

Request for Proposals (RFP)

Issue Date: March 7, 2024

Solicitation Title:

Sports Center Naming Rights

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

RFP NO: 004-777-2024
PRE-PROPOSAL CONFERENCE: -none-
CLOSING DATE: March 28, 2024
CLOSING TIME: 3:00 PM. Local time EDT
PROCUREMENT OFFICER: 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 Wednesday March 20, 2024 @ 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

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-PROPOSAL CONFERENCE: None

RETURN THIS PAGE WITH YOUR BID OFFER

Historic Triangle Recreational Facility Authority

REQUEST FOR PROPOSAL # 004-77-2024

SPORTS AND EVENTS CENTER NAMING RIGHTS

This Request for Proposals (“RFP”) solicits proposals from private entities that have an interest in associating their business name with a new, publicly-owned, sports and events center (“Facility”) to be built at the Colonial Williamsburg Visitors Center property in Williamsburg, Virginia. A private business will have the opportunity to associate its name with the Facility, in exchange for financial considerations that can help the Historic Triangle Recreational Facility Authority (“HTRFA”) support the long-term operations, maintenance, and continued capital improvement of the Facility. HTRFA wants to form a long-lasting partnership to generate mutual value for both parties.

All responses to this RFP 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 March 28, 2024 to the Historic Triangle Recreational Facility Authority, c/o City of Williamsburg – Finance Department, Attention: Travis A. Dill, 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, due to inclement weather, the City of Williamsburg closes its offices at 401 Lafayette Street Williamsburg, Virginia 23185, 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.

TABLE OF CONTENTS

RFP COVER PAGE

INSTRUCTIONS

Page

- I. HTRFA & Sports Center Overview.
- II. Proposal Format and Timetable.
- III. Submittal Instructions.
- IV. Contract Award.

Appendix A General Conditions and Instructions to Offerors

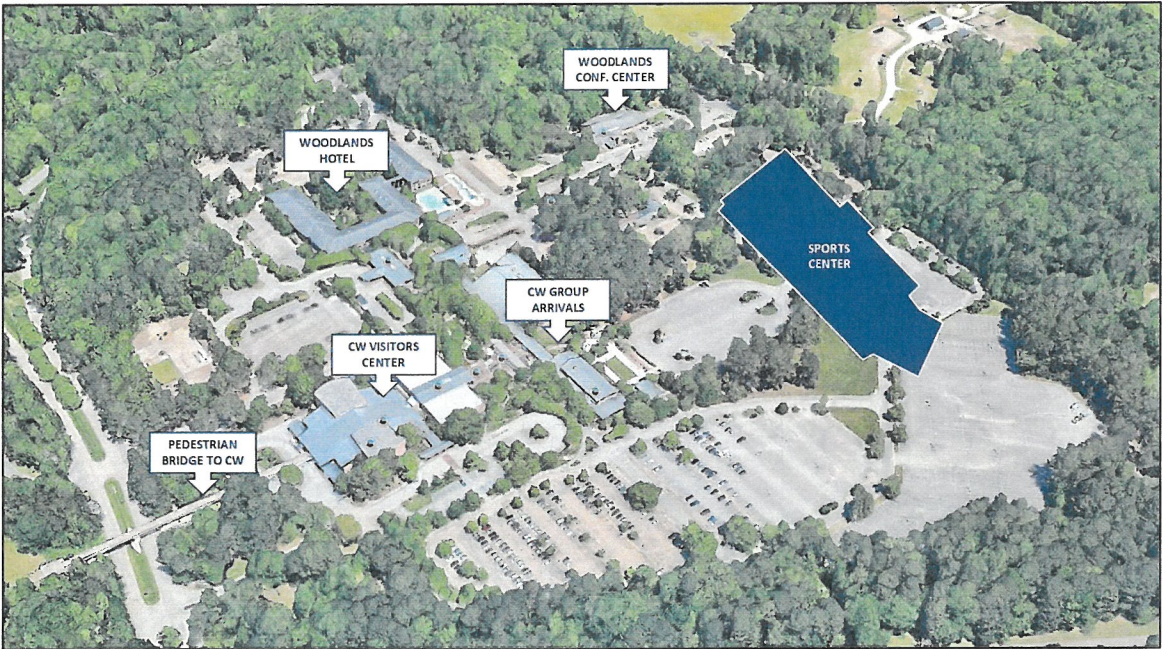
Appendix B Standard Terms & Conditions

Appendix C Acknowledgment of Addenda

I. HTRFA & SPORTS CENTER OVERVIEW.

A. Background.

In the fall of 2021, the Historic Triangle localities of the City of Williamsburg, James City County, and York County committed to forming the Historic Triangle Recreational Facilities Authority (“HTRFA” or “Authority”) 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 planned location for the sports center at the Colonial Williamsburg (“CW”) Visitors Center property is shown below:



- **Sports Center Design-Build Agreement.** HTRFA negotiated an interim agreement with MEB to design and build a regional indoor sports and events center on the CW 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. The construction budget is approximately \$80 million. Current planning expectations are targeting for the opening of the sports center by Q1 2026.
- **Sports Center Plans.** The indoor sports and events 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). The center is also expected to include other on-site amenities, recreation features, and entertainment options, such as a variety of food/beverage options, climbing wall and ninja course, and a 5,000-10,000 square foot multi-use events hall.

- **Consultant Reports.** See link below for summaries of a Sports Tourism Market Study and an Economic Impact Analysis conducted by consultants retained by the City of Williamsburg, <https://williamsburg.civicweb.net/document/29347/City%20Council%20Work%20Session%20-%20Mar%2008%202021.pdf>
- **Event & Attendance Projections.** Consultants project that the indoor sports center will host an estimated 38 annual weekends of regional and national sports tournament activity, to more than 17,000 annual weekday hours of programming that includes local parks/recreation leagues and camps, practices and games for club sports, and other regional events such as corporate meetings, expos, and tradeshow. It is estimated that the sports and events center could host approximately 557,000 annual visitors, including 238,000 (42%) out-of-market visitors.
- **Proximity to Colonial Williamsburg will Independently Increase Visitation.** It should also be noted that the Colonial Williamsburg Visitors Center (with which the new sports and events center will share its site) will continue to generate its own separate visitation.

B. 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.

C. 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 below. Such communication shall be made no later than **5** business days prior to the date set for the receipt of proposals. Notifications may not be considered if received in less than **5** business days of the date set for receipt of proposals. Questions will be accepted via email to tdill@williamsburgva.gov until **March 20, 2024** at 3:00 pm. Answers, interpretations, and any supplemental instructions will be provided to respondents in the form of written addenda to the RFP that will be posted on the HTRFA's website: <https://htrfa.org/bids/>.

D. 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 at <https://www.williamsburgva.gov>, <https://htrfa.org/bids/>, and <https://eva.virginia.gov>.

II. PROPOSAL FORMAT AND TIMETABLE.

A. 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. 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.

HTRFA will assess each respondent based on categories deemed most appropriate for a successful partnership:

- Financial proposal
- Term
- Payment schedule
- Any proposed category exclusivity, sponsorship assets, or other business opportunity requirements
- Proposed name of the facility
- Proposed marketing and community outreach initiatives to support the facility
- Financial stability of the naming rights partner
- Suitability of the company's image, reputation, industry, and products/services with the HTRFA, City of Williamsburg, James City County, York County, and the Colonial Williamsburg Foundation.

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

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 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 – Substantive Description of Offeror's Proposal

Respondent's proposal shall include the following:

- **Financial Proposal** – Respondent shall outline its financial proposal including, but not limited to, payment plan and escalation factors in sufficient detail so that the HTRFA can perform a thorough analysis of the proposal.
- **Term** – Each proposal must contain a minimum term of five (5) years, but longer terms are

also encouraged. Renewal options may also be included in the proposal.

- **Payment Schedule** – Each respondent must submit a proposed annual payment schedule. A majority of the compensation should not be deferred to later in the agreement term, but should provide for approximately equal annual installments over the term of the agreement.
- **Category Exclusivity** – Respondent shall define the entities that are within the respondent’s business category that it desires to preclude from having naming rights for areas within the sports and events center.
- **Proposed Name of Sports Center** – Respondent may propose alternative names for the facility. The HTRFA will have final approval authority of the facility name and logo. The successful respondent will license the right to include any trademarks included in the facility name and logo.
- **Marketing Initiatives** – Respondent must outline how it will enhance the sports and events center’s operations with marketing support in the form of media, promotions, and community projects.
- **Financial Stability** – Respondent must submit sufficient evidence of financial stability.

Section 3 – Other Factors/Components

Respondent may include any additional information deemed appropriate for consideration, including relevant experience (if applicable).

Note: The HTRFA intends to enter into separate negotiations in the future for the pouring rights at the sports and events center. However, if a respondent’s primary business model includes soft drinks, bottled water, sports drinks, and alcoholic beverages, the respondent may include pouring rights in their naming rights proposal.

If the respondent desires any benefits or assets that differ significantly from those described in Section II above, they should be noted in this section of their proposal.

Section 4 – 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 5 – Acknowledgement of Addenda

III. SUBMITTAL INSTRUCTIONS.

The proposal due date and time is **March 28, 2024** at 3:00pm Local Time.

- A. 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

The envelope must be clearly marked with the respondent’s name and “Sports Naming Rights RFP” on the outside of the envelope. By submitting a proposal and participating in the process as outlined in this RFP, respondent expressly agreed that no contract of any kind is formed under, or arises from this RFP, prior to the signing of a formal written contract.

B. Respondents are solely responsible for their own expenses in preparing a proposal and for subsequent negotiations with the Authority, if any. If the Authority elects to reject all proposals, the Authority will not be liable to any respondent for any claims, whether the costs or damages incurred by the respondent in preparing the proposal, loss of anticipated profit in connection with a final contract, or any other matter whatsoever.

C. 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.

D. 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.

E. The HTRFA will assume no responsibility for oral instruction or interpretation.

IV. CONTRACT AWARD.

The HTRFA intends to enter a contract 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.

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.

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.

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 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:
 1. 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;
 2. Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
 3. Is in full compliance with the Virginia Conflicts of Interest Act;
 4. Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and,
 5. 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.
- 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. 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 under protest.
- 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.

- a. 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.
- b. The Contractor will include the provisions of the foregoing paragraphs, a.1, 2, and 3 in every subcontract or purchase order of over ten thousand dollars (\$10,000), 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. [Reserved].

19. [Reserved]

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. 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.

23. 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

24. 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.

25. 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.

26. 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.

27. 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.

28. Substitutions.

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

29. 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.

30. 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.

31. 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.

32. [Reserved].

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.