

## Request for Proposals (RFP)

Issue Date: October 10, 2023

Solicitation Title:

### Sports Center Operations

Issuing Office: Historic Triangle Recreational Authority  
Attn: Travis A. Dill  
401 Lafayette Street  
Williamsburg, Virginia 23185  
Voice (757) 220-6181

Location of where work will be performed:

City of Williamsburg

<b>RFP NO:</b> 002-777-2024
<b>Bid Conference:</b> NA - None
<b>CLOSING DATE:</b> October 26, 2023
<b>CLOSING TIME:</b> 3:00 PM. Local time EDT
<b>PROCUREMENT OFFICER:</b> Travis A. Dill tdill@williamsburgva.gov PHONE: 757-220-6181

**Information will be received until the Date and Time noted above for furnishing the Goods/Services described herein and then reviewed and evaluated. Any Information received after due date and time will not be consider.**

Written questions related to the Request for Proposals (RFP) will be accepted until Thursday October 16, 2023 @ 3:00PM Local Time. Questions regarding Request for Proposals (RFP) must be submitted to tdill@williamsburgva.gov (Emails are an acceptable form of written documentation).

Contract Period: Five (5) years

All inquiries for information should be directed to Travis A. Dill, Purchasing Agent, [tdill@williamsburgva.gov](mailto:tdill@williamsburgva.gov)

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

401 Lafayette Street Williamsburg, VA 23185

Name and Address of Firm:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

(Signature in Ink)

\_\_\_\_\_ Zip Code: \_\_\_\_\_

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

FEI/FIN NO. \_\_\_\_\_

(Please Print)

Fax Number: (\_\_\_\_) \_\_\_\_\_

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

E-Mail Address: \_\_\_\_\_

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

**PRE-BID CONFERENCE:** None

**RETURN THIS PAGE WITH YOUR BID OFFER**

**Historic Triangle Recreational Facility Authority**

**REQUEST FOR PROPOSAL # 002-777-2024**

The HTRFA invites qualified firms to submit proposals to provide Sports Center Operations for a new indoor sports center in Williamsburg, Virginia.

All responses to this Request for Proposal and any resulting contract shall be consistent with and governed by the Virginia Public Procurement Act.

**All proposals shall be turned in no later than 3:00 P.M. EST on October 16, 2023 to the Historic Triangle Recreational Facility Authority located at 401 Lafayette Street Williamsburg, Virginia 23185. If proposals are sent via a mailing service or hand delivered, please address the proposals to the CONTACT listed above. Any proposals that are submitted by e-mail, phone, or facsimile shall not be considered. Any proposals received after the deadline shall be deemed non-responsive and returned unopened. *It is the Offeror's sole responsibility to ensure all information; including addendums are complete and delivered on time.* The HTRFA reserves the right to reject any and all proposals and to waive informalities. If the Historic Triangle Recreational Authority @ 401 Lafayette Street Williamsburg, Virginia 23185 closes its offices due to inclement weather scheduled receipt of proposals will be extended to the next business day, same time.**

*Note: The HTRFA does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.*

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## **I. Introduction**

### **A. Background**

In the fall of 2021, the Historic Triangle Localities (the “Localities”) of the City of Williamsburg, James City County, and York County committed to forming the HTRFA to oversee the construction and management of regional sports and recreation facilities as part of the redevelopment of 160+ acres alongside the Colonial Williamsburg Visitors Center. The HTRFA is tasked with leasing the property, procuring the construction and financing for the project, and overseeing the operations of the sports center once it has been constructed.

In September 2022, the Historic Triangle Recreational Facilities Authority (“HTRFA” or “Authority”) voted unanimously to negotiate an interim agreement with MEB to design and build a regional indoor sports center on the Colonial Williamsburg Visitor Center property in the City of Williamsburg. Architectural firms Clark Nexsen, Guernsey Tingle, and Timmons Group are also part of the MEB design-build team for this project, and they are currently working with the HTRFA to create 35% design drawings. Current planning expectations are targeting for the opening of the sports center by the beginning of 2026. The indoor sports center will be up to 200,000 square feet and include 12 basketball courts that can be converted to 24 volleyball courts, 36 pickleball courts, or a full-sized artificial turf (via a roll-out turf system). Additional amenities are also expected to include other revenue-generating activities, such as food/beverage options, clip n’ climb, ninja course, etc.

In June 2023, the HTRFA issued a Request for Statements of Interest (“RFI”) from qualified youth/amateur sports facility management firms to provide sports center operations for a new indoor sports center in Williamsburg, Virginia. The HTRFA received Statements of Interest from four (4) firms and conducted interviews with each.

### **C. Competitive Negotiation.**

*This procurement shall utilize competitive negotiation, pursuant to §§ 2.2-4302.2 and 2.2-4303.*

The HTRFA has determined in writing that, pursuant to Virginia Code § 2.2-4303(D)(2), competitive sealed bidding is not practicable nor is it fiscally advantageous to the public.

### **D. Communications Prior to the Response Deadline.**

Any communications pertaining to the scope of work, the specifications, the preparation or submittal of a proposal, and all other communications referred to this solicitation must be made in **writing** to the individual whose contact information is listed on the cover page. Such communication shall be made no later than **10** calendar days prior to the date set for the receipt of proposals. Notifications may not be considered if received in less than **10** calendar days of the date set for receipt of proposals.

**E. Revisions to the Request for Proposals.**

Any revisions to the solicitation will be made only by addendum issued by the Contact listed above. Such revisions will be made in the form of an addendum and posted <https://www.williamsburgva.gov> , <https://htrfa.org/bids/> , <https://eva.virginia.gov> .

**F. Offeror Solely Responsible for Proposal Costs.**

HTRFA will not be responsible for any preparation or submission costs associated with your proposal.

**II. Scope of Work**

Following the RFI process, the HTRFA is now issuing a Request for Proposals (RFP) for Sports Center Operations. The intent of this RFP is for the HTRFA to negotiate and enter into an agreement with a single firm to operate, maintain, and market the proposed new sports center in Williamsburg. The firm contracted to operate the facility would report to the HTRFA.

It is envisioned that the HTRFA will contract with a private operator that would be primarily responsible for:

1. Day-to-day general management, maintenance, and planning for the facility (including pre-opening, grand opening, and post-opening).
2. Marketing, securing, and servicing sports tournaments and economic impact-generating events on the weekends:
  - It is expected that most tournament activity would be 2-day weekend tournaments, or 3-day tournaments over holiday weekends, however the HTRFA would also encourage longer (4-5 day) tournaments when feasible, with advance notice to the HTRFA/Localities so that local programming usage can be appropriately adjusted (*note: see below regarding local programming expectations*).
  - Operator will also be expected to provide the HTRFA with detailed data and metrics for evaluation of their performance as it relates to tournament activity and associated economic impact.
3. Partnering with the Historic Triangle Localities' parks and recreation departments to deliver local programming during the week:
  - The HTRFA's vision for the community sports activity portion of the program is that league play could be signed up for by any resident of the three Historic Triangle localities (City of Williamsburg, James City County, and York County) via the Localities' parks/recreation departments (in-person or online). However, the quality of the league play experience would be enhanced because young people and adults from all three communities would play together in consolidated programs delivered by the

HTRFA's contract operator in cooperation with the three parks/recreation departments. This approach would have the further advantage of creating a data set to track relative community usage over time, with a mechanism to adjust shared operating costs over the years.

- The contract operator will also be responsible for renting any available court hours during the week (that are not being utilized for the local programming) to other local and regional sports groups (club teams, leagues, etc.).
4. Working to maximize the potential for revenue from all other aspects of the facility, and therefore reduce potential annual facility operating deficits:
- The HTRFA recognizes that local programming having priority during the week may lessen the opportunity for additional sports court revenues during the week.
  - It is envisioned that potential additional revenue opportunities may include, but may not be limited to concessions and merchandise sales; rental of courts during the week that are not being utilized by local programming; rental of event hall space for banquets, meetings, etc.; other revenue-generating experiential activities such as a climbing wall and ninja gym; facility entry fees during tournaments; and other such feasible revenue opportunities identified by the contract operator.

### **III. Proposal Format.**

The proposals are to be submitted in a format that allows uniform review and easy access to information by the evaluation committee. A table of contents shall be provided, and pages and exhibits numbered in an organized manner. All proposals shall provide a delineation of capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

The items to be addressed in the proposal in the order listed are:

1. Cover Sheet
2. Firm Overview, Relevant Experience & References
3. Proposed Services & Evaluation Plan
4. Proposed Cost of Services
5. Financial & Litigation Information
6. Insurance
7. Other Supporting Data

8. Submission of Proprietary Information
9. Acknowledgement of Addenda

### **Section 1 – Cover Sheet**

Included on the cover sheet shall be:

- a. The name of the firm and the location of the office that will have the responsibility for the services to be provided.
- b. The name, address, and phone number of a key representative who is knowledgeable about the proposal.
- c. The signature, in ink, of an officer or employee having the authority to bind the company by their signature. Signatures by anyone other than the president, vice president, or general partner should have accompanying documentation that the individual is empowered to bind the company or partnership.

### **Section 2 – Firm Overview, Relevant Experience & References**

Please provide a summary of firm history, background, and expertise, including up to five (5) case studies of relevant sports tourism-caliber facility management experience with municipal clients. Please also include a client reference that the Authority may contact for each of the case studies you provide. *(Note: This section should be no longer than 8 pages, based on a 3-page maximum for firm profile, and a 5-page maximum for relevant experience.)*

### **Section 3 – Proposed Services & Evaluation Plan**

Please provide a summary and timeline of your proposed services plan (including both pre- and post-opening services). This plan should clearly include, at a minimum, your approach to the four (4) key operator elements described in Section 2 above. Please also provide suggested approaches to performance evaluation, as well as what metrics you will provide the HTRFA toward that end *(note: any actual examples of metrics/evaluations used on similar facility operating projects may also be provided as part of this section)*.

### **Section 4 – Proposed Cost of Services**

Please provide your proposed cost of services and financial terms during each project phase that would be associated with the services plan your firm provided in response to 3b above. Please also propose your preferred contract length/renewal terms, based on your successful relevant experience.

### **Section 5 – Financial & Litigation Information**

Please provide proof of your firm's financial stability, such as company financial statements, CPA audit reports, letters/references from financial partners, etc. In addition, please provide a description of any litigation within the past 10 years (by or against your firm, principals, or staff) related to operations, maintenance, or marketing of sports and/or event facilities. *(Note: Any confidential/proprietary information should be clearly marked as such.)*

## **Section 6 – Insurance**

Insurance of the types and in the amounts set forth in the terms and conditions shall be purchased and maintained by the Offeror during the life of the Contract.

## **Section 7 – Other Supporting Data**

Other information you feel to be relevant to the selection of your firm for this Contract.

## **Section 8 – Submission of Proprietary Information (Submit Under Separate Cover)**

Trade secrets or proprietary information submitted in a proposal shall not be subject to disclosure under the Virginia Freedom of Information Act. However, in order for this information to be protected from disclosure, the Offeror must specifically invoke the protections of Virginia Code § 2.2-4342 or other applicable statute, prior to or upon submission of the trade secrets or proprietary information. The Offeror must clearly identify any part of its proposal considered to be protected as trade secret or as proprietary information and must state the reasons why protection is necessary. Offerors shall submit under separate cover any information considered proprietary and any copyrighted material. Separate cover means that proprietary information must be placed in a separate area of the proposal and be clearly identified as containing proprietary and/or copyrighted information.

- a. Any Offeror shall identify a trade secret or proprietary information by clearly stating "Trade Secret" or "Proprietary Information" adjacent to the particular information, and by clearly identifying the information to be subject to the protection, such as by encircling, highlighting, underlining or other similar means. The Offeror shall state the reasons why protection is necessary on a separate page of the proposal.
- b. Any Offeror shall not identify as a trade secret or proprietary information those sections of the proposal that are material to the HTRFA's ultimate award of the contract.
- c. The HTRFA reserves the right to contact an Offeror and to request that the Offeror explain or clarify why the Offeror identified certain information as a trade secret or as proprietary information.
- d. Any Offeror shall not identify as trade secret or proprietary information their complete proposal.

All information contained within the body of the proposal not under separate cover and labeled proprietary shall be public information in accordance with state statutes.



## Section 9 – Acknowledgement of Addenda

### IV. Submittal Instructions.

- A. Please submit four (4) hard copies and two (2) thumb drive copies of your proposal to: City of Williamsburg – Finance Department. Attention: Travis A. Dill, 401 Lafayette Street, Williamsburg, VA 23185. Each proposal shall be printed in English and received in hard copy by the deadline. Oral proposals, proposals received by telephone, fax, telegraph, or e-mail shall be rejected.
- B. An authorized representative of the Offeror shall sign proposals.
- C. Proposals should clearly respond to the Scope of Services. All information requested in this solicitation should be submitted. Failure to submit all information requested may result in the proposal being deemed non-responsive. Proposals which are deemed non-responsive, incomplete, or lack key information may be rejected in full by the HTRFA.
- D. Proposals should be organized in the order delineated above in Section III.
- E. All pages of the proposal should be numbered.
- F. Except as otherwise provided, and in accordance with Virginia Code § 2.2-4342, all proceedings, records, contracts, and other public records relating to the HTRFA's procurement transactions shall be open to the inspection of any citizen, or any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.). Proposals shall not be available for inspection by Offerors until interviews, if scheduled, are completed. After award, all proposals become a matter of public record and are available for inspection by the public, except those portions of the proposals that were properly and timely identified as proprietary and/or copyrighted, and thus not subject to the Virginia Freedom of Information Act.
- G. Any contact with any HTRFA representative, other than that outlined above, concerning this RFP is **prohibited**. Such unauthorized contact may disqualify an Offeror from this procurement.
- H. The HTRFA will assume no responsibility for oral instruction or interpretation.
- I. Each Offeror shall be prepared, if so requested by the HTRFA, to present evidence of their experience, qualifications and financial ability to carry out the terms of the Contract.
- J. **ALL PROPOSALS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED AND SHALL BE RETURNED TO THE OFFEROR, UNOPENED. FAILURE TO COMPLETE FORMS AS REQUIRED MAY RESULT IN THE OFFEROR BEING DETERMINED "NON – RESPONSIVE."**

**V. Contract Award.**

**A. Award**

The HTRFA intends to enter a contract for the services solicited under this RFP with a competent, responsive, responsible firm(s) after using the competitive negotiation process as authorized by the Virginia Public Procurement Act, specifically including Virginia Code Sections 2.2-4301, 2.2-4302.2 and 2.2-4303. The RFP outlines the HTRFA's process for selecting the best proposal plus the major elements of the subsequent contract resulting from this selection. The HTRFA will base its recommendation on the "Evaluation Criteria" set forth in this RFP along with past performance and references of each Offeror.

The HTRFA may cancel this Request for Proposals or reject proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. See Virginia Code § 2.2-4359(D). Should the HTRFA determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

**B. Evaluation Criteria**

The HTRFA will base the initial and final evaluation on the following criteria:

Evaluation Criteria

1. Relevant Qualifications, Experience & References, 30%
2. Proposed Facility Services/Operating Approach, 20%
3. Proposed Sports Tourism Attraction Strategy, 20%
4. Cost of Services, 20%
5. Financial/Legal History ,10%

**APPENDIX A: General Conditions and Instructions to Offerors**

**1. COMPETITION INTENDED:** It is the HTRFA's intent that this solicitation permit competition. It shall be the Offeror's responsibility to advise the HTRFA's procurement representative in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source.

## 2. WITHDRAWAL:

- a. Requests for withdrawal of proposals after opening of such proposals but prior to award shall be transmitted to the procurement representative, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Offeror work sheets, etc. If bid bonds were tendered with the bid, the HTRFA may exercise its right of collection.
- b. No Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Proposal of the same Offeror or of another Bidder/Offeror in which the ownership of the withdrawing Offeror is more than five percent. In the case of Invitation for Bid's, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No Offeror who, is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

3. **ERRORS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in proposals must be initialed by the Offeror. Carelessness in quoting prices, or in preparation of proposal otherwise, will not relieve the Offeror. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after public opening cannot be corrected and the Offeror will be required to perform if his or her proposal is accepted.

4. **ACCEPTANCE OF PROPOSALS:** Unless otherwise specified, all formal proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

5. **NO CONTACT POLICY:** No Offeror shall initiate or otherwise have contact related to the solicitation with any HTRFA representative or employee, other than the procurement representative, after the date and time established for receipt of proposals. Any contact initiated by a Offeror with any HTRFA representative, other than the procurement representative, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

## APPENDIX B: Standard Terms & Conditions

*The following provisions shall be incorporated by reference into any contract awarded under this RFP:*

### Definitions

“Contract Documents” means all documents that constitute any legal and binding agreement between the Contractor/Offeror and the HTRFA, including these Standard Terms and Conditions.

“Contract Period” means the time period from the time that Contractor first becomes legally bound to provide goods or services to the HTRFA in response to a Solicitation until all of Contractor’s contractual obligations to the HTRFA, arising out of the Solicitation, cease.

“Obligations” means any and all legal obligations of Contractor under any Contract Documents.

“Solicitation” means the vehicle by which the HTRFA solicited pricing, and if applicable other terms, by which it could acquire goods or services from Contractor, regardless of whether the vehicle was an Invitation for Bids, Request for Proposals, Request for Quotes, HTRFA policy, or Virginia law.

1. **Assignment of Contract.** This Contract may not be assigned in whole or in part without the written consent of the HTRFA.

2. **Attorneys’ Fees.** Should the HTRFA employ an attorney to either (i) institute and maintain a suit against Contractor arising out of the Contract or Contractor’s Obligations (ii) assist in enforcing or defending any of the HTRFA’s rights under the Contract, (iii) protect the HTRFA’s interest in any matter arising under a contract with Contractor, (iv) collect damages for the breach of a contract or any other amounts owed to the HTRFA; or (v) recover on a surety bond given by the Contractor, then the HTRFA shall be entitled to recover its attorneys’ fees, costs, charges, and expenses expended or incurred therein from the Contractor if the HTRFA prevails in court.

3. **Audit.** The Contractor hereby agrees to retain all books, records, and other documents relative to Contractor’s Obligations and the Contract Documents for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The HTRFA and its authorized agents or any of its duly authorized representatives shall have access to any such books, documents, papers and records of the Contractor for the purpose of making audits, examinations, excerpts or transcriptions.

4. **Contractor Authorized to Transact Business in Virginia.** A Contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any Contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why Contractor is not required to be so authorized. Any Contractor described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the HTRFA.

5. **Certifications:**

- a. The Contractor certifies that Contractor's response to any Solicitation:
  - i. Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a proposal in response to the same solicitation;
  - ii. Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
  - iii. Is in full compliance with the Virginia Conflicts of Interest Act;
  - iv. Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and,
  - v. Has been prepared without the benefit of being provided information not available to the general public, or other potential offerors, such as insider information known to HTRFA employees or other sources which may have gained such information from interaction with HTRFA employees;
- b. The Contractor has not offered or received any kickback from any other offeror or contractor, supplier, manufacturer, or subcontractor in connection with the proposal on this Solicitation. A kickback is defined as an inducement for the award of a contract, subcontract, or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- c. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning proposals, prices, terms or conditions upon which the contract resulting from the acceptance of his proposal is to be performed;
- d. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this Request for Proposals; and
- e. Neither Contractor, Contractor's subcontractors, nor any person acting on Contractor's behalf, have conferred, or will confer, on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

## 6. **Contractual Claims Procedure**

- a. Contractual claims or disputes by Contractor against the HTRFA, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the HTRFA written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.
- b. The HTRFA, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.
- c. If the Contractor disagrees with the decision of the HTRFA concerning any pending claim, the Contractor shall promptly notify the HTRFA by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the HTRFA or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the HTRFA, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- d. The HTRFA's decision on contractual claims shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate court.

7. **Counterparts and Electronic Signatures.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Contract or any counterpart hereof to produce or account for the other counterpart. The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature. Without limitation, "electronic signature" shall include faxed version of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

8. **Debarment.** By submitting a proposal, Contractor is certifying that it is not currently debarred by the Commonwealth of Virginia or the HTRFA.

9. **Drug-free Workplace.**

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

"Drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to 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 Agreement.

Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

10. **Employment Discrimination Prohibited.** During the performance of this Contract, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement. The Contractor will include the provisions of the foregoing paragraphs, a, b, and c in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor.

Contractor will include the provisions of the foregoing subsections a.(1), (2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with Contractor, so that the provisions will be binding upon each subcontractor or vendor.

11. **Entire Agreement.** This Contract contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific

intent of the Parties that this Contract alone sets forth the terms on which the Parties have mutually agreed.

12. **Ethics in Public Contracting.** The provisions contained in Virginia Code §§ 2.2-4367 through 2.2-4377, shall be applicable to all contracts solicited or entered into by the HTRFA. A copy of these provisions may be obtained from HTRFA upon request. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (§ 2.1-348 et. seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et. seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

13. **Exemption from Taxes.** The HTRFA is exempt from state sales tax and federal excise tax. Tax Exemption Certificates indicating the HTRFA's tax-exempt status will be furnished by the HTRFA upon request.

14. **Governing Law and Forum Selection.** This Contract shall be governed by, and construed in accordance with, the laws of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Contract shall only be proper in the Circuit Court of the City of Williamsburg, Virginia or in the General District Court of City of Williamsburg, Virginia if the amount in controversy is within the jurisdictional limit of each court, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

15. **Headings.** The headings used in this Contract, or any other Contract, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

16. **Immigration Reform and Control Act of 1986.** By accepting a contract award, Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits the employment of illegal aliens.

17. **Indemnification.** Contractor shall indemnify, keep and save harmless the HTRFA, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the HTRFA in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the HTRFA in any such action, Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this



Contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the HTRFA as herein provided.

## 18. Insurance

The Contractor shall maintain the following insurance to protect it from claims that could arise from performance of the Obligations, including claims (i) under the Workmen's Compensation Act (ii) for personal injury, including death, and (iii) for damage to property, regardless of whether such claims arise out of Contractor's actions or inactions, or those of Contractor's subcontractor or other persons directly or indirectly employed by either of them:

a. Worker's Compensation and Employer's Liability. Contractor shall procure and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with the laws of any state, district or territory of the United States of America in which work towards meeting Contractor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:

1. Bodily Injury by accident, \$500,000 for each accident;
2. Bodily Injury by disease, \$500,000 policy limit;
3. Bodily Injury by disease, \$500,000 for each employee.

b. Commercial General Liability Insurance. This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent Contractor, and personal injury insurance in support of section 10 of this Agreement entitled "Indemnification". This policy shall be endorsed to include the HTRFA as an additional insured during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by the HTRFA. Contractor shall procure and maintain Public Liability Insurance in an amount not less than:

1. \$1,000,000 for each occurrence involving bodily injury;
2. \$1,000,000 for each occurrence involving property damage;
3. \$2,000,000 aggregate limits.

c. Comprehensive Automobile Liability. Contractor shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by the Contractor, with the following limits:

1. \$1,000,000 for each occurrence involving personal injury;

2. \$1,000,000 for each occurrence involving property damage;
3. \$2,000,000 aggregate limits.

d. The Contractor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

The HTRFA reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

All insurance policies required under this paragraph, or otherwise required by the Solicitation or Contract Documents, shall include a clause waiving any and all subrogation rights against the HTRFA.

Insurance policies shall provide for notification to the HTRFA of non-payment of any premium and shall give the HTRFA the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by the HTRFA shall be deducted from amounts due Contractor under the Contract.

19. **Liability Coverage:** Unless otherwise expressly excepted in the Solicitation documents prepared by the HTRFA, the Contractor shall take out and maintain during the Contract Period such bodily injury, liability and property damage liability insurance as shall protect it and the HTRFA from claims for damages for personal injury, including death, as well as from claims for property damage, which could arise from Contractor's performance of its Obligations. Such insurance shall at least have the coverages and be in the amounts set forth in section 19 "Insurance and Bond Requirements" set forth below and shall name the "Historic Triangle Recreational Facility Authority Board" as an additional insured. Such insurance must be issued by a company admitted to do business within the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after Contractor is awarded a contract in response to a Solicitation, and in no event later than the first day on which Contractor provides goods or services to the HTRFA, the Contractor shall provide the HTRFA with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the HTRFA at least 30 days' notice prior to cancellation or other termination of such insurance.

20. **Minority and Women-Owned Business Enterprise and Small Business Certification.** Contractor shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project. Contractor shall complete and submit the "Minority and Women-Owned Business and Small Business Certification" form from time to time, as requested by the HTRFA. Failure to complete and sign this statement is considered a material violation of this Contract.

21. **Modification.** Any amendment or modification of this Contract or additional obligation assumed by either Party in connection with this Contract will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

22. **Reserved**

23. **Non-Discrimination pursuant to Virginia Code § 2.2-4343.1.** Be advised that the HTRFA does not discriminate against faith-based organizations. Contractor shall not discriminate against faith-based organizations during the performance of this Contract.

24. **Notices.** All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either: (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or (b) transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

**Notices to the HTRFA shall be sent to:**

Andrew Omar Trivette, Chair  
Historic Triangle Recreational Facilities Authority  
401 Lafayette Street  
Williamsburg, Virginia 23185  
atrivette@williamsburgva.gov

***With a copy, which shall not constitute notice, to:***

Daniel M. Siegel, Esquire  
Robyn H. Hansen, Esquire  
Sands Anderson, PC  
P.O. Box 1998  
Richmond, VA 23218-1998  
dsiegel@sandsanderson.com

25. **Notice of Required Disability Legislation Compliance.** The HTRFA is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act 1990. Specifically, the HTRFA, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the American with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all state and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and Local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows Section 504 of the Rehabilitation Act of 1973.

26. **Payment to Subcontractors Under Virginia Code § 2.2-4354.**

- a. Contractor is obligated to take one of the two following actions within seven days after receipt of amounts paid to Contractor by the HTRFA for work performed by any subcontractor under this Contract:
  - 1) Pay the subcontractor for the proportionate share of the total payment received from the HTRFA attributable to the work performed by the subcontractor under the Contract; or
  - 2) Notify the HTRFA and the subcontractor, in writing, of Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b. Contractor shall provide its federal employer identification number to the HTRFA.
- c. Contractor shall pay interest to the subcontractor on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from the HTRFA for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subdivision a(2), above.
- d. Unless otherwise provided under the terms of this Contract, such interest shall accrue at the rate of one percent (1%) per month.
- e. Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements to each lower-tier subcontractor.
- f. Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of the HTRFA.

**27. Safety.**

- a. All Contractors and subcontractors performing services for the HTRFA are required to and shall comply with all Occupational Safety and Health Administration (OSHA), state and city safety and occupational health standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.
- b. Contractor expressly undertakes both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may be affected by Contractor's operation in connection with the work.
- c. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

- d. The provisions of all rules and regulations governing safety as adopted by the Virginia Safety and Health Codes Board and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this Contract.

28. **Severability.** If any provision or any part of a provision of the Contract shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

29. **Substitutions.** No substitutions, including key personnel, or cancellations are permitted after award without written approval by the HTRFA Administrator or their designee.

30. **Termination and Cancellation**

The HTRFA shall have the unilateral right to terminate any contract with Contractor for default on the terms of that contract, or any other contract between the Contractor and the HTRFA.

The HTRFA has the unilateral right to cancel and terminate any contract with Contractor, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Contractor as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of the HTRFA. If a contract is terminated in whole or in part for the convenience of the HTRFA, the Contractor shall be paid the contracted price for the service or goods actually provided or rendered up to the date of the termination of the respective contract, but shall not be paid any other fees or lost profits.

Any contract cancellation notice shall not relieve the Contractor of the obligation to perform on all outstanding orders issued prior to the effective date of cancellation.

31. **W-9 Form.** Contractor will submit a completed W-9 form, if it has not already submitted one with its proposal. This information is required in order to issue purchase orders and payments to Contractor.

32. **Waiver.** The failure of the HTRFA or Contractor to insist upon the strict performance of any provisions of the Contract, the failure of the HTRFA or Contractor to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the HTRFA of any act by Contractor requiring the HTRFA's consent or approval shall not be construed to waive or render unnecessary the requirement for the HTRFA's consent or approval of any subsequent similar act by Contractor. No provision of the Contract shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.

33. **Warranties**

If applicable, Contractor warrants to the HTRFA that all materials and equipment furnished shall be new, unless otherwise specified, and that Contractor’s Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents. If the Contract does not state a specific warranty period, the Contractor warrants Contractor’s Work for a period of one (1) year form the date of Substantial Completion of the entire Project. In no event shall Contractor’s warranty period be less than or terminate earlier than any warranty provision specified in the Contract.

The Contractor agrees that if warranties set forth in the Contract Documents are in any respect breached, the Contractor will pay to the HTRFA the full contract price agreed to by the HTRFA to be paid for the supplies, materials, equipment or services furnished under the bid or proposal. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to the HTRFA.

**APPENDIX C:**

**Acknowledgment of Addenda**

No. 1, Date \_\_\_\_\_ Signature \_\_\_\_\_

No. 2, Date \_\_\_\_\_ Signature \_\_\_\_\_

No. 3, Date \_\_\_\_\_ Signature \_\_\_\_\_

**COMPLETE THIS “ACKNOWLEDGMENT OF ADDENDA” AS APPROPRIATE AND INCLUDE IT WITH THE PROPOSAL.**

**SIGN CERTIFICATION ABOVE.**