

Request for Proposals (RFP)

Issue Date: September 12, 2024

Solicitation Title:
HTRFA Venue Naming Rights Sales Services

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

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| RFP NO: 001-777-2025 |
| PRE-PROPOSAL CONFERENCE: -none- |
| CLOSING DATE: October 10, 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 Friday, September 27, 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).

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: _____

RETURN THIS PAGE WITH YOUR BID OFFER

1. OVERVIEW

The Historic Triangle Recreational Facilities Authority (“HTRFA” or the “Authority”) is requesting proposals from qualified naming rights sales agencies or consultants to market naming rights opportunities for sports/event facilities in Williamsburg, Virginia (the project). Construction of the \$80 million Williamsburg Sports & Events Center (<https://www.williamsburgva.gov/1122/Regional-Indoor-Sports-Center>) (Sports Center) broke ground in August 2024 and is expected to be open by Fall 2026. The Authority may also consider future sports and/or event venues to be co-located with the Sports Center at the Colonial Williamsburg Regional Visitor Center site (Visitor Center).

2. PROJECT BACKGROUND

In 2021, the Historic Triangle 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 facility as part of the redevelopment of 160+ acres alongside the Visitor Center. The Authority was tasked with leasing the property, procuring the construction contractor, financing the project, and overseeing the operations of the sports center (via a management contract with Kemper Sports).

In March 2024, the Authority voted unanimously to negotiate an agreement with MEB General Contractors, Inc. (MEB) to design and build a regional indoor sports center on the Visitor Center site. Additional architects and consultants on the MEB design-build team for this project include Clark Nexsen, Guernsey Tingle, Timmons Group, MBP, and Victus Advisors (design-build team).

The Sports Center will be approximately 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 will also include other revenue-generating spaces and activities, such as food/beverage options, clip n’ climb, ninja course, meeting/event hall, etc. As noted above, the construction of the sports center began in August 2024 and is expected to be completed by the fall of 2026.

3. SERVICES TO BE PROVIDED

A. Sales Project Kickoff, Asset Identification/Valuation, and Go-To-Market Plan (est. 6-8 weeks)

The selected Consultant will start the project by visiting the Visitors Center site and shall conduct meetings/interviews with the HTRFA Board, the design-build team, the facility operating team, and other key internal stakeholders (including but not limited to Colonial Williamsburg Foundation (CFW)). The Consultant will review facility plans, relevant marketing materials, and prior studies, and conduct appropriate external research to inform its understanding of the project.

Consultant will perform an asset inventory and valuation of all naming rights and founding partnership assets at HTRFA-owned projects/facilities. The primary inventory list shall include all the components that can be leveraged for naming rights and founding partnerships, and also apply a fair market valuation to those components, identifying the valuation methodology used.

At the completion of this planning stage, Consultant will present the Authority with an initial go-to-market plan for naming rights and founding partnership sales efforts, including but not limited to:

- i. Outline of proposed sponsorship levels, packages, and pricing
- ii. Initial identification of suitable sponsor target categories and any relevant regional prospects, as applicable (Note: this may also include identification of any business categories or companies who may not be potential fits due to feedback gathered from the Authority, CWF, and other project partners and stakeholders.)
- iii. Provide the Authority with realistic revenue projections based on various sponsorship agreement terms (e.g., 5, 10, 15, 20 years, etc.).
- iv. Suggest how the HTRFA can maximize the market value of its naming rights and founding partnership assets via customized partnerships, public-private partnerships, unique activations, exclusivity clauses, etc.
- v. Present an updated timeline and approach for sales process execution.

B. Naming Rights & Founding Partnership Sales

Consultant will lead the naming rights and founding partnership sales process for HTRFA projects/facilities, including but not limited to:

- i. Review all relevant guidelines, policies, and bylaws and local and state laws that could impact any naming rights and founding partnership, and advise HTRFA legal counsel on the type of naming rights policies that should be put in place by the Authority. The Consultant shall review and provide relevant naming rights and founding partnership policies from other similar venues/organizations in order to inform the recommendations.
- ii. Provide the HTRFA with an understanding of how the Authority and/or its operating partners will need to service and maintain these partner relationships after agreements are successfully negotiated. Please also identify how the relationship between the Consultant, sponsors, and Authority will be structured during negotiations, contract signing, and beyond.
- iii. Work closely with the HTRFA to advise on facility naming, logos, and other such marketing support in the form of media, promotions, and community projects, as relevant to the naming rights and founding partnership sales project. Also help the Authority outline a strategy to ensure a complete and integrated use of the new facility name prior to Grand Opening.
- iv. Obtain pre-approval from the Authority for target prospect list to be pursued by Consultant.
- v. Develop key sales collateral and marketing materials for the sales process.
- vi. Introduce naming rights and founding partnership opportunities to approved prospects. These introductions may take place through any number of methods, such as e-mail, phone, virtual meeting, etc. (as appropriate), as well as distribution of collateral/creative materials.
- vii. Schedule meetings and site visits with relevant corporate sponsorship and private donor decision makers.
- viii. Provide monthly (at a minimum) status reports to the HTRFA on the sales process.

- ix. Issue proposals to interested prospects, i.e., those who have emerged from the initial outreach process and are ready for a formal, customized proposal.
- x. Follow-up with potential sponsor contracts as necessary. This will be an ongoing process that addresses prospect needs, questions, concerns, etc.
- xi. Help to negotiate partnership/sponsorship agreements and provide HTRFA legal counsel with sample contract templates for successful partnership agreements.

The Authority reserves the right to utilize the Consultant, as necessary, to provide additional assistance/services related to asset inventory, valuation, and naming rights and founding partnership sales services under this award.

4. REQUIRED PROPOSAL FORMAT

- a. **Cover Letter** – Submit a cover letter signed by an authorized member of your firm that expresses your interest in the project and highlights the key differentiators for your firm.
- b. **Table of Contents** – Identify the relevant page numbers for each of the required proposal sections.
- c. **Summary of Qualifications & Experience** – Provide a summary of firm history, background, and expertise, including at least five (5) relevant case studies (with reference contact information for each) of sports and/or event facility naming rights sales projects that have resulted in significant revenue generation for public facility clients.
- d. **Resumes of Assigned Personnel** – Provide a project organizational chart; identify the individuals who will be the primary day-to-day contacts for the Authority on this engagement; and provide detailed individual resumes for each of the Offeror’s staff that will be working on this project. Do not include resumes of individuals who will not be directly assigned to the project, as the Authority wishes to evaluate proposals based on Offeror’s assigned project team who Offeror anticipates will staff the project in a defined role.
- e. **Proposed Project Approach & Timeline** – Describe how your firm would provide the deliverables and execute the desired services as outlined in Section 3 above. If your firm would or could provide any additional services/deliverables beyond those requested in Section 3 above, please include a description of those services in your proposal. Provide a Gantt chart outlining realistic timing for the proposed tasks, services, and deliverables associated with your recommended project approach.
- f. **Proposed Cost of Services & Contract Term** – Provide a summary of proposed costs/fees and contract length/term that would be associated with your services. The Authority seeks to understand all of the potential costs that could be associated with partnering with your firm. Accordingly, provide detailed estimates of not only your professional service fees and/or commission structures, but also in your proposal not-to-exceed budgets for any out-of-pocket expenses or subcontracted services that may be required for successful completion of the project.

- g. **Financial Stability** – Respondent must provide information to demonstrate that its financial resources are sufficient to comply with the duties and responsibilities described in this RFP. Each Respondent shall provide a current annual financial report and the previous year’s report and a statement regarding any recent or foreseeable mergers or acquisitions.
- h. **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.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. Any Offeror shall not identify as trade secret or proprietary information their complete proposal.
- i. **Acknowledgement of Addenda**

5. PROPOSAL SUBMITTAL INSTRUCTIONS

- a. Questions regarding this RFP must be submitted via email to TDill@williamsburgva.gov by **Friday, September 27 at 3:00pm Local Time**.
- b. The proposal due date and time is **Thursday, October 10, 2024 at 3:00pm Local Time**. 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

- c. The envelope must be clearly marked with the respondent's name and "HTRFA 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.
- d. 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.
- e. 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 will 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 will 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.
- f. 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.
- g. The HTRFA will assume no responsibility for oral instruction or interpretation.

6. 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 §§ 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.

Additional submittal terms and conditions include:

- a. The Authority reserves the right to reject any and all proposals and to waive any informality or technical defects in proposals received if, in its judgment, the best interests of the Authority will be served. Oral proposals and proposals received by telephone, fax, or e-mail shall be rejected.

- b. By submitting a proposal and participating in the process as outlined in this RFP, respondents expressly agree that no contract of any kind is formed under, or arises from this RFP, prior to the signing of a formal written contract.
- c. All information requested in this solicitation should be submitted. Failure to submit all the 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. All pages of the proposal should be numbered.

7. EVALUATION & INTERVIEWS

A review panel designated by the Authority will evaluate the proposals and rank them according to the following scoring criteria:

- a) Relevant Firm Qualifications/Experience & Proven Track Record of Success – 25%
- b) Strength of Assigned Project Team – 25%
- c) Recommended Project Approach – 25%
- d) Proposed Cost of Services – 25%

The Authority intends to conduct in-person interviews with any or all of the RFP respondents, but the Authority is not required to do so. After any interviews have been completed, the Authority's review panel may revise its scores and re-rank the Offerors based on the scoring criteria listed above. The Authority will not be liable for any costs incurred by the respondents in connection with such interviews (e.g., travel, accommodations, preparation time, etc.).

8. RFP TIMELINE

- **RFP Issued – September 12, 2024**
- **Q&A Deadline – September 27, 2024 at 3:00pm Local Time**
- **Q&A Response – September 30, 2024**
- **Submittal Due Date – October 10, 2024 at 3:00pm Local Time**
- **Interviews in Williamsburg – TBD**
- **Selection & Negotiation with Highest-Ranked Firm – TBD**
- **Project Kickoff – TBD**

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. General Provisions

In the event of any conflict between any provision of these General Terms and Conditions and the Agreement and/or other Contract Documents (as defined in the Agreement), these General Terms and Conditions shall take precedence and control. Nothing in the Agreement or any document executed in connection therewith shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service and Work contained therein unless first approved in writing by HTRFA. Unless defined herein, capitalized terms shall have the meaning defined and used in the Agreement. “Contractor” shall refer to all parties to the Agreement other than HTRFA.

2. Laws of the Commonwealth

- A. The Agreement shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of Virginia without regard to principles of conflicts of law.
- B. The Contractor providing goods or services to the County under this Agreement represents and warrants to the County that:

1. It conforms to the provisions of the **Civil Rights Act of 1964**, as amended, the **Virginia Fair Employment Contracting Act of 1975**, as amended, and the **Virginia Human Rights Act**, as amended, where applicable;
2. It does not and will not, during the performance of this contract, employ illegal alien workers or otherwise violating the provisions of the **Immigration Reform and Control Act of 1986**;
3. It complies with federal, state and local laws and regulations applicable to the performance of the services procured; and
4. It is in full compliance with the **Virginia Conflict of Interest Act**.

3. Assignment of Contract.

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

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Debarment

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Insurance Requirements

The Contractor shall take out and maintain during the life of the Agreement such bodily injury, liability and property damage liability insurance as shall protect it and the County from claims for

damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this Agreement. Such insurance shall at least have the coverages and be in the amounts set forth below and shall name Caroline County and the Caroline County Board of Supervisors as Additional Insureds. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best's Key Rating of A:V1. The Contractor shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days' notice prior to cancellation or other termination of such insurance.

The Contractor shall maintain the following insurance to protect it from claims under the Workmen's Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

| TYPE OF COVERAGE | LIMITS |
|---|--|
| Workers' Compensation and Employer's Liability including coverage under United States Longshoremen's and Harbor Worker's Act where applicable | Statutory, including Employer's Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee |
| Comprehensive General Liability endorsement coverages. | Including the Broad Form C.G.L. |
| Premises – Operations Bodily Injury Liability and Property Damage Liability Combined | \$1,000,000 Each Occurrence \$3,000,000 Aggregate |
| Including: Underground Hazard (U) Explosion and Collapse Hazard (XC) | |
| Independent Contractors – Owner's Protective Bodily Injury Liability and Property Damage Liability Combined | \$1,000,000 Each Occurrence \$3,000,000 Aggregate |
| Completed Operations - Products Liability Bodily Injury Liability and Property Damage Liability Combined for five (5) years after payment | \$1,000,000 Each Occurrence \$3,000,000 Aggregate |
| Contractual Bodily Injury Liability and Property Damage Liability Combined in accordance with Agreement between Owner and Contractor | \$1,000,000 Each Occurrence \$1,000,000 Each Occurrence \$3,000,000 Aggregate |
| Personal Injury with Employee's Exclusion C deleted | \$1,000,000 Aggregate |
| Automobile Bodily Injury Liability and Property Damage Liability Combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned, or hired by the Contractor | \$1,000,000 Per Accident |

| | |
|----------------------------------|--|
| Umbrella/Excess Liability | \$1,000,000 Each Occurrence \$3,000,000 Aggregate |
| Professional Liability Insurance | \$1,000,000 Limit of Liability |

1. The Contractor shall purchase and maintain insurance coverage on its tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
2. The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

20. [Reserved].

21. [Reserved]

22. 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.

23. 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.

24. 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.

25. 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 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

26. 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.

27. 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.

28. 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.

29. 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.

30. Substitutions

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

31. 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.

32. 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.

33. 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.

34. [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.