place designated in the solicitation by the prescribed date and time.

a. The official time used for the receipt of responses is determined by reference to the clock designated by the Purchasing Agent. The Purchasing Agent shall determine when the Bid Receipt Deadline has arrived and shall announce that the Deadline has arrived and that no further bids or bid modifications will be accepted. All bids and bid modifications in the possession of the Purchasing Agent and such Agent's assistants at the time the announcement is completed are deemed to be timely, whether or not the bid envelope has been physically date/time stamped or otherwise marked by the time the Purchasing Agent makes the deadline announcement.

b. Late Submissions will be returned to the Bidder UNOPENED, if solicitation number, acceptance date and Bidder's return address is shown on the container.

c. If the City closes its offices due to inclement weather or emergency, scheduled bid openings or receipt of proposals will be extended to the next business day at the same place and time.

d. Bidders may modify their Submissions prior to the date and time specified for the bid opening. Facsimile modification of Submissions shall not be accepted unless specifically allowed by the terms of the solicitation.

10. ERRORS IN BIDS: When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the Bidder. Carelessness in quoting prices, or any other detail of a bid, will not relieve the Bidder of responsibility to provide the goods or services. Bidders are cautioned to recheck their bids for possible errors. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform in accordance with the bid if accepted.

11. IDENTIFICATION OF BID ENVELOPE: The signed bid and requested copies must be returned to the Purchasing Agent in a separate envelope or package, sealed and addressed as specified in Page 1 of the solicitation. Such envelope or package must be identified on its face as provided in paragraph 6 hereinabove.

If a bid does not comply with the above requirements, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid to be disqualified.

12. BID PRICING: The following applies to bid prices:

a. The Bidder warrants by virtue of submitting its bid that prices, terms, and conditions quoted therein are firm for acceptance for a period of sixty (60) days from the date of opening of such bid unless otherwise stated by the City or the Bidder.

b. Prices shall be stated in units of quantity as specified in the bid form.

c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. Such analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.

d. Prices stated in a bid shall be for complete installation ready for the City's use and shall include all applicable freight and installation charges; extra charges will not be allowed.

e. When an annual contract is not requested in the solicitation and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

13. CONDITIONAL BIDS: Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

14. OPENING OF BIDS: At the time fixed for the opening of bids, all properly submitted bids will be opened and in the case of competitive bids (as opposed to responses to Requests for Proposals), the names of the bidders and the amount thereof shall be read aloud and made readily available to the public. Bids will be opened at the time and place stated in the Invitation for Bids or as modified by subsequent Addenda, and their contents publicly announced. The Purchasing Agent shall decide when the specified time for bid opening has arrived. No responsibility will be attached to any officer or agent of the City for the premature opening of a bid not properly addressed and identified. Bid opening shall be no sooner than 24 hours after the time set for receipt of bids.

If a public opening of bids in response to a Request for Proposals is held, only the names of the Bidders will be read publicly.

15. RESPONSE TO SOLICITATIONS: If a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid. Because of the large number of firms listed on the City's Bidders List, it may be necessary to delete therefrom the names of potential bidders who fail to respond after having been invited to bid on three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the potential bidder from the City's Bidder's List.

16. BIDDER INTERESTED IN MORE THAN ONE BID: If more than one bid is offered by any one Bidder, either directly or by or in the name of any officer, member, partner, employee, agent, affiliate or any other person or entity acting on behalf of or in concert with the Bidder, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders that submit a bid directly in response to the solicitation.

17. STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND CITY BUSINESS LICENSE: Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (State registration of contractors), which requires that a contractor must show evidence of proper licensure as required by such chapter as a condition of consideration of such contractor's bid.

All persons doing business in the City of Williamsburg are required to be licensed in accordance with the City's "Business, Professional, and Occupational Licensing ("BPOL Tax") as set forth in Chapter 18, Article X of the Williamsburg Code. Wholesale and retail merchants without a

business location in the City are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Commissioner of the Revenue for the City of Williamsburg, telephone (757) 220-6151.

18. PROPRIETARY INFORMATION: Section 2.2-4342F of the Code of Virginia states: "Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

19. TAX EXEMPTION: The City is exempt from the payment of any federal excise or Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder.

20. DEBARMENT STATUS: A Bidder that submits a bid in response to a solicitation shall be deemed to certify that the Bidder is not currently debarred by the City of Williamsburg, the Commonwealth of Virginia, the Federal Government, any local government or government agency, entity or authority from submitting bids or proposals on contracts for the type of goods and/or services covered by the solicitation, nor is the Bidder an agent of any person or entity that is currently so debarred.

21. ANTI-DISCRIMINATION: By submitting their (bids/proposals), Bidders certify to the City 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 City. (*Code of Virginia*, § 2.2-4343.1E). The Contractor hereby reconfirms such certification.

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.

22. ETHICS IN PUBLIC CONTRACTING: The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, are applicable to all contracts solicited or entered into by the City of Williamsburg. A Bidder by submitting a bid is deemed to certify that the bid is made without collusion or fraud and that the Bidder has not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with the bid; that the Bidder has not conferred with any public employee having official responsibility for the procurement transaction, nor has the Bidder demanded or received from any supplier or subcontractor, as an inducement for the award of a subcontractor or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

The Bidder is further deemed to certify that to the best of its knowledge, no employee of the City, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the Bidder's business and that no person associated with the Bidder has any interest that would conflict in any manner with the performance of the contract resulting from the solicitation.

23. PERFORMANCE AND PAYMENT BONDS: When provided for in the solicitation, the successful Bidder shall furnish to the City a performance bond and labor and material payment bond with surety satisfactory to the City Attorney in the amount of the contract price. Such bond(s) shall be furnished at a time of or prior to execution of the contract.

24. NO CONTACT POLICY: No Bidder shall initiate or otherwise have contact related to the solicitation with any City employee, other than the Purchasing Officer, after the date and time established for receipt of bids. Any contact initiated by a Bidder with any City representative, other than the Purchasing Agent, concerning the solicitation is prohibited and may cause the disqualification of the Bidder from the procurement process.

25. LICENSES, PERMITS, AND FEES: All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by City or the Commonwealth of Virginia.

26. INSURANCE: By signing and submitting its bid/proposal, the Bidder certifies that if awarded the contract, at the time that the contract is awarded, it will have in force and maintain in force throughout the term of the contract the following insurance coverages unless otherwise specified in the solicitation.

1. Workers' Compensation - Statutory requirements and benefits. The workers' compensation policy must include the City as an alternate employer. 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. Motor Vehicle Liability - \$500,000 - Combined single limit. (If motor vehicle is to be used in performance of the contract.).

5. In addition, various Professional Liability/Errors and Omissions coverages are required in soliciting those services as follows:

Accounting \$1,000,000 per occurrence,
\$3,000,000 aggregate

Architecture \$2,000,000 per occurrence,
\$6,000,000 aggregate

Asbestos Design, Inspection/Abatement
\$1,000,000 per occurrence,
\$3,000,000 aggregate

Health Care Practitioner (to include:

Dentists, licensed Dental Hygienists, Optome-

trists, Registered or Licensed Practical Nurses,

Pharmacists, Doctors, Podiatrists, Chiropractors,

Physical Therapists, Physical Therapist Assis-

tants, 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 occur-rence, \$1,000,000 aggregate

Legal \$1,000,000 per occurrence, \$5,000,000 aggregate

Professional Engineer \$2,000,000 per occur-rence, \$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 shown 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.

All insurance policies providing the coverages required under paragraphs 1, 2, 3, 4 and 5 above must require thirty (30) days' advance written notice of cancellation [ten (10) days in case of failure to pay premiums] to the City.

A simple notation of the required policy endorsements on a Certificate of Insurance (ACORD form) will not be accepted. The requirements must be met by either the policy itself, in which case a true copy of the policy must be furnished to the City or by policy endorsements, copies of which must be delivered to the City. The following properly completed endorsements will be acceptable. (Copies of forms are attached):

- Workers' Compensation:
- 4. Certificate of Coverage
- 5. Alternate Employer Form WC 00 03 01 A
- 6. Material Coverage Change or Cancellation Form WC 99 00 10 01 10A
- Additional Insured: Form No. CG 20 10 11 85.
- Completed Operations: Form No. CG 20 37 07 04
- Material Change or Policy Cancellation Notice: Form No. IL 60 05 VA 01 10 and Form No. CA 02 03 12 05

27. INVOICES AND CORRESPONDENCE: If not otherwise provided in the Contract awarded

pursuant to the solicitation, and subject to the City's satisfaction with the product or service, the successful Bidder's invoices shall be paid within thirty (30) days of the City's receipt of invoice mailed to the payment address shown on the purchase order/contract. All invoices and other correspondence relating to this project shall show purchase order number.

28. ETHICS IN PUBLIC CONTRACTING: By submitting their bids/proposals, Bidders 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, 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.

SPECIFICATIONS

29. BRAND NAME OR EQUAL ITEMS: Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer will not restrict Bidders to the specific brand, make or manufacturer. The naming of a manufacturer without more, is intended to convey the general style, type, character and quality of the product desired, and 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, may be accepted by the City in its sole discretion. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the offered product meets the requirements of the solicitation. Such data is required even if the Bidder proposes to use 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 to enable the City to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid that the offered product is an "equal" product, such bid will be considered to offer the brand name product referenced in the solicitation.

30. FORMAL SPECIFICATIONS: When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the Bidder will be required to furnish products in conformity with that specification.

31. TRANSPORTATION AND PACKAG-

ING: By submitting their bids/proposals, all Bidders 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 in the bid/proposal, 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.

32. OMISSIONS & DISCREPANCIES: Any items or parts of any equipment listed in the solicitation that are not fully described or are omitted from the solicitation's specifications, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention

is made of any products, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of those laws, ordinances, etc., shall be construed as the minimum requirements of the specifications.

33. EXCEPTIONS TO SPECIFICATIONS: A full explanation of the rationale for any exception to specifications must be itemized and included in the bid.

34. SILENCE OF SPECIFICATIONS: The City cannot be familiar with all various technical details of all Bidders' products. Therefore, any and all materials/equipment required to provide a functional product that meets the City's needs although not specifically mentioned in a solicitation shall, nevertheless, be provided by the successful Bidder without claim for additional payment; it being understood that the IFB/RFP contemplates and requires delivery of a safe, fully and properly functional product that meets with the solicitation and accompanying specifications.

35. PRODUCT STANDARDS. Unless otherwise indicated in the solicitation, any product delivered shall be standard new equipment, latest model, the best quality. All work performed shall be the highest grade work. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.

36. SAMPLES: Evidence in the form of samples may be requested if a brand being quoted upon is other than as specified. The City reserves the right to request that such samples be furnished at the time of bid opening. The City also reserves the right to request samples after the date of bid opening. Requested samples must be furnished to the City free of expense, and if not used in testing or destroyed, will, upon request, be returned at the Bidder's expense.

37. ANNUAL CONTRACT USAGE REQUIREMENTS: Whenever a bid seeks a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by the City as to the total amount that may be purchased under any resulting contract. Statements of quantities or usage are for the Bidder's information only and will be used for tabulation and presentation of bid.

38. PRODUCT INFORMATION: The Bidder shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid to enable the City to determine if the offered product meets the solicitation. Failure to do so may cause the bid to be declared non responsive.

39. EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete delivery and installation of the product or work, as the case may be, ready for the City's use, and shall include all applicable charges. Extra charges will not be allowed.

40. 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.

41. TRAINING: Training shall be provided by the successful Bidder to familiarize designated City personnel with the operation, maintenance and care of all products furnished.

42. NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are cancelled or rejected, the City 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 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 for the solicitation prior to the issuance thereof. Negotiations with the low bidder may include both modifications of the bid price and specifications of the product(s) to be furnished or the scope of work to be performed. The City shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the City wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the City and the lowest responsive, responsible bidder.

AWARD

44. AWARD OR REJECTION OF BIDS: The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the City to accept it. Awards made in response to a RFP will be made to the most qualified Bidder whose proposal is determined, in writing, to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the City. Award may be made to as many Bidders as deemed necessary to fulfill the anticipated requirements of the City. The Purchasing Agent shall have the right to negotiate with the lowest responsive, responsible Bidder should bids exceed available funds. The Purchasing Agent shall reject the bid of the Bidder who is deemed to be a non-responsive or non-responsive.

43. DETERMINATION OF RESPONSIBILITY: Each Bidder shall be prepared if so requested by the City, to present evidence of its experience, qualifications and financial ability to carry out the terms of the contract.

Prior to award of the contract, under an IFB, an evaluation will be made to determine if the low Bidder, or the successful Bidder has the capability in all respects, to perform fully the contract requirements and moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required. Factors to be evaluated include, but are not limited to:

- a. Sufficient financial ability to perform the contract as evidenced by the Bidder's/Bidder's ability to obtain payment and performance bonds from an acceptable surety;
- b. Appropriate experience to perform the Work described in the bid documents;
- c. Any judgments entered against the Bidder, or any officers, directors, partners or owners for breach of a contract for construction;
- d. Any substantial noncompliance with the terms and conditions of prior contracts with a public body without good cause where the substantial noncompliance is documented; or
- e. A conviction of the Bidder or any officer, director, partner, project manager, procurement manager, chief financial officer, or owner in the last five years of a crime relating to governmental or nongovernmental construction or contract-ing;
- f. Any current debarment of the Bidder, any officer, director or owner, from bidding or contracting by any public body of any state, any state agency, or any agency of the federal government.

The City reserves the right to disqualify or refuse to accept the bid of any Bidder who has been convicted, or entered a plea of guilty or nolo contendere, in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract whether federal, state, or local, or who has been determined in any judicial proceeding to have violated any antitrust, bid-rigging or collusive practice statute in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been initiated. A Bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing in conformance with the procedures in §2.2-4359 of the Code of Virginia, as amended.

45. OTHER FACTORS CONSIDERED: In addition to price (when applicable), the following factors shall be considered in the City's award decision:

- a. The total completion time proposed by the Bidder.
- b. The quality of performance and workmanship of previous contracts, services or products, or references which attest to other specific experiences;
- c. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
- d. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
- e. The ability and availability of the Bidder to provide both quality and timely maintenance, service, and/or parts;
- f. The resale value, life cycle costing, and value analysis of a product;
- g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
- h. Delivery of a product and timely completion of a project as stated by vendor in bid;
- i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the City;
- j. Product or parts inventory capability as it relates to a particular bid; and
- k. Results of product testing.

In addition to, and not in limitation of the above, the City reserves the right to make such reasonable investigations as it deems necessary and proper to determine the ability of the Bidder to perform the work/furnish the product(s). The Bidder shall furnish to the City all such information and data for this purpose as may be requested. Further, the City reserves the right to conduct on-site inspections of any Bidder's facilities prior to award to satisfy questions regarding the Bidder's capabilities.. The results of said inspection will be considered in determining Bidder's capabilities of successfully performing the contract contemplated under the IFB or RFP. The City reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of a Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

46. NOTICE OF REQUIRED DISABILITY LEGISLATION: The City of Williamsburg is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the City, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

47. TIE BIDS: In the case of a tie bid, the City may give preference to goods, services and construction produced in the City or provided by persons, firms or corporations having principal places of business in the City. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no City or Commonwealth choice is available, the tie shall be decided by lot.

48. NONDISCRIMINATION OF CONTRACTORS: A Bidder or contractor shall not be discriminated against in the solicitations or award of a contract under this solicitation because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the contract is awarded to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to such 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 City shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

49. COPYRIGHTS OR PATENT RIGHTS: The Bidder certifies by submission of its bid/proposal that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of its bid/proposal. The successful Bidder shall, at his 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.

50. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of the solicitation, the Purchasing Agent will publicly post such notice on the public posting notice board in the 1st floor hallway display case of the City of Williamsburg Municipal Building at 401 Lafayette Street for a minimum of 10 days.

51. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this IFB/RFP, no indication of such sales or services to the City of Williamsburg will be used in the successful Bidder's/Bidder's product literature or advertising.

BIDDER REMEDIES

52. PROTEST OF AWARD OR DECISION TO AWARD: Any Bidder who desires to protest the award or decision to award a contract, by the City shall submit such protest in writing to the Purchasing Agent no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected

Bidder is not a responsible Bidder. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Bidder appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit a Bidder to challenge the validity of the terms or conditions of the solicitation.

CONTRACT The successful Bidder shall enter into a contract with City substantially in the form of the contract attached hereto and designated "Attachment A." The completed contract shall be subject to approval by the City Attorney.

VI. 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 _____, 2018, (Waller Mill Park Multi-Use Trail Resurfacing)

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 _____, 2018, 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: _____, 2018

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.

VII. PAYMENT 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 _____, 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, 2018, for Waller Mill Park Multi-Use Trail Resurfacing.

NOW THEREFORE, if the Contractor shall promptly make payments to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in the Agreement, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools consumed, used or rented in connection with the construction of the Work, and all insurance premiums on the Work, and for all labor performed in the Work, whether by Subcontractor or otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received, 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, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

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.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this ____ day of _____, 2018, 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: _____, 2018

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.

IX. NOTICE TO PROCEED

TO: **{CONTRACTOR}** DATE: _____, 2018

PROJECT: **Waller Mill Multi-Use Trail Resurfacing**

You are hereby notified to commence Work in accordance with the Agreement dated _____, 2018, on or before _____, 2018, and you are to substantially complete the Work within **forty-five (45)** Days thereafter and reach Final Completion of the Work within **sixty (60)** Days thereafter. The date of Final Completion of all Work is therefore _____, 2018.

Liquidated damages as stipulated in the Bid form, in the amount of **\$350** per Day for failure of the Contractor to substantially complete the Work by the date for Substantial Completion and **\$350** per Day for failure to complete the Work by the date for Final Completion, will be assessed by the Owner as stated above or as may be modified by duly executed Change Orders.

OWNER: City of Williamsburg

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

_____ this _____ day of _____, 2018

CONTRACTOR: _____

BY: _____

TITLE: _____

End of Section