

# HAMPTON VA

## INVITATION TO BID – CONSTRUCTION

ISSUE DATE: February 14, 2023	ITB #: 23-40TM	NGIP CODE: 909.30
DATE/TIME OF CLOSING: March 16, 2023 at 2:00 p.m. EST	BUYER NAME: Tammy Martin, Senior Buyer	COMMODITY: Construction
THE CITY OF HAMPTON IS SEEKING BIDS FROM QUALIFIED BIDDERS TO PROVIDE FOR THE CONSTRUCTION OF FIRE STATION 3.		
ACKNOWLEDGE RECEIPT OF ATTACHMENTS: A ____ B ____ C ____ D ____ (Please initial)		
ACKNOWLEDGE RECEIPT OF ADDENDUM: 1 ____ 2 ____ 3 ____ 4 ____ (Please initial)		
Pre-Bid Conference – Non Mandatory Prebid to be held on February 28, 2023 at 11:00 a.m. via zoom. City of Hampton Procurement is inviting you to a scheduled Zoom meeting.		
Join Zoom Meeting <a href="https://us06web.zoom.us/j/82554970103?pwd=WTBQUGNXQUZMZWJiZGtWOHNFaFFmUT09">https://us06web.zoom.us/j/82554970103?pwd=WTBQUGNXQUZMZWJiZGtWOHNFaFFmUT09</a>		
Meeting ID: 825 5497 0103 Passcode: 989114		
<b>BIDDER NAME:</b>		

**COMPETITIVE SEALED BIDDING.** This Invitation to Bid (“ITB”) is subject to the competitive sealed bidding provisions outlined in Virginia Code §2.2-4302.1. **Sealed bids** will be received in Consolidated Procurement 1 Franklin Street Suite 345 Hampton, VA, 23669 until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. **Bids received by telephone, email, facsimile, or any other means of electronic transfer will NOT be accepted.** The City of Hampton is not responsible for late delivery by the United States Postal Service or any other courier. All inquiries for information regarding this ITB are to be directed to the Issuing Office as defined herein.

**THIS IS NOT AN ORDER.** The City of Hampton, hereafter referred to as “the City”, reserves the right to accept or reject any and all bids in whole or in part and waives any informality in the competitive sealed bidding process. Further, the City reserves the right to enter into any one or more contracts deemed to be in its best interest. The entire contents of the ITB, addenda, and Bidder’s bid shall be incorporated by reference into any resulting contract.

**QUESTION PERIOD.** All questions regarding this solicitation shall be submitted in writing to [tmartin@hampton.gov](mailto:tmartin@hampton.gov) by no later than 3:00 PM EST on March 7, 2023. **Questions must be submitted in writing; telephonic inquiries will not be considered.**

**All terms and conditions (bid submission, general, and special, as applicable) in this solicitation are intended to apply to the bid submitted by bidder and any resulting contract. The terms and conditions in this solicitation shall supersede any conflicting terms and conditions offered by bidder. Any additional terms and conditions a bidder intends to be considered shall be submitted with the bid as an exception. Such exceptions may result in a finding that the submittal is non-responsive to the bid, and bidder may be denied award based on claimed exceptions. Contractual documents submitted by a successful bidder after an award will not be accepted.**

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# SECTION A

## Subsection A.1 BID SUBMISSION TERMS AND CONDITIONS

### I. PREPARATION

- 1.1 Throughout the bidding process, up until award, bidders are prohibited from contacting City staff, representatives or agents other than the Consolidated Procurement Department on the subject of this ITB or any subject related to this ITB except with prior knowledge and express permission from the Procurement Director or designee.
- 1.2 All attached response forms must be used and submitted. Responses not submitted on said forms or not fully completed with all information may be declared nonresponsive. Additional pages may be attached if additional space is required to complete the forms.
- 1.3 All documents shall be signed in ink. Any corrections to entries made on forms shall be made in ink and initialed by the person signing the response. Bids containing any conditions, omissions, unexplained alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the City as being incomplete or nonresponsive.
- 1.4 All bids shall be submitted sealed, plainly marked showing the bid number, date, and time. Failure to return all required pages may result in a determination that the submittal is non-responsive.
- 1.5 General questions, requests for explanations, or interpretations of documents shall be made as directed. No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of the contract.
- 1.6 During preparation and prior to opening, each vendor shall not divulge, discuss or compare his response with others, and shall not collude with any other party to a response. A signed response shall be taken as an indication that the vendor fully understands the Commonwealth of Virginia's Conflict of Interest Act and the Commonwealth of Virginia's Ethics in Public Procurement Act and that his actions in no way violate any of the provisions therein.
- 1.7 Unless this solicitation contains a clear statement that only one certain brand, make or manufacturer is acceptable and a clear reason is stated why such is so, the name of a certain brand, make or manufacturer does not restrict vendors to that named. Such only conveys the general style, type, character, and quality of that desired. During evaluation of responses, it shall be the sole discretion of the City to determine what is equal, considering quality, workmanship, economy of operation, and suitability for the purpose intended.
- 1.8 The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size, and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
- 1.9 It is the responsibility of each bidder in preparing its bid:
  - a) To examine thoroughly the bid documents;
  - b) To visit the site to become familiar with and satisfy the bidder as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the work;
  - c) To study and carefully correlate the bidder's knowledge and observations with the bid documents and other such related data; and
  - d) To promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which the bidder has discovered in or between the bid documents and such other related documents or field/site conditions.
- 1.10 Prices shall be all inclusive for the scope of the solicitation. Where applicable, the following shall apply: All shipments shall be F.O.B. destination, freight included. Delivery shall be inside as

directed at the address indicated. Required delivery times and terms of payment shall be clearly stated.

- 1.11 Prices shall be stated in units of quantity specified. No additional charges shall be passed to the City, including any applicable taxes, delivery, or surcharges. Prices quoted shall be the final cost to the City.
- 1.12 It is the Bidder's responsibility to ensure that the Bidder receives all addenda to accompany the bid. Addenda are posted on the City's website where bid documents can also be found.
- 1.13 It is the policy of the City of Hampton to encourage the development and sustain utilization of minority and woman-owned businesses (MBE/WBE). The City of Hampton encourages these firms to compete and encourages non-minority firms to provide for the participation of these businesses through subcontracting opportunities. Bidder is requested to complete the MBE/WBE Forms in this document.

## II. SUBMISSION

### 2.1 Bid Submissions MUST include:

- a) **Subsection A.2: Bidder Information**
  - b) **Subsection A.3: Experience and Qualifications**
  - c) **Subsection A.4: Bid, including pricing sheet and any necessary attachments identified in the Scope of Work and Specifications, including all applicable licenses and permits**
  - d) **Subsection A.5: Bidder Representations and Acknowledgements**
  - e) **Subsection A.6 Bid Bond (for projects greater than \$100,000).**
  - f) **Subsection A.7 MBE/WBE Forms**
- 2.2 If the City is closed for business at the time scheduled for bid opening, for whatever reason, sealed bids will be accepted and opened on the next business day of the City, at the originally scheduled hour.
  - 2.3 All bids must be signed by an authorized, responsible officer or employee having the authority to enter into contracts. The bidder agrees that its contract performance shall be in strict conformity with the contract documents.
  - 2.4 Bidders may only request withdrawal of their bids from consideration if the bid is substantially lower than other bids due solely to an unintentional arithmetic error, unintentional omission of quantity of work, labor, or material made directly in the compilation of a bid that can be shown by objective evidence. A request to withdraw must be made in writing within two (2) days of the bid opening.
  - 2.5 The City's acceptance of responses does not place any liability or obligation on the City to the Contractor. Financial obligations on behalf of the City shall occur only through the award of a contract and/or purchase order in accordance with applicable law.
  - 2.6 The bidder certifies that by signing the bid that the bid is made without prior understanding, agreement, or accord with any other person or firm submitting a bid for the same goods and/or service and that this bid is in all respects bona fide, fair, and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. Any false statement hereunder may constitute a felony and can result in a fine and imprisonment, as well as civil damages.
  - 2.7 A bid bond or certified check in the amount of five percent (5%) of the amount of the bid shall accompany any bid in excess of \$100,000.00 for the bid to be considered responsive.
  - 2.8 Bidder is to submit all applicable contractor's licenses in conformance with Title 54.1, Chapter 11 of the Code of Virginia. The City requires bidder to submit a copy of his license or full certificate number prior to considering the bid.
  - 2.9 By submitting their bid, bidders certify that they are not now debarred by the Federal Government, the Commonwealth of Virginia, any state, or any locality 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.

2.10 Bidder is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Bidder.

- a) Bidder may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information, and other confidential information provided by the Bidder:
  - i. Invoke the protections of this Section prior to, or upon submission of, the data or other materials.
  - ii. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
  - iii. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
  - iv. References to the proprietary information may be made within the body of the Bid; however, all information contained within the body of the bid shall be public information in accordance with State statutes.
  - v. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder's costs and/or bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further consideration.
- b) The City reserves the right to submit such information to the City Attorney for concurrence of the Bidder's claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

2.11 Bidder agrees that its Bid shall be binding and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing date of this ITB.

### III. RECEIPT OF BIDS

- 3.1 Bids will be received on or before the date and the hour and at the place stipulated in the Invitation to Bid and may be modified by subsequent Addenda. Consolidated Procurement Division operating hours are M-F 8:00 AM until 4:30 PM.
- 3.2 It is the responsibility of the bidder to assure that its bid is delivered to the place designated for receipt of bids by the date and hour (deadline) set for receipt of bids. Therefore, it is the bidder's responsibility to take into account all factors which may impact its bid deliverer/courier's ability to deliver the bid and to implement whatever actions are necessary to have the bid delivered to the proper bid receipt location prior to the bid receipt deadline. No bids or modifications submitted or offered after the date and hour designated for receipt of bids will be accepted or considered.
- 3.3 The Chief Procurement Officer or designee is the City's representative designated to receive bids at the time and place noted in the ITB and to open the bids received at the appointed time.
- 3.4 The official time used for the receipt of responses is determined by reference to the clock designated by the Chief Procurement Officer or designee. The Chief Procurement Officer or designee shall determine when the bid receipt deadline has arrived and shall announce that the deadline has arrived and that no further bids will be accepted. All bids in the possession of the Chief Procurement Officer or designee or designee 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 Procurement Officer makes the deadline announcement.
- 3.5 The solicitation document maintained by the Procurement Department in the bid file folder shall be considered the official copy. Any exception or changes to the specifications made by the bidder may be cause to disqualify a bid.
- 3.6 To demonstrate its qualifications to perform the work, each bidder shall be prepared to submit further written satisfactory evidence that the bidder has sufficient experience, necessary capital, materials,

machinery and skilled workers to complete the work. If financial statements are required, they shall be of such date as the City shall determine and shall be prepared on forms acceptable to the City. The City may make any such investigations as deemed necessary to determine the ability of the bidder to perform the Work. The City's decision or judgment on these matters shall be final, conclusive and binding.

3.7 Samples, when requested must be furnished free of expense, and upon request, if not destroyed, will be returned at the bidder's risk and expense.

#### IV. AWARD

- 4.1 Award will be made to the lowest responsive and responsible bidder. The quality of the construction serves to be supplies, conformity to the specifications, suitability to requirements, delivery terms, qualifications, reference, and past performance with the City will be taken into consideration in making an award. Unless cancelled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted; except that if the bid from the lowest responsible bidder exceeds available funds, the Procurement Director may negotiate with the apparent low bidder to obtain a contract price within available funds.
- 4.2 Prices shall be entered on and in accordance with the bid form. In case of an error in the calculation of cost based on multiple units of the same item, the unit price shall govern and the correct amount will be calculated by the City. In case of an error in the total cost, the individual line items shall govern and the summation will be calculated by the City.
- 4.3 Successful bidder(s) shall furnish all required bonds, certificates of insurance and required endorsements on City approved forms included in this bid package within fifteen (15) days of notice of the award. Any other forms are not acceptable and will not be approved by the City Attorney's Office. Time is critical on this work and non-compliance or failure to submit the appropriate documents in a timely manner will delay the work and may be cause to make award to the next qualified bidder.
- 4.4 Successful bidders shall within seven (7) days of posting of the Intent to Award, shall submit to the City a list of all subcontractors who will be performing work on the project. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of experience and qualifications of each such subcontractor, person and organization. If the City, after due investigation, has reasonable objection to any proposed subcontractor, other person and organization, the City may, before contract signing, request the apparent low bidder to submit an acceptable substitute without an increase in bid price. If the apparent low bidder declines to make any such substitution, the contract shall not be awarded to such bidder. For any subcontractors, other persons, or organization so listed and to whom City does not make written objection prior to awarding the contract, it will be deemed the City has no objection.

## Subsection A.2 BIDDER INFORMATION

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

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

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

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

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

State Corporation Commission ID: \_\_\_\_\_

City of Hampton Business Prof. License Tax No.: \_\_\_\_\_

Class of Contractor License: \_\_\_\_\_ Contractor License Number: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_; **OR** Social Security Number (Sole Proprietor): \_\_\_\_\_

**NOTE: Numbers identified as social security numbers will be redacted in public documents.**

DUNS # \_\_\_\_\_

Registered as a Class \_\_\_\_\_ Contractor with the Commonwealth of Virginia; Registration # \_\_\_\_\_

**In Accordance with Code of Virginia §54.1-1115(A1, A6) the City requires the bidder to submit a copy of his license or full certificate number prior to considering the bid.**

**Business Classification: (for informational purposes only)**

Is Bidder a "minority" business?  Yes  No

African American  Hispanic American  Native American  Asian American

Other; Please Explain: \_\_\_\_\_

Is Bidder Woman Owned?  Yes  No

Is Bidder a Small Business?  Yes  No

Is Bidder Faith-Based Organization?  Yes  No

Is Bidder a Disabled Veteran Business?  Yes  No

**Check One:**  **INDIVIDUAL**  **PARTNERSHIP**  **CORPORATION**  **LLC**

**State in which Registered or Incorporated** \_\_\_\_\_

**By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth above and in the Bid Submission Terms and Conditions and General Conditions as described in Section B.**

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

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

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

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

Issuing Office: Wherever used in this ITB, the Issuing Office will be:

Tammy Martin, Buyer  
Consolidated Procurement Division  
1 Franklin Street, Suite 345  
Hampton, Virginia 23669

Phone: 757-727-2205  
Fax: 757-727-2207  
Email: [tmartin@hampton.gov](mailto:tmartin@hampton.gov)

Wherever used in this ITB, the City Contract Administrator will be:

Ron Sterling, Senior Civil Engineer  
Public Works-Engineering Services  
22 Lincoln Street  
Hampton, VA 23669

Phone: 757-727-6145  
Fax: 757-727-6123  
Email: [rsterlin@hampton.gov](mailto:rsterlin@hampton.gov)



**Subsection A.3 EXPERIENCE AND QUALIFICATIONS (TO SUPPORT RESPONSIBILITY DETERMINATION)**

1. Experience:

a. How many years has your company been in business as a Contractor under its present business name? \_\_\_\_\_

b. Do you have any prior names; if yes, please list them:

\_\_\_\_\_

2. How many years of experience in this type of construction work does this bidder have?

a. As a Contractor? \_\_\_\_\_

b. As a Subcontractor? \_\_\_\_\_

3. Provide a list of uncompleted contracts/projects at present held by this bidder. (attach supplemental sheet if necessary)

Contract/Project	Type of Work	Amount	% Complete

4. List the bidder’s crew foremen and supervisors proposed for this project and their years of related experience:

Name	Years of Experience	Dates of Employment with Bidder

5. What construction equipment does this bidder own that is available for the proposed work? (attach supplemental sheet if necessary)

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

6. Does this bidder plan to subcontract any part of this work? If so, list name, address, years of experience, and type and amount of work to be performed by each Subcontractor.

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



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7. Provide a list of projects similar in character and scope to the Work specified under this Contract which have been successfully completed by this bidder during the past three years. (attach supplemental sheet if necessary)

(The term “completed” means accepted and final payment received from the City or authorized representative)

Location & Type of Work	City’s Name and Address	Contact person (name and telephone)	Date Completed	Contract Price

8. Have you ever performed work for a municipal corporation, local governing body, or similar agency previously? (If all such bodies are listed under 8, this question need not be completed.)

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9. Bidder Responsibility:

a. Has your company ever failed to complete any work awarded to it? \_\_\_\_\_ If yes, give name of city, name of Bonding Company and circumstances:

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b. Has your company ever been debarred by the Federal Government or by the Commonwealth of Virginia, by any other state, or by any other locality?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please provide details:

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c. Has your company ever had any judgments entered against it for breach of contract for construction? \_\_\_\_\_ If yes, please provide details:

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d. Give a summary of your financial statement. (List assets and liabilities, use an insert sheet if necessary)

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10. State approximate largest dollar volume of work performed by your company in one year:

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11. Give two (2) Banking Institution References:

a. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Credit Available: \_\_\_\_\_

b. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Credit Available: \_\_\_\_\_

12. List three (3) material suppliers and amount of credit available:

a. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Credit Available: \_\_\_\_\_

b. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Credit Available: \_\_\_\_\_

c. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Credit Available: \_\_\_\_\_

13. List current insurance coverage:

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14. Bonding reference: List surety company and highest coverage:

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15. Have you or your authorized representative, personally inspected the location of the proposed Work, and do you have a clear understanding of the requirements of the Bid Documents?

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## Subsection A.4 BID RESPONSE

### Hampton Fire Station #3

#### BID SHEET

The contract award will be based on the Base Bid (including any properly submitted bid modifications).

#### BASE BID (Includes 1 and 2 in Base Bid Breakdown below)

Lump sum price for the construction of the building including all site work in accordance with the Plans and Specifications.

\_\_\_\_\_ Dollars  
\$ \_\_\_\_\_

#### BASE BID BREAKDOWN

1. Lump sum price for the construction of the building within a perimeter extending 5 feet from the walls of the building in accordance with the plans and Specifications.

\_\_\_\_\_ Dollars  
\$ \_\_\_\_\_

2. Lump sum price for the sitework beyond the 5 feet building perimeter in accordance with the Plans and Specifications.

\_\_\_\_\_ Dollars  
\$ \_\_\_\_\_

#### ADDITIVE BID ITEMS

ALTERNATE NO. 1 – ADDITIONAL APPARATUS BAY \$ \_\_\_\_\_

State the amount to be added to the Base Bid for providing a 4<sup>TH</sup> apparatus bay.

ALTERNATE NO. 2 – MEZZANINE, TRAINING EQUIPMENT, AND TRAINING PLATFORM \$ \_\_\_\_\_

State the amount to be added to the Base Bid for providing the

mezzanine, training equipment, and training platform.

ALTERNATE NO. 3A – FOUR FOLD DOORS \$ \_\_\_\_\_

State the amount to be added to the Base Bid for providing four fold doors at the three front facing apparatus bay doors.

ALTERNATE NO. 3B – FOUR FOLD DOORS \$ \_\_\_\_\_

State the amount to be added to the Base Bid for providing four fold doors at the four front facing apparatus bay doors.

UNIT PRICES

Modifications to the contract will be based on the following Unit Prices for the work indicated:

UNIT PRICE NO. 1 – UNDERCUT/BACKFILL ADD \$ \_\_\_\_\_/Cu.Yd.  
BUILDING PAD AND PAVED AREAS

Excavation of unsuitable material located within the area of the building pad and paved areas below or in addition to the levels indicated on the drawings and in the specifications and backfill with compacted structural fill material.

UNIT PRICE NO. 2 – UNDERCUT/BACKFILL ADD \$ \_\_\_\_\_/Cu.Yd.  
BUILDING PAD AND PAVED AREAS

Excavation of unsuitable material located within the area of the building pad and paved areas below or in addition to the levels indicated on the drawings and in the specifications and backfill with VDOT #57 crushed aggregate.

UNIT PRICE NO. 3 – UNDERCUT/BACKFILL ADD \$ \_\_\_\_\_/Cu.Yd.  
TRENCHING

Excavation of unsuitable material for trenching below or in addition to the

levels indicated on the drawings and in the specifications and backfill with compacted structural fill material.

UNIT PRICE NO. 4 – GEOTEXTILE FABRIC                      ADD \$ \_\_\_\_\_/Sq.Yd.

Provide geotextile fabric between aggregate backfill and natural soils.

UNIT PRICE NO. 5 – VARIATIONS IN PILE                      ADD/DEDUCT \$ \_\_\_\_\_ /LF  
LENGTH QUANTITIES

Increase or decrease the total length of piles to be furnished and installed because of added or omitted piles or variations in the pile lengths based on test pile results.

UNIT PRICE NO. 6 – PILE LOAD TEST                      ADD \$ \_\_\_\_\_ /EA

Provide pile load test in accordance with ASTM D1143, Section 5.6 “Quick Load Test Method for individual piles”.

## Subsection A.5 BIDDER REPRESENTATIONS AND ACKNOWLEDGEMENTS

\_\_\_\_\_ (initial) **NO CITY INDEMNIFICATION.** The City of Hampton cannot legally agree to any clause indemnifying the Bidder from any damages arising out of the contract or hold the Bidder harmless. The submission of a bid constitutes an agreement by the Bidder not to request such language in a resulting contract. In compliance with this solicitation and to all the conditions imposed herein, the undersigned agrees to perform any contract awarded as a result of this solicitation. The following section shall be signed by an agent authorized to bind the company. Failure to execute this portion may result in proposal rejection.

\_\_\_\_\_ (initial) **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY CONTRACT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1. THROUGH 59.1-9.17 OR SECTIONS 58.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THE CONTRACT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS BID; AND, THAT NO PERSON OR PERSON, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE INTERESTED IN, THIS BID.

\_\_\_\_\_ (initial) **DEBARMENT STATUS:** By submitting this proposal, Bidder certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently so debarred.

\_\_\_\_\_ (initial) **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR ITBs:** By submitting a proposal, Bidder agrees that if awarded a Contract under this ITB, that Bidder, and any subcontractors Bidder uses for goods or services, will be required to utilize the City's Contract. If Bidder submits its own agreement for use, the City reserves the right to change any terms of the Bidder's agreement required for the City to meet its obligations under Virginia, local, and Federal law or regulations.

**By signing this bid, Bidder certifies that all information provided is true and correct, and acknowledges, understands, and agrees to be bound by the conditions set forth above, in the Bid Terms and Conditions, and General Terms and Conditions, and any Special Terms and Conditions.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Subsection A.6 BID BOND**

**Bid Bond # 23-40TM**

KNOW ALL MEN BY THOSE PRESENT: That we, the undersigned:

\_\_\_\_\_, as Principal, and  
\_\_\_\_\_  
\_\_\_\_\_

as Surety, acknowledge ourselves held and firmly bound unto the City of Hampton, Virginia, in the just and full sum of five percent (5%) of the maximum amount of accompanying bid for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

WHEREAS, the Principal has submitted a bid, dated \_\_\_\_\_, 20 \_\_\_\_, for ITB # 20-37TM

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with such bid and give bond with good and sufficient surety for the faithful performance of such contract, or in the event of the failure of the Principal to enter into such contract and give such bond, if the Principal shall pay to the Obligee the difference, not to exceed the penalty hereof, between the amount specified in said bid and the amount for which the Obligee may legally contract with another party to perform the work covered by said bid, if the latter amount be in excess of the former, then this obligation shall be null and void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their corporation names and seals, respectively, to be hereunto subscribed and affixed by their officers in that behalf duly authorized this \_\_\_\_\_ day of \_\_\_\_\_.

[CONTRACTOR NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

[SURETY NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Submit with Power of Attorney

\_\_\_\_\_  
Resident Virginia Agent of Surety



## **Subsection A.7 MINORITY AND WOMAN OWNED BUSINESS PROGRAM**

The City of Hampton (“COH”) is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this Contract include:

**Minorities (MBE) 4.34%      Non-minority women (WBE) 3.82%**

Solicitation meetings will be held on contracts \$100,000 and above to assist in attaining the contract minority and woman owned business goals.

The CITY requires that each minority and woman-owned business become a certified Small, Woman and Minority owned business (SWAM) by the Virginia Department of Small Business and Supplier Diversity (SBSD).

Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the Contract goals as established.

Prime Contract solicitations require bidders to include, as part of their proposal or bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the contract work.

- A listing of all certified minority and woman-owned subcontractor vendors
- The dollar value of each subcontract
- A description of type of work to be performed under each contract
- SWAM certification number and contact information for each minority and woman-owned firm

Prime Contractor subcontractor/supplier solicitation information will be submitted to document firms contacted for quotes.

Prime Contractor solicitations and resulting contracts will require each successful bidder to report actual subcontract payments quarterly the Procurement Department to ensure accurate utilization records.

**Prime Contractors are to submit quarterly sub-contractor payment information on all certified minority and woman-owned vendors no less than quarterly after the Notice to Proceed (NTP) is issued by the Public Works Department.**

**Failure of a Prime Contractor to submit required documentation to the CITY can result in the withholding of a payment and/or other sanctions imposed by the CITY.**

All bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive bidders by the CITY.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the contract.

Failure of a contractor to adhere to its subcontracting plan may under certain circumstances, result in future loss of contracts and/or debarment from bidding by the CITY.

In these cases contractors will be requested to submit documentation of good faith efforts used to meet their subcontracting plan. Determination of efforts will be made on an individual contract basis. It is recommended that contractors pre-qualify or determine the subcontractors’ capabilities prior to subletting work.

Good Faith efforts are documented reasonable steps taken to achieve a Contract goal. These efforts are those taken by a bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts are not good faith efforts. It is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive.

**Other factors or types of efforts may be relevant in appropriate cases. The following is a list of types of actions which are considered good faith efforts:**

- Soliciting through reasonable and available means (pre-bid meetings, advertisements, phone calls, community organizations, etc.)
- Selecting portions of the work to be subcontracted out to increase the likelihood that a Contract goal can be achieved.

- Providing interested firms with information necessary to respond in a timely manner to a request for solicitation
- Effectively using the services of available minority and woman-owned organizations, local, state and federal small business assistance offices, etc.

Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

(Please note: this requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned businesses; rather, the purpose is to include as many qualified businesses as possible).

Any Prime Contractor that is a SBSB certified minority or woman-owned vendor that is awarded a contract of \$100,000 and above is not required to submit the above information as the Prime Contractor is itself such a certified business. This does not, however, relieve such a Prime from the obligation to achieve both Contract goals during the life of the Contract. The CITY reserves the right to review subcontracting plans and good faith efforts to ensure that both goals are achieved.

The CITY will utilize a performance evaluation process that will include documenting the quality of work and business practices of all vendors used on CITY contracts of \$100,000 and above.

The suggested forms are attached for use by bidders to ensure consistent submission of required data.

**CITY OF HAMPTON  
DEPARTMENTAL MINORITY AND WOMAN-OWNED BUSINESS SOLICITATION  
TELEPHONE RECORD FOR GOODS AND SERVICES**

Date	Department	Bidder #1	Bidder #2	Bidder #3
Firm name				
Address				
Phone no.				
Fax no.				
Email address				
Quantity	Item description	Unit Price/Total Price	Unit Price/Total Price	Unit Price/Total Price

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

Department Director: \_\_\_\_\_

**CITY OF HAMPTON  
SUBCONTRACTOR/SUPPLIER UTILIZATION FORM  
POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION**

Project no. \_\_\_\_\_ Date submitted: \_\_\_\_\_

Bid goal % \_\_\_\_\_ Total Contract Value \_\_\_\_\_

Firm name	Certification no.	Type (M/W)	Percent bid	Dollar value	Type of work

I/We propose that the certified SBSD businesses will be used on this Contract as stated herein and assure that during the life of the Contract. I/We will meet the goal established by the City of Hampton.

Bidder \_\_\_\_\_ Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

**CITY OF HAMPTON**

**SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL)**

Project no. \_\_\_\_\_ Date \_\_\_\_\_

The bidder certifies that this form accurately represents its solicitation and utilization or non-utilization as indicated of the SBSB certified minority and woman-owned businesses listed below for performance of work on this project. The bidder certifies that he/she has had direct contact (email, fax, phone) with the named firms regarding performing work on this project.

Bidder \_\_\_\_\_ Signature \_\_\_\_\_

Vendor no.	Name of firm	Telephone no.	SWAM Yes/No	Utilized Yes/No



## Frequently Asked Questions (FAQ's) - MBE & WBE Goals

**1. How do I know if there is a goal on a project?**

It will be mentioned in the ITB (Invitation to Bid) or RFP (Request for Proposal). Bidders are encouraged to utilize certified SWaM vendors towards their efforts in meeting the MBE and WBE goals.

**2. What is a SWaM vendor?**

SWaM is the acronym for Small, Women and Minority owned businesses. A SWaM vendor is a business that has been certified by the Virginia Department of Small Business and Supplier Diversity (SBSD) and is listed in the SWaM Vendor Directory.

**3. Where can I find a list of SWaM certified MBE and WBE businesses?**

A list of certified SWaM businesses can be found at the following websites:

- City of Hampton Small Business Directory: <http://hamptonpublic.hampton.gov/swam/search.aspx> allows searches by SWaM type, city location and description of work.
- Virginia Department of Small Business and Supplier Diversity [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov)  
The SBSB website allows searches by company name, SWaM type, NIGP commodity code or description and Zip & NIGP Code.

**4. Is it possible to meet both the MBE and WBE goals utilizing one contractor?**

No. It is not possible to meet both the MBE and WBE goals utilizing one contractor. These are two separate goals; one for MBE and one for WBE and are independent of each other.

**5. I have worked with a minority owned business in the past, but they are not SWaM certified, can I still use them towards meeting the goal?**

No. The CITY requires that each minority and woman-owned business become SWaM certified by SBSB. Any minority or woman-owned business that is not a certified SWaM vendor will not be considered for meeting the contract goals as established.

**6. I am a Minority /Woman Owned Business, but I am not SWaM certified, how do I get certified?**

As found on the SBSB website, there are four steps to get certified: Complete an online application, Print out your application, Collect your supporting documentation on the checklist and send the signed application form to the SBSB. Visit their website at [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov) to start the process.

**7. I am a SWaM certified minority / woman owned business, do I still need to meet the MBE and WBE goals?**

Yes. The CITY encourages all prime contractors bidding on a project to document efforts and meet the goals.

**8. Can I utilize vendors certified as a Small Business (S) that I found on the City of Hampton's Directory or the Virginia Department of Small Business and Supplier Diversity Directory?**

You can, but it won't be counted towards meeting the MBE and WBE goals. To meet the MBE goal a business needs to be certified as a Minority Owned Business Enterprise (M), Minority Owned Small Business Enterprise (MS). To meet the WBE goal a business needs to be certified as a Woman Owned Business Enterprise (W) or Woman Owned Small Business Enterprise (WS).

**9. Which forms do I have to turn in at bid opening?**

There are 3 forms in your bid response forms pertaining to the Minority Business Program. At time of bid opening, submit Form 1 (Solicitation Telephone Record for Goods and Services), Form 2 (Subcontracting/Supplier Utilization Form) and Form 3 (Subcontractor/Supplier Solicitation and Utilization Form). *If awarded a contract, Payment Information will need to be submitted MONTHLY during the course of the contract using Form 4 (Minority and Woman-Owned Business Payment Report).*

**10. Which is the official form to list the Minority and Woman Owned subcontractors I am proposing to utilize on the project?**

Fill out Form 2 (Subcontracting/Supplier Utilization Form) completely. Bidders must include this form as part of their proposal or bid to list certified minority and woman-owned vendors they plan to utilize on the project. This form should include information on:

- The dollar value and percentage for each subcontractor
- A description of type of work to be performed



- SWaM certification number and contact information for each minority and woman-owned firm

**11. I contacted a SWaM certified minority/women owned business, but I won't be utilizing them, how do I document this?**

Fill out Form 2 (Subcontractor/Supplier Solicitation and Utilization Form) completely.

**12. How do I document good faith efforts?**

Fill out Form 2 (Subcontractor/Supplier Solicitation and Utilization Form Solicitation) completely. Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

**13. If awarded a contract, on what form do I report the payments made to subcontractors?**

**Successful** bidders on CITY contracts will be required to report actual subcontract payments quarterly to the CITY to ensure accurate utilization records. Fill out Form 4 (Payment Information) completely to report this information.

**14. At what point must a vendor be SWaM certified in order to be counted towards meeting the MBE and WBE goals?**

By the bid opening date when an Invitation to Bid (ITB) is due.

**15. Who can I contact if I have specific questions or need additional help finding certified minority or woman owned businesses?**

You can contact City of Hampton's Minority Business Office located within the Economic Development Department at (757) 728-5171.

# SECTION B

## Subsection B.1 GENERAL TERMS AND CONDITIONS

*These General Terms and Conditions are a sample of what may be included in the final contract awarded to Bidder and are subject to change.*

### I. Definitions.

- A. The **City** and the **Contractor** are those named as such in the Contract. They are treated throughout the Contract as if each were of the singular number and masculine gender.
- B. The **Project Manager** shall be that individual named by the City to administer day-to-day activities, charged with the responsibility to insure compliance with the scope of work, terms and conditions, and cost in accordance with the Contract.
- C. **Subcontractor** shall mean anyone, other than the Contractor, who furnishes at the site, under a contract with the Contractor, labor, or labor and materials, or labor and equipment.
- D. **Work** shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Contract and the carrying out of all duties and obligations imposed by the Contract.
- E. **Extra Work** shall mean such additional labor, materials, equipment, and other incidentals, not shown on the drawings or called for in the specifications, but authorized by the City in writing as an addition to that Work called for in the Drawings and Specifications.
- F. The **Written Notice to Proceed** is a separate document issued by the Project Manager after all other Contract Documents have been issued and all pre-construction matters have been agreed upon between the City and the Contractor. The notice to proceed requires the Contractor to begin Work on the site within ten (10) calendar days of the date of its issuance.

II. Scope of Work. Contractor agrees that it shall perform services as specified in this ITB. The Contractor further agrees it will furnish all labor, equipment, and material necessary to perform all Work in accordance with the requirements and provisions of the Contract as defined in the General Terms and Conditions.

### III. Time of Completion.

- A. **Schedule for Completion.** The Contractor shall submit, as soon as practical after Award of Contract, a schedule which shall show the order (and value of) in which the Contractor proposes to carry on the Work, with dates at which the Contractor will start the several parts of the Work, and estimated dates of completion of the several parts. The schedule of values, once approved by City, shall be the basis for submittal and approval of monthly progress payments. Each Contract shall have a set time for commencement of the Contract and set number of days for completion of the Contract. Failure to complete the Work under the Contract within the set number of days shall result in Liquidated Damages.
- B. **Extensions.**
  - 1. Extensions may be granted for completion of Work in the discretion of the Project Manager and the City when approved changes in the Work increase the needed time for completion, when the Work is suspended, or when the Work is delayed because of conditions or acts of others that could not have been foreseen by, or which were beyond the control of the Contractor, its subcontractors, and were not the result of the fault or negligence of the Contractor or its subcontractors.
  - 2. If a Contractor believes it is due an extension, it shall submit in writing, along with its monthly request for progress payments, a request for the extension which clearly explains the circumstances which it feels justifies an extension. The request will be reviewed by the City and a written response, granting or rejecting the request, will be issued. Any request for days older than the current month will be dismissed without consideration. Time extensions shall constitute a formal change to the Contract terms and

conditions and shall be issued accordingly. **NO TIME EXTENSION WILL BE GRANTED BY THE CITY UNLESS THE ABOVE PROCESS IS FOLLOWED.**

- C. Liquidated Damages.** Liquidated Damages shall be a dollar amount calculated based on the total value of the Contract and determined in the sole discretion of the City. It is further understood and agreed that the payment of the Liquidated Damages is in lieu of actual damages for such occurrences. The Contractor hereby waives any defense as to the validity of any Liquidated Damages stated in the Contract as it may appear on the grounds that such Liquidated Damages are void as penalties or are not reasonably related to actual damages.
- D. Suspension.** The City may, on its own volition and in the public interest, temporarily suspend the Contractor's operations on the project or upon any part of it. In the event of such suspension, except in emergency, the Contractor shall be given three (3) calendar days' notice and the work shall be resumed within five (5) calendar days after notice has been given to the Contractor to do so. The City shall allow the Contractor an extension of time for completion corresponding to the total period of the temporary suspension and shall reimburse the Contractor for necessary rental of unused equipment, services, and other unavailable expenses occurring by reason of the suspension without fault of Contractor. The Contractor shall not be entitled to damages, overhead costs, or anticipated profits arising from such temporary suspension.
- E. Force Majeure.** Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to a Force Majeure Event, unless otherwise specified in this Agreement. If a Party desires to cite a Force Majeure Event as a defense for failure to perform any duties or responsibilities hereunder, such Party must provide written notice to the other Party within five (5) days after the Party is aware of the commencement of the Force Majeure Event, which notice shall include a reasonable description of the facts pertaining to the Force Majeure Event and a reasonable estimate of the anticipated delay caused by the Force Majeure Event based on the facts then known to such Party. Upon the occurrence of any Force Majeure Event, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the Force Majeure Event (including any time reasonably required to recommence performance due to such Force Majeure Event). The affected Party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Contractor may not rely on either its own acts or omissions or the absence of immediately available funds as grounds for any Force Majeure Event or for any delay in its performance. Contractors sole relief for a Force majeure event shall be an extension to the time for completion.
- F. Weather Delays.**
1. The Time for Completion will not be extended due to inclement weather conditions that are not unusual or disruptive to the general locality of the Site, or as otherwise provided in the Contract Documents.
  2. Contractor's sole relief on any claims for delay which is caused by unusual or disruptive weather shall be an extension of the Time for Completion provided Contractor gave the Project Manager timely written notice once Contractor became aware of the inception of such delay and provided the weather affected the timing of Substantial Completion in accordance with the Project Schedule and no claim for an increase in cost will be allowed. It shall be Contractor's responsibility to provide to the Project Manager the necessary documentation evidencing that the weather conditions claimed were encountered, which may include daily reports by Contractor, copies of notification of weather days to the Project Manager, NOAA backup, and pictures from each day claimed.
  3. The Time for Completion will not be extended due to inclement weather conditions which are not unusual or disruptive for the City. The Time for Completion includes an allowance for workdays (based on five (5) day workweek) which according to historical data may not be suitable for construction work. Contractor may request extension to the Time for Completion if it can demonstrate unusual and disruptive weather conditions per the requirements below:

- i. That a weather condition listed below was encountered; and,
  - ii. The occurrence of the weather condition(s) resulted in an inability to prosecute Work which would have otherwise been performed on the day(s) the weather condition(s) occurred; and
  - iii. The Work which was not able to be completed and affected the timing of Substantial Completion in accordance with the Project Schedule and could not be completed due to the weather condition(s) claimed.
4. A fully documented claim for a time extension under this Section shall be submitted to the Project Manager no later than ten (10) calendar days after the end of the calendar month in which the weather delay occurs. It shall be Contractor's responsibility to provide the reasonable documentation to satisfy the Project Manager that the weather condition(s) claimed were encountered.
  5. The Project Manager will determine Contractor's entitlement to an extension of the Time for Completion. Unless approved by Project Manager based on the information received from Contractor, a time extension of no more than one (1) day will be granted for one (1) day of lost Work which satisfies the requirements above, regardless of the number of weather conditions encountered.
  6. Weather shall be considered "unusual and disruptive," and will be considered by the City based on the requirements set forth above as an extension of the Time for Completion only if a weather condition (or any combination of weather conditions) prevents the Contractor from timely obtaining Substantial Completion in accordance with the Project Schedule for a number of workdays during a calendar month which number exceeds the number of workdays listed below for that calendar month. Delays will only be allowed for the amount of lost workdays in excess of the following:

January	6	July	4
February	4	August	3
March	4	September	3
April	3	October	3
May	4	November	3
June	4	December	5

7. The Contractor shall anticipate the potential loss of the number of workdays listed above for each calendar month due to weather, and shall schedule the Work accordingly. Any schedules submitted shall include the above number of days each month as lost days. The Project Manager shall determine, upon examination of submitted evidence, whether or not weather prevented the Contractor from performing Work on the days claimed by the Contractor. The Project Manager's determination shall be final and binding upon the parties except as provided for otherwise in the Contract Documents.

#### **IV. Project Manager Status.**

- A. **Access and Inspection.** The Project Manager at all times shall have access to the Work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection. The Project Manager shall perform technical inspection of the Work. He has authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. He also shall have authority to reject all Work and materials which do not conform to the Contract and to decide questions which arise in the execution of the Work. Notwithstanding such inspection, the Contractor will be held responsible for the acceptability of the finished Work. The Project Manager's presence and actions do not replace the legal requirements of the Commonwealth and/or local building codes. Notwithstanding the Project Manager's actions or instructions, the Contractor shall adhere to all building code requirements regarding inspection and approvals.

- B. Notice for Inspection.** If the specifications, the Project Manager’s instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Project Manager timely notice to its readiness for inspection, and if the inspection is by an authority other than the City, of the date fixed for such inspection. If any Work required to be inspected should be covered without proper approval or consent, if required, it must be uncovered for examination and properly restored at the Contractor’s expense.
- C. Reexamination.** Reexamination of any Work may be ordered, and if so ordered, the Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract, the City shall pay the cost of reexamination and replacement. If such Work is not in accordance with the Contract, the Contractor shall pay such cost.
- D. Contiguous Work.** Whenever Work being done by the City’s forces, utility companies, or by other contractors’ forces is contiguous to Work covered by this Contract, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the Work in general harmony.
- E. Project Manager Decisions.** Within a reasonable time after presentation to him, the Project Manager shall make decisions on all matters relating to the execution and progress of the Work or the interpretation of the Specifications and/or Drawings. In making these decisions, the Project Manager shall have authority to make interpretations and minor changes as to the Scope of Work not involving extra cost, and not inconsistent with the purpose of the Work. If the Contractor claims that any such instructions involve extra cost, it shall give written notice thereof within ten (10) days, after the receipt of such instruction. Except in an emergency endangering life and/or property, the City shall accept no extra cost unless pursuant to a formal modification of the Contract.

**V. Changes in the Scope of Work.** It is understood that, during the course of construction, changes in the Scope of Work may be necessary and will be executed as follows:

- A. Changes Requested By the Contractor.** Changes in specified methods of construction or in the plans and specifications, which do not materially affect the Work, and which are not detrimental to the Work or to the interests of the City, may be granted by the Project Manager if requested by the Contractor in writing. No additional payment or contract time will be made for these changes.
- B. Changes Requested by the City.** The City may change the plans, specifications, character of the Work, or quantity of the Work, both additive and deductive. Changes affecting the Contract price shall be issued through a change order and shall be accepted by Contractor signature.
- C.** The provisions of A and B above shall not limit or restrict Contractor’s responsibility or authority for emergency work.
- D.** A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of the change. The allowable percentage markups for overhead and profit for a change to the Work performed by Contractor’s own forces or performed by the subcontractor shall be negotiated based on the nature, size, and complexity of the Work involved but shall not exceed the percentages for each category listed below:
  1. Subcontractor’s markup for overhead and profit for the Work it performs in a change to the Work shall be a maximum of fifteen percent (15%) of that subcontractor’s Base Cost.
  2. Contractor’s markup for overhead and profit on a subcontractor’s price for a change to the Work shall be a maximum of ten percent (10%).
  3. Contractor’s markup for overhead and profit (including bonds and insurance) for Work it performs in a change to the Work shall be a maximum of fifteen percent (15%) of the Base Cost.
  4. The markup for overhead and profit of a sub-subcontractor at any tier on a change to the Work it performs shall be a maximum of fifteen percent (15%) of that sub- subcontractor’s Base Cost. Contractor and all

intervening tiers of subcontractors' markup on such sub-subcontractor's price under this subsection in the change to the Work shall not exceed a total of ten percent (10%).

- E. The allowable percentage markups for overhead and profit stated above shall compensate Contractor, subcontractor, and sub-subcontractor for all other costs associated with or relating to the change to the Work including by way of illustration and not limitation, general conditions, supervision, field engineering, coordination, insurance, bond(s), use of small tools, incidental job costs, and all other general and administrative home and field office expenses.

## **VI. Execution of the Work.**

- A. **Specifications and Drawings.** The City will furnish to the Contractor, free of charge, copies of Drawings and/or Specifications reasonably necessary for the execution of the Work. The City will be responsible for the adequacy of design and sufficiency of the Drawings and/or Specifications, issuing, if necessary, addendum to clarify the Work. However, when the Work involved is that common to a trade or industry, which may be judged as acceptable, or not by commonly accepted standards for a specific trade, the Contractor shall not use the inadequacy or omission of Drawing detail or Specification language to excuse its failure to perform to the highest industry standards. All Drawings and/or Specifications shall remain the property of the City and shall not be reused on other Work by the Contractor.
- B. **Work Conditions/Discrepancies.** The Contractor, by careful examination, shall satisfy itself as to the nature and location of the Work, the character of equipment and facilities needed preliminarily to and during prosecution of the Work, the general and local conditions, and all other matters which may in any way affect the Work under this Contract. If the Contractor finds any discrepancy between the Drawings and/or Specifications and the physical conditions of the Work site, or any errors or omissions in Drawings and/or Specifications, it immediately shall inform the Project Manager in writing, and the Project Manager promptly shall verify the same. Any Work done after such discovery, until authorized, will be done at the Contractor's risk except in the event of an emergency.
- C. **Environmental Considerations.** Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties, or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, State or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, Subcontractors, consultants, subconsultants, or any other persons, Corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This Section shall survive the termination, cancellation or expiration of this Contract.
- D. **Materials and Equipment.** Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities of a quantity and quality necessary for the execution and completion of the Work. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials. The Contractor promptly shall notify the Project Manager in writing if any change in materials as specified is contemplated or proposed. Any such proposed change shall be investigated promptly, and if found to be necessary and/or acceptable, the Contract shall be modified formally. Any change in materials shall be made at the Contractor's own risk unless approved as prescribed above.
- E. **Access to Worksite.** The City shall provide access to the site upon which the Work under this Contract is to be done and to such other areas which are designated for use by the Contractor. The Contractor shall provide at its



own expense and without liability to the City any additional land and access thereto that may be required for temporary facilities, or for storage of materials.

- F. Permits and Utility Fees.** Utility fees of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Utility fees for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified. Permits (building, plumbing, mechanical, and electrical) shall be obtained from the appropriate agency prior to performance of Work. No permit fee will be charged for City-owned property. However, fees will be charged for all other publicly owned property.
- G. Royalties and Patents.** The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and save harmless the City from loss on account thereof except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the Contract that the particular process, design, or product is patented or is believed to be patented.
- H. Contractor Personnel.**
1. *Superintendence.* The Contractor shall designate in writing before starting work an authorized representative who shall have complete authority to represent and to act for the Contractor and respond to all directions and queries from the Project Manager. The Contractor shall keep this individual assigned to the Project at all times during its progress or Contractor shall produce a new written designation if substituting or replacing the authorized representative.
  2. *Contractor Employees.* At all times, the Contractor shall enforce proper discipline and order among its employees and shall seek to avoid employing on the Work any unfit person or anyone not skilled in the Work assigned to him. Adequate sanitary facilities shall be provided by the Contractor. The Contractor shall be responsible for complying with all OSHA requirements.
- I. Responsibility for Work.** The Contractor assumes full responsibility for the Work until final acceptance. The Contractor shall be responsible for damage to or destruction of the Work caused by the negligence of the Contractor, or any other party under the control and supervision of the Contractor. The Contractor agrees to make no claims against the City for damages for the Work from any cause except negligence or willful acts of the City, improper or faulty design, acts of any foreign or domestic enemy, or acts of war. Contractor shall obtain and maintain in force until City's Final Acceptance of Project, Builders' Risk Insurance that fully covers any loss or damage to Project.
- J. Changed Conditions.** During the course of the Work and before such conditions are disturbed, except in the event of any emergency, the Contractor promptly shall notify the Project Manager in writing of previously unknown conditions at the Work site, differing materially from those ordinarily encountered and which prevent the proper execution of the Work of the character provided for in this Contract. The Project Manager promptly shall investigate the conditions; and if he finds that such conditions materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made and the Contract formally modified accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless it has given notice as required above and the Contract has been formally modified.
- K. Protection of Public, Work, and Property.** The Contractor shall provide and maintain all necessary watchmen, flagmen, barricades, and signage in accordance with requirements of the Project Manager and take all reasonable precautions for the protection and safety of the public. It continuously shall maintain reasonable protection of all Work from damage, and shall take all reasonable precautions to protect property from injury or loss arising in connection with this Contract. The Contractor shall take reasonable precautions to protect private property adjacent to the Project from such nuisances as debris and excessive noise. It shall make good any damage, injury, or loss to its Work and to the property or the City resulting from lack of reasonable protective precautions except such as may be caused by agents or employees of the City.



**L. Emergency Work.** If a situation threatens public safety, the Work, or adjoining property, the Contractor is permitted to act in its discretion to prevent any threatened loss or injury without special instructions or authorization from the Project Manager. Any compensation claimed by the Contractor for emergency work shall be negotiated and approved by the City in writing.

**VII. Payment to Contractor.**

**A. City Payment to Contractor.**

1. Subject to Contractor's regular and timely submission of complete Applications for Payment to the Project Manager, which Applications for Payment shall be submitted by the twenty-fifth (25th) day of each calendar month, the City will make partial payments not more frequently than monthly, less retainage, to Contractor on the basis of Contractor's written estimate of the Work performed during the preceding calendar month as reviewed and accepted by the Project Manager within thirty (30) days of such acceptance, unless otherwise provided herein. The accepted Schedule of Values shall be used as the basis for preparing the estimates. Each Application for Payment will not be reviewed or processed by the City unless an updated Construction Schedule is also attached.
2. For Pay Applications that include payment for materials stored offsite, the Contractor shall provide, with the Pay Application, photographs of the materials stored offsite and certificates of insurance for the stored material naming the City of Hampton as an additional insured.
3. City agrees to make payments under the Contract within thirty (30) days after receipt of a correct invoice, pursuant to Section B below, for such payment. Where payment is made by mail, the day of postmark shall be deemed the date of payment. Any amounts due to the City by Contractor under the terms of this or any other Contract may be applied against Contractor's invoices with documentation for the basis of the adjustment attached.
4. The City may, after determining the accuracy of monthly invoices, retain five percent (5%) of Contractor's payment from each payment made to Contractor until the Work is complete.
5. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with these Contract requirements for any product or service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of twenty (20) days or greater will be considered in the evaluation of Bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Contractor shall be net forty-five (45) days.
6. Contractor acknowledges and agrees that it is not entitled to any compensation in excess of the value of the Work performed that has been approved by the City. Contractors and subcontractors are not entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of amendment or termination of the Contract.

**B. Contractor Invoices.** Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the products and services required under the Contract. Invoices shall not include any costs other than those identified in the executed City Purchase Order awarding the Contract or any subsequent Change Orders issued by the Consolidated Procurement Division. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City Purchase Order or Change Orders. Contractor's invoices shall provide at a minimum:

1. Type and description of the product or service installed, delivered and accepted
2. Serial numbers, if any
3. Quantity delivered
4. Charge for each item
5. Extended total (unit cost x quantity)
6. This ITB number and the City Purchase Order number

### **C. Reimbursable Expenses and Accounting Records.**

1. Reimbursable expenses shall not include incidental expenses such as supplies, utilities, licensing fees, bond fees, and other fees which are normally included in overhead costs.
2. Expenses that are not normally part of III.C.1 and that directly relate to the scope of this Project may be reimbursed upon prior approval by the City. Examples of such expenses include, but are not limited to, reasonable travel, lodging, specifications and drawing reproduction beyond first two sets, and overtime that is authorized by the City.
3. Records of reimbursable expenses and expenses accrued as a result of additional services on the Project on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at mutually convenient times.
4. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice to the City. The City reserves the right to request proof of the expense before payment and reserves the right to refuse to pay any expense that was not previously approved by the City.
5. **NOTE: Pursuant to the provisions of Virginia Code §2.2-4309, a public contract may include provisions for modification during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Hampton City Council.**

## **VIII. Conditions for Completion of the Work and Closeout of Project.**

**A. Substantial Completion.** Substantial Completion of the Work will be considered to have occurred when the Project Manager has agreed that the condition of the Work is sufficiently complete in accordance with the Contract Documents, such that the Project can be utilized by the City for the intended purposes, and the following conditions have been satisfied:

1. Contractor and Project Manager have agreed to a Punchlist. Failure to include an item on the Punchlist does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents;
2. Final test reports have been accepted by the Project Manager;
3. Approval forms and transfer documents for all utilities have been accepted by the Project Manager;
4. The City has been trained on all life safety systems, including, but not limited to, fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems;
5. Operation and Maintenance Manuals have been submitted to the Project Manager and Architect for review;
6. All documents and verification of training for mechanical and electrical systems have been accepted by the Project Manager;
7. The As-Built Drawings showing the record condition have been submitted for review and approval by the Project Manager and Architect;
8. Entrances and egress pathways have been constructed and can remain clear of construction activities;
9. A Certificate of Occupancy has been issued for the Project by the City's applicable Code Official, who will have verified the following, in addition to all other aspects of the Work required for the issuance of that Certificate of Occupancy:
  - a. All life safety systems, including fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems are complete and working in an automatic mode;
  - b. All requisite certificates of inspection for use and occupancy have been issued;

- c. The Fire Marshal has approved the Project.
- d. The HVAC system Testing and Balancing Report needed for commissioning have been properly conducted, prepared, and provided to the City.

When the Project Manager has agreed the Work is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion that will establish the date of Substantial Completion.

**B. Final Completion.** Final Completion shall be attained within 45 calendar days from the date of substantial completion. The Work will be considered Finally Complete when the Project Manager has agreed and accepted that the condition of the Work warrants Final Completion in accordance with the Contract Documents and all of the following conditions have been met:

1. All construction deficiencies and Punchlist items have been closed and all construction deficiencies corrected and accepted by the Project Manager;
2. All attic stock materials shall be provided and stored in an orderly manner in a space designated by the Project Manager and a complete inventory list has been verified and accepted by the Project Manager;
3. All warranty certificates and contact information for parties providing warranties have been delivered, are in the name of or assigned to the City, and accepted by the Project Manager;
4. All final Operating and Maintenance manuals have been delivered and accepted by the Project Manager;
5. All final As-Built Drawings in .pdf format on a CD or a flash drive delivered and accepted by the Project Manager; and
6. All support for commissioning has been completed.

**C. Occupancy at Substantial Completion.** The City shall be permitted to take occupancy and utilize the Project once Contractor has achieved Substantial Completion and the City has issued the Certificate of Substantial Completion. Project Manager shall work with Contractor to ensure that such occupancy can occur in a safe and secure manner without unreasonably interfering with Contractor's completion of the Punchlist and achieving Final Completion.

**D. Correction of the Work.**

1. The Contractor promptly shall remove from the premises all materials and Work condemned by the Project Manager as failing to meet Contract requirements, regardless of whether incorporated in the Work, and the Contractor promptly shall replace materials and/or re-execute Work in accordance with the Contract and without expense to the City and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
2. All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned Work and materials within ten (10) days after written notice, the City may remove them and store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) days' time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay to the Contractor any net proceeds thereof, after deducting all the costs and expenses that should have been borne by the City.

**E. Payment Withheld Prior to Final Acceptance of the Work.** As a result of discovered evidence, the City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect itself from loss caused by:

1. Defective Work not remedied;

2. Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor;
3. Failure of the Contractor of making payments properly to Subcontractors or for material or labor; or
4. Damage to another Contractor.

**F. Removal of Equipment.** Prior to the completion or termination of this Contract, Contractor shall remove all of its equipment and supplies from the property; failing to do so, the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

**G. Clean Up.** The Contractor shall remove at its own expense from the Work site and from all public and private property all temporary storage structures, rubbish, and waste materials resulting from its operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission for such disposal granted to the Contractor by the Project Manager where such disposal is in accordance with local ordinances.

## **IX. Contractor Representations and Obligations.**

**A. Performance by Contractor.** Contractor shall act as the prime contractor for the goods and services to be provided under the Contract and shall be the sole point of contact with regard to all obligations due under the Contract. To the extent Contractor employs subcontractors to perform obligations under the Contract, Contractor agrees that it will:

1. Inform subcontractor of the proposed use and disposition of the subcontractor's products or services, and obtain a written statement from subcontractor that it has no objection and that the City is not liable to the subcontractor for any work performed under the Contract.
2. Obtain prior written approval from the Contract Administrator at least ten (10) calendar days prior to the work subcontractor work being performed.
3. Be solely responsible for all work performed and materials provided by subcontractors and for the liability of subcontractors for the types and limits required of the Contractor under the Contract.

**B. Authority to Transact Business.**

1. At the commencement of the Contract, Contractor shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required under Title 13.1 or Title 50 of the Virginia code or as otherwise required by law.
2. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Contract.

**C. Compliance with Law.**

1. Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of the scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of the Contract prior to the initiation of work. Contractor shall maintain all such licenses and permits throughout the term of this Contract. Failure to maintain such licenses and permits and to provide copies to the City shall constitute a material breach of this Contract.
2. Contractor does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**D. Nondiscrimination.**

1. During the performance of the Contract, Contractor shall:
  - i. 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/consideration reasonably necessary to the normal operation of Contractor.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

- ii. State that Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of Contractor. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation are sufficient to meet the requirements of this section.

2. Contractor shall include the provisions of paragraph D.1 in every subcontract or purchase order over \$10,000.

**E. Drug-Free Workplace.**

1. For purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with the Contract with 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.
2. During the performance of the Contract, Contractor shall:
  - i. Provide a drug-free workplace for Contractor's employees;
  - ii. Post a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. This statement must be posted in a conspicuous location available to all employees and applicants for employment.
  - iii. State that Contractor maintains a drug-free workplace in all solicitations or advertisements for employees placed by or on behalf of Contractor.
3. Contractor will include the provisions of Section E.2 in every subcontract or purchase order of over \$10,000.

**F. Payments to Subcontractors.** Contractor shall make payment to all subcontractors, as defined in the code, within seven (7) days after receipt of payment from the City; or shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein. Contractor’s obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**G. Insurance.**

1. If applicable, Contractor shall submit to the City Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under the Contract or no later than ten (10) days after award, whichever occurs first.
2. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified by the Contractor without thirty (30) days prior written notice to the City.
3. The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669 and its elected and appointed officials, agents, employees and volunteers as additional insureds for the specified Project. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as additional insureds on all policies the City are made

additional insured(s). This shall be either a direct Endorsement that actually names the City or a blanket Endorsement within the insurance policy that states that under a contractual agreement the City will be named as an additional insureds on the required insurance policy. Such insurance shall also contain an endorsement stating that the insurance is primary with respect to any self-insurance or insurance maintained by the City of Hampton. Contractor’s coverage is primary and shall be on a non-contributing basis, and without regard to the fault of the named insured.

4. Insurance shall be maintained during the entire term of the Contract and any extensions and shall be of the following forms and limits:

All required insurance coverages must be obtained from insurers authorized to do business in the Commonwealth of Virginia. The insurers must have a rating of “A” (financial strength) and a VII or greater in the latest edition of the A.M.’s Best Company’s Insurance reports.	
Coverage Parts Required	Coverage Limits
<b>Commercial General Liability (CGL)</b> Required but not limited to: Bodily Injury and Property Damage Personal & Advertising Injury Damage to Rented Premises Premises liability Products & Completed Operations Contractual Liability	\$1,000,000 per occurrence \$2,000,000 aggregate \$100,000 min on damage to rented premises
<b>Business or Commercial Automobile Liability</b> Coverage for Any Auto Required	\$1,000,000
<b>Umbrella or Excess Liability</b>	\$10,000,000
<b>Workers’ Compensation</b> <b>Employer’s Liability</b>	Per Virginia Statute \$1,000,000 min
<b>Professional Liability</b> Inclusive Contractors E&O	\$3,000,000 \$5,000,000 aggregate
<b>Pollution Liability</b> Environmental Liability	\$1,000,000
<b>Builders’ Risk</b> All Perils and must remain in effect until substantial completion or until no person other than the City of Hampton or Hampton City Schools has insurable interest in the covered property.	100% of the insurable structure or structures guaranteed maximum value, to include but not limited to, soft costs, materials, and construction costs.
<b>Waiver of Subrogation</b> All lines of liability	Required Waiver of Subrogation
Claims-made policies require the policy holder to provide evidence of a retroactive date on the policy no later than the beginning of the contractor’s or sub-contractor’s work <b>under this project</b> . Claims-made commercial general liability or pollution policies must provide an endorsement extending the claim reporting period of up to three (3) years <b>after the agreement</b> .	
Certificates of Insurance (COI’s) must be accompanied by an endorsement naming City of Hampton or Hampton City Schools and their elected and appointed officials, agents, employees and volunteers as additional insureds.	

*\* Please note that single person contractors are not required to carry this insurance but must complete a Request for Waiver of Worker’s Compensation with the City’s Risk Management Department. If the Contractor has employees at any time during the Contract period, the Contractor must provide the minimum necessary coverage or a copy of the State’s consent to self-insure. The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the n Contractor.*



5. **Builder's Risk.** In addition, the Contractor, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain Builder's Risk insurance providing coverage to protect the interests of the City, Contractor, subcontractors, including property in transit, and property on or off premises, which shall become part of the building or project.
- i. Coverage shall be written on an all-risk, replacement cost, and completed value form basis in an amount at least equal to 100% of the projected completed value of the project as well subsequent modifications of that sum.
  - ii. Any flat deductible(s) shall not exceed \$5,000, any wind percentage deductible (when applicable) shall not exceed five-percent (5%); and any flood sublimit shall not be less than 25% of the projected completed value of the project.
  - iii. The policy shall be endorsed with a manuscript endorsement eliminating the automatic termination of coverage in the event the project is occupied in whole or in part, or put to its intended use, or partially accepted by the City. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the City's interest in the building ceases, or the building is accepted or insured by the City. The Contractor further agrees to endorse the City as additional insured, or loss payee, on the Builder's Risk.
  - iv. The Contractor shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation.
6. **IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.**

#### **H. Payment/Performance Bonds.**

1. Contractor shall furnish to the City a payment bond and a performance bond in conformity with Hampton City Code § 2-329. Each bond shall be payable to the City of Hampton and each in the sum of the City's Contract amount. The performance bond shall be conditioned upon the faithful performance of the Contract in strict conformity with the terms and conditions of the Contract, and each payment bond shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the Work.
2. Unless otherwise noted, all Surety documents required herein shall be received and approved by the Procurement Officer prior to beginning Work under the Contract and not later than ten (10) days after issuance of the "Notice of Intent to Award" or "Notice of Award" (whichever is sooner) for this ITB. Each of the required bonds shall be payable to the City of Hampton. Bonds shall be executed by one or more Surety companies legally authorized to issue bonds and do business in the Commonwealth. Said bonds shall be payable to the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669. With the exception of any required Bid Bond, each of the required bonds shall be maintained through the term of the Contract and any extensions.

- I. Hold Harmless/Indemnification.** It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and



litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

**G. Warranty/Guarantee.** Contractor guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of substantial completion. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under the Contract which is, or becomes, defective during the warranty period, shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the City.

**H. Unauthorized Disclosure of Information.**

1. Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract. The Contractor shall save harmless and indemnify the City of Hampton and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Contractor shall, upon written demand by the City of Hampton, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.
2. Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract shall constitute a breach of the terms of the Contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop and any and all unauthorized disclosures of confidential information.

**X. Dispute Resolution.**

**A. Procedure for Consideration of Contractual Claims**

1. Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of City and /or result in mitigation or elimination of the effects of the claim. Therefore, Contractor shall provide City with written notice of Contractor's intention to file a claim which:
  - i. Describes the act or omission by City or its agents that contractor contends caused the damages or entitles it to other relief; and
  - ii. Provides a description of the nature and amount of the claim.
2. Contractor's written statement providing notice of the claim shall be submitted to city within twenty (20) days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of Contractor to result from its acting on an order from City, it shall immediately take written exception to the order. For purposes of this section,

“claim” shall include, without limitation, any request for an increase in the Contract price or time and any request for equitable adjustment.

3. Submission of a notice of claim in compliance with the requirements described above shall be mandatory, and failure to submit a claim notice that complies with the requirements above shall be a conclusive waiver to such claim for damages or other relief by Contractor. Oral notice and untimely notice will be insufficient to satisfy the requirements stated in this section.
4. The City will review the claim and provide Contractor with a written decision thirty (30) days after its receipt of the claim. Contractor may not institute legal action prior to receiving the final decision of the City.

**B. Final Decision.** The final decision of the City shall be considered final and conclusive unless Contractor appeals the decision within three (3) months of the final decision or the due date of the final decision by instituting legal action.

**C. No Cessation of Performance.** Nothing in this section shall be construed to authorize or permit the Contractor to cease performance of the Contract while utilizing the dispute resolution procedures outlined in this section or any other dispute resolution procedures available to Contractor. Pendency of claims shall not delay payment of amounts agreed due in final payment.

**XI. Breach of Contract.** Contractor shall be deemed in breach of the Contract if the Contractor:

- A. Fails to Comply with any terms or conditions of the Contract;
- B. Fails to cure such noncompliance within ten (10) calendar days from the date of the City's written notice or such other time frame specified by the City Contract Administrator in the notice; or
- C. Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

**XII. Notice of Defect.** In the event of a defect or impropriety in an invoice or in the goods or services provided to City by Contractor or a subcontractor, City shall notify the Contractor of the defect or impropriety if the defect or impropriety would prevent payment by the payment date. The notice shall be sent by the City fifteen (15) days after receipt of the improper invoice or defective goods or services.

**XIII. Non-Performance.**

**A. Failure to Deliver.** The City reserves the right to procure goods and/or services to be provided under the Contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in the Contract.

**B. Unacceptable Deliveries or Performance (Rejections).** Upon notification by the City that goods and/or service deliverables provided by the Contractor under the Contract are damaged and/or not of the quality specified by the City, such goods and/or service deliverables will be rejected. Upon such notification, Contractor shall:

1. Replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.
2. Remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from the City's premises within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.

**C. Alternative Goods and Services.** In the case of default by Contractor for failure to deliver or perform in accordance with the Contract specification or terms and conditions, the City may procure goods or services

from other sources and hold Contractor liable for reasonable costs of completion directly attributable to Contractor's failure to perform. Contractor's liability shall include, but not be limited to:

1. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
2. Increased cost of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
3. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

**XIV. Termination of Contract.**

**A. Without Cause.**

1. The City may at any time, and for any reason, terminate the Contract by written notice to Contractor specifying the termination date, which shall be not less than fifteen (15) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of the Contract.
2. In the event of such termination, Contractor shall be paid the work satisfactorily completed or partially completed, and accepted by the City, at the time of termination.
3. Upon receiving the notice of termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any work completed or in process for which City has paid.

**B. With Cause.**

1. In the event that Contractor breaches any term of the Contract, the City may provide written notice of such breach to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid or in Section 1 of the Contract.
2. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed to cure the breach. Upon failure of Contractor to cure the breach, the City may immediately terminate the Contract as of the mailing date of the breach notice.
3. Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any completed or partially completed work for which the City has paid.
4. In the event of violations of law, safety, or health standards and regulations, the Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

**C. Non-Appropriation.**

1. It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of the Contract.
2. In the event funds are not appropriated and budgeted in any fiscal year for payments due under the Contract, the City shall notify Contractor of such occurrence in writing within thirty (30) days of non-appropriation, and the Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

**XV. Audit/Ownership of Documents/Freedom of Information Act.**

- A. Audit.** The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to the Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its

employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of the Contract and for at least three (3) years following the completion of the Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City's employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton chosen by the City.

**B. Ownership by City.** Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analysis prepared pursuant to the Contract, shall belong exclusively to the City. Such materials and documentation, whether completed or not, shall be the property of the City whether the Work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the City.

**C. Proprietary Information/Non-Disclosure.** Contractor is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all documents submitted by Contractor. Contractor may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information, and other confidential information provided by the Contractor:

1. Invoke the protections of this Section *prior to, or upon submission of*, the data or other materials.
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit proprietary or security information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
4. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Contractor's costs and/or bid pricing are to be protected is unacceptable. Contractor will be requested to remove any such statement(s) in order to be eligible for further consideration.

D. The City reserves the right to submit such information to the City Attorney for concurrence of the Contractor's claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

**XVI. Modification.** The Contract may only be modified in a writing executed by authorized representatives of the City and the Contractor.

**XVII. Tax Exemption.** The City is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under the Contract. Upon request, the City will furnish the Contractor with tax exemption certificates or the City tax exempt number. The City's exemption from taxation does not transfer to Contractor for Contractor's purchases for supplies or services required to complete the Contract.

**XVIII. Miscellaneous.**

**A. Non-Assignment.** Contractor shall not assign its rights and duties under the Contract without the prior written consent of the City.

**B. Applicable Law.** The Contract shall be deemed to be a Virginia contract and shall be governed as to all matters, whether of validity, interpretations, obligations, performance, or otherwise, exclusively by the laws of the Commonwealth of Virginia. Regardless of where actually delivered and accepted, the Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

- C. Venue.** Any and all suits for any claims or for any and every breach or dispute arising out of the Contract shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, or, if applicable, in the United States District Court for the Eastern District of Virginia, Newport News Division.
- D. Extent of Contract.** The Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral.
- E. Severability.** If any part, term, or provision of the Contract, shall be found by a court of competent jurisdiction to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the Contract.
- F. Separate Contracts.** The City reserves the right to allow other Contractors to provide goods or perform services in connection with the Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of materials and the execution of Work and properly shall connect and coordinate its Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractors, the Contractor shall inspect and promptly report to the Project Manager any defects in such Work that render it unsuitable for such proper execution and results.

## Subsection B.2 INSURANCE REQUIREMENTS

### CITY OF HAMPTON, VIRGINIA INSTRUCTIONS AND INFORMATION FOR COMPLYING WITH CITY INSURANCE REQUIREMENTS

This information is to assist the Contractor with understanding the insurance requirements of the City of Hampton (City). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the ITB requirements override statements in this document section.**

1. **Agreement/Reference.** All evidence of insurance must identify the nature of your business with the City. Clearly show any assigned number of a bid, contract, lease, permit etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. **It is important that you provide the types of coverage and minimum dollar amounts specified in the ITB document.** Failure to provide the requested amounts may lead to disqualification and increase processing time.
2. **When to Submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For “As-needed” contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
3. **Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the City as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the City is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable alternatives to **ACORD Certificates and other Insurance Certificates:**

- A. A copy of the **full insurance policy**
- B. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval
- C. **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (see paragraph 6 below)

Additional Insured Endorsements **DO NOT** apply to the following:

- A. Indication of compliance with statute, such as Workers’ Compensation Law
- B. Professional Liability insurance

4. **Renewal.** Upon renewal of any insurance policy, it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.
5. **Cancellation.** The contractor/vendor must inform the City thirty (30) days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insureds is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.
6. **Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval



after the City Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk Manager by submitting a request to the Risk Management Department.

7. **General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the City is at risk of:
  - A. **Third party claims** which may arise out of your work or your presence or special event on City premises.
  - B. **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
  - C. **Fire legal liability** insurance is required for persons occupying a portion of City premises.
8. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your contract or when they are driven off-road on City premises. It is not required for simple commuting unless the City is paying mileage. However, compliance with Virginia law requiring automobile liability insurance is a contractual requirement.
9. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
10. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent to Self-Insure) must be provided if you have any employees at any time during the period of the contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on City premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the City) any workers' compensation paid to an injured employee of the contractor.
11. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the City.
12. **Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle City funds or securities, and under certain other conditions. Specialty coverage may be needed for certain operations as outlined in the ITB.

# SECTION C

## Subsection C.1 PERFORMANCE BOND

### CONTRACT PERFORMANCE BOND PROJECT NO. 23-40TM

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, acknowledge ourselves held and firmly bound unto the City of Hampton, Virginia as Obligee, in the amount of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, the said [CONTRACTOR NAME] did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, enter into a contract with the City of Hampton, ITB# 20-37TM which said contract is by reference made a part hereof, is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall in all respects promptly and faithfully comply with and fulfill all the terms and conditions of said contract, then this obligation shall be void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any change, alteration or addition to the terms of the Contract or extension of time made by the Owner.

Whenever principal shall be, and declared by Obligee to be in default under the Contract, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Obligee elects, upon determination by the Obligee and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the Obligee to principal under the Contract and any amendments thereto, less the amount properly paid by Obligee to principal.

It is hereby expressly further understood and agreed that this Bond is also given and made against defective material and workmanship in the said work covered by the said Contract, provided, however, that no suit, action or proceeding, by reason of any defect whatever, shall be brought



upon this Bond after one (1) year following (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of Obligee.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.

[CONTRACTOR NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

[SURETY NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Countersigned: \_\_\_\_\_

Resident Virginia Agent

Registration No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

NOTE: Submit Certificate of Power-of-Attorney with Bond

**Subsection C.2 PAYMENT BOND**

**CONTRACT PAYMENT BOND**

**PROJECT NO. 23-40TM**

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, acknowledge ourselves held and firmly bound unto the City of Hampton, Virginia as Oblige in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, the said [CONTRACTOR NAME] did, on the \_\_\_\_ day of \_\_\_\_\_, 2023, enter into a contract with the City of Hampton, Virginia, ITB #23-40TM, which said contract is by reference made a part hereof, as fully and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to also include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for such sum or sums as may be justly due claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - A. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice of the following: The Principal, the City, and the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or for whom the work or labor was done or performed.

Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal, City and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

- B. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - C. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.

[CONTRACTOR NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

[SURETY NAME]

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

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Countersigned: \_\_\_\_\_

Resident Virginia Agent

Registration No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

NOTE: Submit Certificate of Power-of-Attorney with Bond

**Subsection C.3 RETAINED FUNDS ESCROW AGREEMENT**

**RETAINED FUNDS ESCROW AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ by, between and among the City of Hampton, Virginia (City), \_\_\_\_\_  
\_\_\_\_\_ (Contractor),  
\_\_\_\_\_ (Name of Bank),  
\_\_\_\_\_ (Address of Bank), a  
trust company, bank, or savings and loan institution with its principal office located in the  
Commonwealth (hereinafter referred to collectively as “Bank”) and \_\_\_\_\_  
\_\_\_\_\_ (“Surety”) provides:

**I.**

The City and the Contractor have entered into a contract with respect to:

\_\_\_\_\_  
\_\_\_\_\_ (“the contract”).

This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

**II.**

In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the City is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the City, elected to have these retained amounts held in escrow by the Bank. This Agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or Agreement between the City and the Contractor.

**III.**

The City shall from time to time, pursuant to its contract, pay to the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from Escrow by the City, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks drawn by the City and made payable to it as Escrow Agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement.

1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills.
2. Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States.
3. Bonds or notes of the Commonwealth of Virginia.
4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A".
5. Certificates of deposit issued by commercial banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
6. Any bonds, notes, or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase Agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase Agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase Agreement a fair market value equal to at least one hundred percent (100%) of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder, which matures more than five (5) years after the date of its purchase by the Bank or deposit by the Contractor.

VI.

One of the following methods may be used to withdraw funds from the escrow account:

1. The Contractor may from time to time withdraw the whole or any portion of the escrow funds by depositing with the Bank approved securities listed in Section V above in an amount equal to or in excess of the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.
2. Upon receipt of a direction signed by the City Manager or Director of Finance, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City. Such payment shall be made in cash as soon as is practicable after receipt of the direction.
3. Upon receipt of a direction signed by the City Manager or Director, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

#### VII.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

#### VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

#### IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the Contract are not affected hereby.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the PARTIES hereto have caused their names to be hereunto subscribed and affixed by their officers in that behalf duly authorized this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF HAMPTON, VIRGINIA

BY \_\_\_\_\_  
CITY MANAGER OR DESIGNEE

[CONTRACTOR NAME]

BY \_\_\_\_\_  
OFFICER, PARTNER OR CITY

[BANK NAME]

BY \_\_\_\_\_  
PRESIDENT/VICE-PRESIDENT

\_\_\_\_\_  
SURETY

BY \_\_\_\_\_  
ATTORNEY-IN-FACT



**Subsection C.4 PROJECT TIMELINE**

The undersigned agrees that if awarded a Contract, bidder will commence work within **10** calendar days after the date of notice to proceed letter, and that bidder will obtain substantial completion within **450** calendar days acknowledging the owner’s right, per Article II, of the Contract, to assess Liquidated Damages of \$ **2500.00** per day.

(For individual trading  
in his individual name) \_\_\_\_\_ Date: \_\_\_\_\_  
(Print)  
\_\_\_\_\_  
(Signature)

(For use by an individual  
trading under trade name) \_\_\_\_\_ Date: \_\_\_\_\_  
(Print)  
\_\_\_\_\_  
(Signature)

Trading as \_\_\_\_\_  
(Print)  
\_\_\_\_\_  
(Signature)

(For use by partnership) \_\_\_\_\_ Date: \_\_\_\_\_  
(Partnership Name Printed)  
\_\_\_\_\_  
(Partner/Signature)

(For use by a corporation) \_\_\_\_\_ Date: \_\_\_\_\_  
(Corporate Name Printed)

By \_\_\_\_\_  
(Corporate Officer Signature)  
\_\_\_\_\_  
(Name Printed)  
\_\_\_\_\_  
Indicate Official Position

Attest: \_\_\_\_\_  
Corporate Secretary  
\_\_\_\_\_  
(Name Printed)

## **SECTION D – DEPARTMENT SCOPE OF WORK, SPECIFICATIONS, DRAWINGS, AND SPECIAL CONDITIONS**

### **SCOPE OF WORK:**

Construct the new Fire Station #3 including all associated site work and utilities at 1911 W. Pembroke Ave, Hampton Va. 23661.

### **DRAWINGS AND OTHER DOCUMENTS**

All work shall be in accordance with the following documents which are posted separately online as Section D and are incorporated by reference herein.

- Drawings
- Project Manual (Specifications)
- Geotechnical Report, dated February 22, 2022, prepared by Froehling & Robertson
- Virginia Department of Environmental Quality, Virginia Water Protection (VWP) General Permit
- Corps of Engineers, Norfolk District, State Program General Permit (SPGP)

Drawings:

<https://guernseytingle.sharefile.com/d-sb6a6b1e5152e4fa5a57b5704173c33a5>  
[\[guernseytingle.sharefile.com\]](https://guernseytingle.sharefile.com)

Specifications:

<https://guernseytingle.sharefile.com/d-s3dc5d1165f2b40a2a6fd33b1cba7d1b3>  
[\[guernseytingle.sharefile.com\]](https://guernseytingle.sharefile.com)

# SECTION E – ADDITIONAL TERMS AND CONDITIONS FOR FEDERALLY FUNDED TRANSACTIONS

## ADDITIONAL TERMS AND CONDITIONS FOR FEDERALLY-FUNDED TRANSACTIONS

The purchase of goods or services funded in whole or in part by the Federal Government are subject to the requirements of 2 C.F.R. §§ 200.317 – 200.326 and 2. C.F.R. Part 200, Appendix II. The contractor, vendor, or supplier (“Contractor”) is responsible for ensuring its compliance with all applicable Federal requirements. The following contract clauses shall be incorporated in any contract awarded by the City of Hampton, Virginia, its governing body, officers, employees, and agents (“City”) as indicated below.

### I. TERMS REQUIRED FOR ALL CONTRACTS

<b>SUSPENSION AND DEBARMENT</b>	
Authorizing Legislation	Executive Order 12549 (1986), Executive Order 12689 (1989), 2 C.F.R. Part 3000
Required Contracts	<b>All Contracts</b>

- A. The contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, contractor is required to verify that neither the Contractor, nor its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its respective lower tier covered transactions.

<b>BYRD ANTI-LOBBYING AMENDMENT</b>	
Authorizing Legislation	31 U.S.C. 1352, 45 C.F.R., Part 18, Appendix A
Required Contracts	<b>All Contracts</b>

- A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered

by 31 U.S.C.1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. The certificate entitled Certification Regarding Lobbying (See "Appendix B" hereto) must be completed and returned with this Agreement.

- B. Required Certification. If applicable, contractors must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING  
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

<b>PROCUREMENT OF COVERED MATERIALS</b>	
Authorizing Legislation	42 U.S.C. § 6962, Section 6002 of the Solid Waste Disposal Act
Required Contracts	<b>All Contracts Over \$10,000</b>

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - 2. Meeting contract performance requirements; or
  - 3. At a reasonable price.
  
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
  
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

<b>TERMINATION FOR CAUSE/CONVENIENCE</b>	
Authorizing Legislation	2 C.F.R. Part 200, Appendix II (B)
Required Contracts	<b>All Contracts</b>

See General Terms and Conditions.

<b>ACCESS TO RECORDS</b>	
Authorizing Legislation	DHS Standard Terms and Conditions v.3.0 (2013)
Required Contracts	<b>All Contracts</b>

The following access to records requirements apply to this contract:

- A. The Contractor agrees to provide City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  
- C. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
  
- D. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

<b>CONTRACT WORK HOURS AND SAFETY STANDARDS ACT</b>	
Authorizing Legislation	29 C.F.R. 5.5(b)
Required Contracts	<b>All Contracts Over \$100,000 Utilizing Mechanics or Laborers</b> (as defined in 40 U.S.C. §§ 3701)

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
  
- C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
  
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

<b>CLEAN AIR ACT AND FEDERAL WATER POLLUTION ACT</b>	
Authorizing Legislation	40 U.S.C. § 7401-7671(q), 33 U.S.C. §1251-1387, 29 C.F.R. § 5.5(b)
Required Contracts	<b>All Contracts Over \$150,000</b>

- A. Clean Air Act
  - 1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency (EPA) Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**B. Federal Water Pollution Control Act**

1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate EPA Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

<b>LEGAL/CONTRACTUAL/ADMINISTRATIVE REMEDIES FOR BREACH</b>	
Authorizing Legislation	2 C.F.R. Part 200, Appendix II(A)
Required Contracts	<b>All Contracts Over \$250,000</b>

See General Terms and Conditions.

**II. ADDITIONAL TERMS REQUIRED FOR CONSTRUCTION CONTRACTS**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	
Authorizing Legislation	2 C.F.R. PART 200 APPENDIX II(C)
Required Contracts	<b>Required in All Construction Contracts</b> (as defined in 41 C.F.R. § 60-1.3)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including

an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain



from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

<b>DAVIS-BACON ACT</b>	
Authorizing Legislation	40 U.S.C. §§ 3141-3144 and 3146-3148, 29 C.F.R. Part 5; 2 C.F.R. PART 200 APPENDIX II(D)
Required Contracts	<b>Required in Certain Construction Contracts Over \$2,000*</b>

- A. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Vendor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Contractors are required to pay wages not less than once a week.

\* Please note that the Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded under the American Rescue Plan Act of 2021 (“ARPA”).

<b>COPELAND ANTI-KICKBACK ACT</b>	
Authorizing Legislation	40 U.S.C. 3145
Required Contracts	<b>Required in All Construction Contracts Over \$2,000</b>

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**III. TERMS RECOMMENDED FOR ALL CONTRACTS**

<b>CONTRACT CHANGES OR MODIFICATIONS</b>	
Recommended Contracts	<b>All Contracts</b>

See General Terms and Conditions.

<b>COMPLIANCE WITH FEDERAL LAW REGULATIONS AND EXECUTIVE ORDERS</b>
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Recommended Contracts	<b>All Contracts</b>
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This is an acknowledgement that financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

<b>NO OBLIGATION BY FEDERAL GOVERNMENT</b>
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Recommended Contracts	<b>All Contracts</b>
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The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the contract.

<b>PROGRAM FRAUDULENT STATEMENTS OR RELATED ACTS</b>
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Authorizing Legislation	31 U.S.C. §§ 3729-3733
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Recommended Contracts	<b>All Contracts</b>
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The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.