

# INVITATION FOR BIDS (IFB)



Issue Date: February 5, 2024

IFB#: 24-36

Title: ON-CALL PARKS CONSTRUCTION AND REPAIR SERVICES

Issuing Agency: City of Charlottesville, Procurement Division

The City of Charlottesville requests a bid for the work described in the “Project Description” & “Scope of Service” sections provided below. This solicitation is subject to the provisions of the City of Charlottesville’s Instructions to Bidders, General Terms and Conditions for Construction Contracts and any other Special Terms and Conditions provided with the Bid Documents.

**Period of Contract:** Contract shall be for one year, from March 3, 2024, through March 2, 2025, with the option to renew under the terms of the original agreement for up to five (5) additional one-year terms if agreed upon in writing by both parties.

**Project Description:** The purpose of this bid is to secure a contractor for construction and repair services related to pathways, trails, courts, parking areas and other surfaces throughout City parks and City managed trail corridors.

**Scope of Service:**

The Contractor is to provide all supervision, equipment, labor and materials necessary to complete the work as described in the specifications/scope of work.

**All Sealed Bids are to be submitted to:** City of Charlottesville, Procurement Services, 325 4<sup>th</sup> Street NW, Charlottesville, VA. 22903. Attention: Joe Hoffman, Buyer II. Sealed Bids will be received before 2:00 PM local prevailing time on February 16, 2024.

All inquiries for information should be submitted in writing to Joe Hoffman, VCA, Buyer II at [purchasing@charlottesville.gov](mailto:purchasing@charlottesville.gov).

The face of the envelope or shipping container shall be clearly marked in the lower left-hand corner as follows:

IFB# 24-36  
TITLE: ON-CALL PARKS CONSTRUCTION AND REPAIR SERVICES  
BIDS DUE: FEBRUARY 16, 2024

**IF BIDS ARE HAND DELIVERED OR MAILED SEND DIRECTLY TO ADDRESS SHOWN BELOW:**

City of Charlottesville  
Procurement Services  
325 4th St., NW  
Charlottesville, VA 22903

**TO RECEIVE A COMPLETE BID PACKAGE, PLEASE VISIT OUR  
WEBPAGE AT [WWW.CHARLOTTESVILLE.GOV/PURCHASING](http://WWW.CHARLOTTESVILLE.GOV/PURCHASING)  
AND CLICK ON BIDS AND PROPOSALS.**

Due to the length, complexity and technical nature of this solicitation, it is not being posted on the City website in an accessible format; however, accommodations will be made upon request by submitting an email request to [purchasing@charlottesville.gov](mailto:purchasing@charlottesville.gov).

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# **I. CITY OF CHARLOTTESVILLE, VIRGINIA INSTRUCTIONS TO BIDDERS for PROCUREMENT OF CONSTRUCTION AND RELATED SERVICES**

The general instructions, rules and conditions which follow apply to procurement of construction and construction related services conducted by the City of Charlottesville, unless otherwise specified. Bidders are expected to inform themselves fully as to all applicable terms, conditions, instructions, requirements and specifications, before submitting bids. Failure to do so will be at the bidder's own risk, and relief cannot be secured on the plea of error.

Subject to all laws, policies, resolutions and regulations of the Commonwealth of Virginia and the City of Charlottesville, and all applicable rules, regulations and limitations, if any, imposed by legislation of the Federal government, bids submitted in response to a solicitation issued by the City of Charlottesville will bind bidders to the conditions and requirements herein set forth, unless otherwise expressly specified in the solicitation.

"This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 and Code of the City of Charlottesville Chapter 2, Article XV, § 2-431 or against a bidder or offeror on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability, or any other basis prohibited by state law relating to discrimination in employment."

## **SECTION 1: DEFINITIONS**

**1.1.** "*Agency*" means any department, agency, authority, commission, board or other unit in the administrative service of the City.

**1.2.** "*Bid*" means the offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

**1.3.** "*City*" means the City of Charlottesville, Virginia and its agencies, officials, officers, employees, agents and designated representatives.

**1.4.** "*Contractor*" shall have the same meaning as "successful bidder," as set forth below.

**1.5.** "*Construction Documents*" shall mean the plans, specifications, approved change orders, revisions, addenda and other information approved by the City, which set forth in detail the Work to be performed for a construction Project.

**1.6.** "*Goods*" means all material, equipment, supplies, printing and automated data processing hardware and software.

**1.7.** "*Informality*" means a minor defect or variation of a bid from the exact requirements of a solicitation, which does not affect the price, quality, quantity or delivery schedule for the goods or services being procured.

**1.8.** "*Invitation for Bids*," "*Invitation to Bid*," and "*IFB*" shall each mean a competitive sealed bidding procurement process by which a request is made to prospective suppliers (bidders) for their quotation on goods or services desired by the City. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

**1.9.** "*Issuing Authority*" means the authorized representative of the department of the City who issued the solicitation.

**1.10.** "*Purchasing Agent*" means the head of the City's Purchasing Division, or a designated contact person acting for him or at his direction.

**1.11.** "*Responsible Bidder*" means a bidder having the capability in all respects to perform fully the contract requirements, and who has the moral and business integrity and reliability which will assure good faith performance of the contract sought to be procured, and who has been pre-qualified, if required.

1.12. “*Responsive Bidder*” means a bidder who has submitted a bid or proposal which conforms in all material respects to the IFB.

1.13. “*Services*” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

1.14. “*Solicitation*” means the process of notifying prospective bidders that the City wishes to receive bids on a set of requirements to provide goods or services. The notification of City requirements may consist of public advertising, the mailing of an IFB, the public posting of notices, the conduct of small purchase procedures, and/or telephone calls or facsimiles to prospective bidders.

1.15. “*State*” means the Commonwealth of Virginia.

1.16. “*Successful bidder*” means the lowest responsive and responsible bidder to whom a contract is awarded as a result of a competitive sealed bidding procedure conducted by the City. The term “contractor” and “general contractor,” as used herein, shall mean “successful bidder.”

## SECTION 2: TERMS, CONDITIONS, INSTRUCTIONS APPLICABLE TO PROCUREMENT

### 2.1. Bid Forms.

A. Unless otherwise specified, forms provided by the City (including, without limitation: bid cover sheets, pricing schedules, etc.) shall be utilized by the bidder. All bids shall be submitted on forms provided, properly signed in ink in the proper spaces and submitted in a sealed envelope. All blanks must be filled in, and answers shall be printed in ink or typewritten. Should the bid prices and/or any other submissions on any copy of a submitted bid differ from those on the original, the ORIGINAL shall prevail.

B. Each bid must be submitted in a sealed envelope addressed to the City. The exterior of the sealed envelope shall be plainly marked to identify: (i) the IFB number and project name, (ii) the name and address of the bidder, (iii) the bidder’s licensed Virginia contractor number, (iv) the State Corporation Commission ID Number: and (v) the date, time and location on/at which bids are scheduled to be received by the City. If forwarded by mail (U.S. Postal Service, UPS, Fedex, etc.) the sealed envelope containing the bid must be enclosed in another envelope or shipping container addressed to the City at the post office address identified within the solicitation.

C. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror 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 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Link to the Virginia State Corporation Commission site: <https://www.scc.virginia.gov/>.

D. All contractors who perform any construction work for the City are subject to the provisions of the Virginia Code, Title 54.1, Chapter 11, and are required to be licensed as required therein. Each bidder shall, as part of its bid, provide the City with the following information: (i) whether the bidder is a resident or non-resident of the Commonwealth of Virginia; (ii) whether the bidder possesses all required licenses and certificates required by law for the work to be performed; and (iii) documentation of proper license or certification under the provisions of Title 54.1, Chapter 11 of the Virginia Code.

E. Each bidder is and shall be subject to the provisions of the Virginia Governmental Frauds Act, Virginia Code, Title 18.2, Chapter 12, Article 1.1. In compliance with this law, each bidder is required to submit a certification that its bid, or any claim resulting therefrom, is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce, or any act of fraud punishable under the Act. Any bidder who knowingly makes a false statement on the Certificate of No Collusion shall be guilty of a felony, as provided in Virginia Code §18.2-498.5.

### 2.2. Late Bids and Modifications of Bids.

A. Each bidder is solely responsible for delivering his bid to the correct location on or before the date and time on which bids are scheduled to be received by the City. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award. The time of receipt of a bid at the specified location is the time/date stamp of such location on the bid wrapper or other documentary evidence of receipt maintained by the specified location.

B. Any bidder may withdraw or modify its bid, by a writing containing the original signature of the bidder, which writing must be received by the City's Purchasing Agent or Issuing Authority prior to the date and time set for submission of bids. Withdrawal or modification shall be delivered by one of the following means: (i) hand delivery by the bidder itself, a courier, or other delivery service; (ii) by mail (no consideration shall be given to any postmark); or (iii) by telegram or facsimile or e-mail received prior to the date and time set for submission of bids, followed by written confirmation containing the original signature of the bidder, where the City is able to determine that the written confirmation was or has been sent out by the bidder prior to the date and time set for submission of the bids, or (iv) by marking(s) on the exterior of the bid submission envelope, but only if the marking is dated and includes the original signature of the bidder. If written confirmation of a telegram or facsimile communication is not, in fact, received by the City within five days following the date and time set for submission of bids, no consideration will be given to the requested withdrawal or modification.

C. Written withdrawals or modifications of bids should not reveal the bid price contained in the previously submitted sealed bid, but should simply provide the desired addition, subtraction or modification, so that the final price or terms of the bid will not be known to the City until the sealed bids are opened.

### **2.3. Errors in bids.**

A. Each bidder must carefully examine all documents and plans (including, without limitation, specifications and drawings, and the form contract) made available by the City for inspection by potential bidders, prior to submission of a bid. In addition, each bidder, prior to submission of a bid, must use whatever means necessary to satisfy itself of the extent and requirements of the Project and of the actual conditions under which the Project is to be performed. Comprehensive or detailed information of existing Site conditions may not be included in the Contract Documents; therefore, prior to bid submission, the Contractor must visit and examine the Site. Submission of a bid shall be deemed evidence that the bidder has visited the Site of the Project, that the bidder has familiarized itself with existing conditions at the Site (including without limitation, areas for storage of materials and equipment), and that the bidder is satisfied that it can construct the Project, in accordance with the Construction Documents, for the price(s) specified within its bid. Contractors will not be allowed or provided additional compensation as relief from the consequences of an error in their bids, including, without limitation errors which are attributable to conditions or factors which could have been identified by thorough examination of the Site and the Contract documents (including, without limitation, boring reports and subsurface condition reports, if available) prior to submission of a bid.

B. A bidder for a construction contract, other than a contract for construction or maintenance of public highways, may withdraw a bid from consideration after bid opening if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, if the unintentional arithmetic error or unintentional omission clearly can be shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

C. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

D. The bidder shall give notice in writing to the purchasing agent of a claim of right to withdraw a bid, within two (2) business days after the conclusion of the opening of the bids and shall submit original work papers with such notice.

E. If the purchasing agent denies the withdrawal of the bid, he shall notify the bidder in writing, stating the reasons for the decision; in that event, the purchasing agent, or his designee, shall award the contract to the bidder at the bid price, provided such bidder is responsible and responsive.

F. If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid; however, no bid may be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five (5) percent.

#### **2.4. Binding Effect.**

A. Bids must be submitted and prepared in accordance with these Instructions to Bidders. It is the responsibility of each bidder to examine all documents and plans (including, without limitation, specifications and drawings, and the form contract) made available by the City for inspection by potential bidders, prior to submission of a bid. Unless otherwise specified by the solicitation, all bids and proposals submitted shall be binding for ninety (90) calendar days after bid opening by the City, unless extended by mutual consent of all parties.

B. Each bid in excess of \$200,000 submitted in response to this IFB shall be accompanied by a bid bond in an amount equal to five percent (5%) of the total monetary amount of the bid (total base bid plus all additive bid items). The bid guarantee may be either (i) a certified or cashier's check made payable to "The City of Charlottesville, Virginia," or (ii) a bid bond made payable to "The City of Charlottesville, Virginia." The bid guarantee shall be for the purpose of promising and guaranteeing that the bidder will not withdraw its bid for a period of ninety (90) days after bid opening. The proceeds of the bid guarantee shall be and remain the sole property of the City, as liquidated damages, should the successful bidder fail to execute a contract, provide proof of all required insurance and endorsements, or provide all required payment and performance bonds within five days of the City's issuance of notice of award of the contract. In lieu of a bid bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond, or, if approved in advance by the city attorney, a bidder may furnish a personal bond, property bond, or a bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid bond.

C. The bid guarantees of all except the three lowest bidders will be returned within three (3) days after bid opening. The remaining bid guarantees will be returned as soon as the City has received a fully-executed contract, or within 90 days after bid opening, whichever occurs first.

D. An attorney-in-fact who executes a bid guarantee must file with the guarantee a certified and dated copy of the written power of attorney which authorizes them to act.

E. In lieu of a bid bond, a bidder may furnish a cashier's check or cash escrow in the face amount required for the bid bond. If approved by the city attorney, a bidder may furnish a personal bond, property bond or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination by the city attorney that the alternative form of security proffered affords protection to the city equivalent to a corporate surety's bond.

#### **2.5. Conditional Bids.**

Conditional bids will be subject to rejection in whole or in part by the City.

#### **2.6. Time for Opening Bids.**

Bids received prior to the time designated for submission of bids, and (if different) opening of bids, shall be securely kept, unopened. The Purchasing Agent, or his designee, or the Issuing Authority, will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will attach to the Purchasing Agent or his designee, or the Issuing Authority, for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in a solicitation, telegraphic or facsimile bids/modifications of bids will not be considered.

#### **2.7. Public Opening of Sealed Bids.**

All bids will be opened at the time and place specified in the solicitation and bids will be read publicly and will remain available for public inspection in the office of the Purchasing Agent or his designee, or the Issuing Authority.

#### **2.8. Public Inspection, Bids and Proposals.**

A. Except as provided herein, or by applicable law, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person in accordance with the Virginia Freedom of Information Act and the Virginia Public Procurement Act.

B. Cost estimates relating to a proposed procurement transaction, prepared by or for the City, shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the City decides not to accept any of the bids and to reopen the contract, postpone the contract or not contract at all. Otherwise, competitive sealed bid records shall be open to public inspection only after award of the contract.

D. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

E. Trade secrets or proprietary information submitted by a bidder in connection with this procurement transaction shall not be subject to the Virginia Freedom of Information Act, but only if the bidder (i) invokes the protections of Virginia Code §2.2-4342 prior to or upon submission of the data or other materials; (ii) identifies the specific data or other materials to be protected, and (iii) states the reasons why protection is necessary. A general designation of a contractor's entire bid submission as being "confidential" shall not be sufficient to invoke the protections referenced above. The City will not be liable for any damages sustained by a bidder or offeror who fails to follow the procedures designated by Virginia Freedom of Information Act, the Virginia Public Procurement Act, and the Charlottesville City Code as being prerequisite to protection of trade secrets or proprietary information.

## **2.9. Omissions and Discrepancies.**

Any items or parts of any equipment listed in a solicitation which are not fully described, or which are omitted from the specifications, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including any drawings or specifications, he or she shall notify the Issuing Authority at least five (5) days prior to the date set for the opening of bids. If necessary the Issuing Authority will send a written addendum for clarification to all bidders. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

## **2.10. Bidder interested in more than one Bid.**

If more than one bid or proposal is offered by any one party, either directly or by or in the name of his or her clerk, partner or other persons, all such bids or proposals may be rejected. A person who has quoted prices on work, materials or supplies to a bidder or offeror is not thereby disqualified from quoting prices to other bidders or offerors submitting a bid.

## **2.11. Pricing.**

A. The Purchasing Agent or Issuing Authority shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding method of procurement. In submitting a bid or proposal, each bidder shall, by virtue of submitting a bid, be deemed to have warranted that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied warranty shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive sealed bidder, in advance of the opening of bids, of the terms or conditions of the bid submitted by a competitor shall render the entire proceedings void and shall require the re-advertisement for bids.

B. All prices submitted must be FOB Destination—Freight Prepaid and Allowed.

C. The Contractor shall pay all sales, consumer, use and other similar taxes for the Work (as defined in the "General Terms and Conditions for Construction Contracts") provided by the Contractor which are legally enacted at the time bids are received. The City is exempt from the payment of federal and State taxes. Therefore, prices bid by the Contractor to the City must be net, exclusive of taxes. In other words, the City pays sales tax on goods and materials incorporated into

the Work; however, the City does not pay sales tax on the value of the construction contract, or subcontracts.

D. Taxes to be paid by Contractor's located in the City of Charlottesville shall include, but shall not be limited to, the Charlottesville City Business, Professional and Occupational License Tax (a gross receipt tax, or local license fee).

E. Where there is an error in the extension of any unit prices set forth within a Bid, the unit price shall govern.

#### **2.12. Questions Concerning Contract Terms, Conditions, Specifications.**

A. Any information or requests relative to interpretation or clarification of contract documents, terms or conditions, specifications, plans or drawings shall be requested of the Purchasing Agent or Issuing Authority, in writing, sufficiently prior to the date set for opening of bids to allow the Purchasing Agent or Issuing Authority to evaluate and respond to the information or request for interpretation. The request shall be made on a pre-bid question form, one request per form. Electronic submission is preferred. To be given consideration the request must be received more than five (5) working days prior to the date fixed for the submission of bids. Any material change will be submitted to all bidders through issuance of an addendum.

B. No inquiries received by the Purchasing Agent or Issuing Authority within five (5) working days of the date set for the opening of bids, will be given any consideration.

C. Any material interpretation, as determined by the Purchasing Agent or Issuing Authority, will be expressed in the form of an addendum to the specification, and will be sent to all prospective bidders. Oral answers given by any City official, employee or representative to any inquiry or request will not be binding upon the City.

D. The City shall not be responsible for ensuring any bidder's actual receipt of any addendum. The failure of a bidder to receive any addendum issued by the City shall not relieve the bidder from any obligation under its bid as submitted.

#### **2.13. Brand Name or Equal Items.**

A. Unless otherwise provided in the IFB, the name of a certain brand, make or manufacturer referenced in an IFB does not necessarily restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the City in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted. It shall be the responsibility of the Bidder to obtain the City's written determination that a proposed alternative brand, make or manufacturer is the equal of that specified in the IFB, considering quality, workmanship, economy of operation and suitability for the purpose intended.

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B. Bidders must submit requests for substitutions in writing to the City, and they must be delivered so that they are received by the City no later than five (5) days prior to the date set for public opening of bids. Requests shall include all information necessary to determine if the proposed substitution is equal to a product, brand, make or manufacturer specified in the IFB or is an acceptable substitute therefor.

#### **2.14. Formal Specifications.**

When a solicitation contains a specification or other provision which allows no substitutes, no deviation from the specification will be permitted and the bidder will be required to furnish articles in conformity with that specification. The bidder shall abide by and comply with the true intent of the specifications and shall not take advantage of any unintentional error or omission. Whenever mention is made of any articles, materials or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, ASTM regulations, or similar expressions, the requirements of such laws, ordinances, etc., shall be construed as to the minimum requirements of the specifications.

#### **2.15. Material Safety Data.**

A material safety data sheet (MSDS) is required to be submitted to the City, for all chemicals proposed to be furnished in the performance of the services, or the provision of goods, which are the subject of this procurement transaction. The MSDS must list all ingredients which constitute more than one percent (1%) of any product, or more than one-tenth percent (0.1%) for any known or suspected carcinogens. The MSDS must identify each product by its common or

chemical name, provide physical and chemical characteristics of any hazardous materials or hazardous components, list any known acute or chronic health effects, specify exposure limits, and list any necessary or recommended precautionary measures and emergency and first aid procedures.

#### **2.16. Award of Contract**

A. The City shall award the contract to the lowest responsive and responsible bidder complying with all material provisions of the IFB, provided it is in the best interests of the City to do so.

B. Unless canceled or rejected, a responsive bid from the lowest responsible bidder in a competitive sealed bidding process shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, then the City may negotiate with the low bidder to obtain a contract price within available funds. If the City wishes to negotiate with the low bidder to obtain a contract price within available funds, negotiations shall be conducted in accordance with the procedures as described in City of Charlottesville Code of Ordinances, Sec. 22-6.

C. Written notice of award of a contract to the lowest responsive and responsible bidder will be provided by the City to the successful bidder. A written award letter which has been faxed, e-mailed, mailed or otherwise furnished to the successful bidder within ninety (90) days after bid opening, or such other time for acceptance specified within the solicitation, shall be deemed to result in a binding contract, and the successful bidder shall not refuse to execute the contract documents.

D. Public notice of the award of this contract, or the announcement of the decision to award this contract, shall be given in the following manner: posting of a written notice on the City's website at <https://www.charlottesville.gov/912/Bids-Proposals>.

#### **2.17. Cancellation or Rejection.**

The City may cancel or reject an invitation for bids, a request for proposals, any other solicitation, or any or all bids or proposals received in response thereto.

#### **2.18. Waiver of Informalities.**

The City may waive any informalities in bids, whenever, in the sole discretion of the City, such waiver is in the best interests of the City.

#### **2.19. Determination of Responsibility.**

No contract may be awarded to a bidder who is determined by the Purchasing Agent or Issuing Authority to be non-responsible. In determining the responsibility of a bidder or offeror, the following criteria will be considered:

- A. The ability, capacity or skill of the bidder to perform the contract or provide the services required;
- B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- C. The character, integrity, reliability, reputation, judgment, experience and efficiency of the bidder;

D. The quality of performance on previous contracts or services;

E. The previous and existing compliance by a bidder with laws and ordinances relating to the contract or service;

F. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

G. The quality, availability, and adaptability of the goods or services to the particular use required;

H. The number and scope of any conditions attached to the bid;

I. Whether the bidder is in arrears to the City on a debt or contract or is in default on a surety to the City, and whether the bidder's City taxes or assessments are delinquent;

J. Such other information as may be secured by the Purchasing Agent or Issuing Authority, having a bearing on the decision to award the contract.

\*\*Upon request by the City, it shall be the responsibility of each bidder to ensure that the bid submitted contains information sufficient to enable the City to evaluate each of the above-referenced criteria.

## **2.20. Equal Opportunity.**

It is the policy of the City of Charlottesville to facilitate the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in the City 's procurement activities. Toward this end, the City encourages these firms to compete and encourages bidders to provide for the participation of small businesses, and businesses owned by women and minorities, through partnership, joint ventures, subcontracts or other contractual opportunities. Bidders are asked, as part of their submission, to describe any planned use of such businesses with respect to the performance of the construction services which are the subject of this contract.

## **2.21 Contractor's Form/Boilerplate Contracts.**

All written agreements, contracts, service agreements, account applications, forms and other documents, of any nature, that the Contractor would require the City to sign in connection with any contract resulting from this procurement transaction, or the performance thereof by the Contractor, must be submitted along with the Contractor's bid. Under no circumstances shall the City be required to agree to any contractual provision (i) that would materially conflict with any provision of this Invitation for Bids, (ii) that would affect the price, quality, quantity or delivery schedule for any goods or services, or (iii) that would, in the City's sole discretion, materially alter the overall combination of quality, price and various elements of required services that in total are optimal relative to the City's needs, and the Contractor shall not condition its performance or delivery upon any such agreement by the City.

## II. SCOPE OF SERVICES

The Contractor shall provide all labor, supervision, materials, equipment and tools as necessary for construction and repair services for pathways, trails, courts, parking areas and other surfaces throughout City parks and City managed trail corridors. The project in general comprises new construction or rehabilitation of deteriorated infrastructure, including the restoration of disturbed (shoulder) areas of pathways, trails, parking lots, courts, and other surfaces. Finish coat can be either asphalt or rock dust per the attached plans. The General Terms and Conditions for Construction will apply to each individual task order released from resulting contract. The maximum dollar amount for any one task order shall not exceed \$199,999.99. The work described will be on an on-call/as-need basis.

All trail construction details shall be per the City Standards and Trail Detail – Attachment H unless modifications are approved in writing by the City Trail Planner and/or Parks Division Manager. Contractor will provide additional survey stakeout beyond those survey marks already provided by the City, at Contractor's cost.

Contractor shall be responsible for work coordination with the City's Parks and Recreation Department. Contractor shall make every effort not to block access to buildings. Contractor may also be responsible for work coordination with Neighborhood Development Services and the Department of Parks and Recreation prior to restricting access to buildings if required.

Contractor may be required to apply Pramitol or approved equivalent herbicide in excavated areas before installing base gravel and final surface and must have the capacity to provide this application at the label rates for the use. Applicator must meet all Virginia Department of Agriculture and Consumer Services application requirements.

The City will provide the Contractor with specifications/scope of work and a schedule for each task order initiated against the contract. The Contractor shall provide a labor and material quote for each task order as per the contract. A City Purchase Order (PO) will serve as the City's acceptance of the task order and the contract for the project. Once the PO has been issued, the contract becomes a fixed price contract. Any changes to PO must be by contract change order.

### CONTRACTOR'S PERSONNEL:

The contractor shall be required to have sufficient and qualified personnel to perform all phases of work. The contractor shall be capable, with instructions or specifications which may be furnished by the City, of competently making any installation which the contractor may be called on to perform under this contract, without further assistance from the City.

Should the City deem any employee unqualified for his assigned duties, the contractor shall re-assign him. Should any employee be deemed incompetent, negligent or for any cause unfit for his duties by the City Trail Planner and/or Parks Division Manager in charge or his agent, the contractor shall dismiss him from any work negotiated under this contract.

Contractor's personnel shall be dressed in appropriate shirts and bottoms, subject to approval by the City.

### CONTRACTOR'S EQUIPMENT:

Consistent failure of equipment will result in project being shut down and contractor being replaced if deemed necessary by the City.

### TRAFFIC CONTROL:

It is imperative that the contractor's personnel be sufficiently experienced to perform work in an expeditious manner and with a minimum of interference with traffic. Contractor shall be responsible for all traffic control, including signage, barricades, A-frames, flagman, and temporary parking removal. State certified flag persons must be used to control traffic in accordance with the Virginia Work Area Protection Manual.

Contractor shall make every effort to have all work locations completed by each Friday afternoon or shall make temporary arrangements for pedestrian use over the weekend. These efforts are to be approved by the City Planner and/or Parks Division Manager.

PUBLIC RELATIONS:

Maintenance of good relations with the general public, owners and tenants of private property both abutting the work or on private easements, the representatives of Albemarle County and the Virginia Department of Transportation and other utility companies is of paramount concern to the City. The Contractor must do everything in its power to maintain these good relations. This includes but is not limited to: advance notice of work to adjacent owners and tenants; maintenance of a clean work area; prompt restoration of disturbed work areas; compliance with Virginia Department of Transportation permit conditions; and protection of utilities.

WARRANTY:

The contractor shall guarantee his work for a period of one (1) year from completion date of each task order released against this contract.

WORK HOURS:

Regular work hours are 7:30 a.m. to 5:00 p.m. The regular workweek is Monday through Friday the Contractor shall not work on any observed City holiday without prior approval of the City. City holidays include but not limited to:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day
- Liberation and Freedom Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Eve
- Christmas Day
- Day after Christmas Day

If the Contractor desires to work outside the regular hours or on holidays, it shall notify the City Trail Planner and/or Parks Division Manager sufficiently in advance to allow arrangements to be made for proper inspection; provided, however, no work shall be performed on Sunday. Work day shall not extend beyond sunset.

SUBCONTRACTOR:

No portion of the work may be sublet to subcontractors without the prior written permission of the City. If the Contractor intends to sublet any portion of the work to subcontractors, he shall notify the City Trail Planner and/or Parks Division Manager, in writing, setting forth the work to be sublet, the names and addresses of all subcontractors, and the estimated cost to the Contractor and the City, if any, of all sublet work.

SAFETY:

Contractor shall be responsible for work site safety during construction, particularly between the excavation/forming and pouring/finishing phases of the work. The Contractor shall perform all work in a safe and careful manner, to furnish and require its employees to use safety devices and equipment as necessary, and to comply with all laws, rules, codes and regulations applicable to the safe performance of the work. The Contractor's employees shall be required to wear safety vests or orange shirts (orange shirts cannot be substituted for safety vests at night or when they are not allowed by City or Virginia Law) and hard hats while in construction areas. The Contractor shall provide traffic control signs, signals, flashing lights, guards, plates, enclosures, barricades and notices, including all special design signs as may be required by the City or the Virginia Department of Transportation, as necessary to protect both its employees, the City's employees, and the public at large against damage to property and bodily injury or death. The Contractor shall comply with the Virginia Department of Transportation Flagging Certification Program. The contractor shall also comply with OSHA Regulation 29 CFR, Part 1926, Subpart P – Excavations.

PROTECTION AND REPAIR OF PROPERTY (PRIVATE AND PUBLIC):

Contractor shall use all due care and diligence to avoid damage to existing utilities and property, including but not limited to buildings, pipes, conduits, sewers, water lines, gas lines, electric lines, communication lines, meters, manholes, and handholes. Contractor shall promptly replace or properly repair as necessary any such damages to property or private utilities at Contractors' expense. Contractor shall inform Virginia 811 of the date and location of any excavation work, drilling, or digging in advance thereof to avoid damages to existing underground utilities. Contractor shall properly repair or replace, at Contractors' expense, damaged marked or unmarked private utilities or facilities including, but not limited to, water lines, sewer lines, sprinkler systems, and invisible fencing.

PROTECTION OF WORK AND WORK SITE:

Contractor shall use all due care and diligence, and shall furnish material and equipment as necessary to protect all work performed against all loss or damage until such time as the work is accepted by the City. The Contractor must provide for the safe maintenance of the work for after hours and weekends (barricades, lights, trench settlement).

Any such loss or damage resulting from the Contractor's failure to use due care and diligence hereunder shall be repaired or replaced by the Contractor in a manner satisfactory to the City at the Contractor's expense.

Contractor shall designate a person to be available, by phone, after hours, weekends and holidays to handle complaints regarding the above, and shall identify that person for the City.

CLEAN-UP:

Contractor shall keep all job sites clean and orderly insofar as is reasonable for the type of work performed, and shall leave all job sites clear and clean of equipment, materials, and debris at the conclusion of the work, to the satisfaction of the City. Contractor may be required to clean up and establish final grade to shoulders, installation of tall turf type fescue seed at a rate of 10 pounds per 1,000 square feet of disturbed area with straw mulch for grass restoration adjacent to trails or other areas worked. Contractor shall be responsible for hauling and disposal of all spoils generated as a result of this work.

COMPLAINTS:

All complaints received from persons and property owners of any nature whatsoever, including complaints for property damage, bodily injury and death, shall be reported to the City Trail Planner and/or Parks Division Manager immediately. Complaints that require action by the Contractor shall be completed within 48 hours of notice from the City Trail Planner and/or Parks Division Manager or their representative.

EXISTING UTILITIES:

There may be utilities located within the project. It is the responsibility of the Contractor to become aware of the locations of all underground utilities. The Contractor shall notify Miss Utility at least forty-eight (48) hours prior to construction to allow the utility companies to mark and locate buried utilities. It shall be the responsibility of the Contractor to protect these utilities and to replace or repair any damage occurring during construction at the Contractor's expense. Contractor will keep an inventory of acceptable repair items to enable a timely repair of any water utilities that may be disrupted by the work. The City Trail Planner and/or Parks Division Manager will determine liability for any damage to utilities that occurs during the work.

OSHA STANDARDS:

All contractors and subcontractors performing services for the City are required 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.

### III. GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

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## DEFINITIONS AND INSTRUCTIONS FOR INTERPRETATION

When one of the following words, terms or phrases is used in this contract, it shall be interpreted or construed first, as defined below; second, according to its generally-accepted meaning in the construction industry; and third, according to its common and customary usage.

**Builder:** The General Contractor to whom a Contract for Construction has been awarded by the City.

**Change Order:** A document issued on or after the effective date of the Contract for Construction, which is agreed to by the Contractor and approved by the City and the Professional, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. A change order, once signed by all parties required to sign it, is incorporated into and becomes a part of the Contract.

**Change Directive:** A construction change directive is a written order signed by the City and the Professional, directing a change in the work prior to agreement on adjustment (if any) in the contract price or contract time, or both.

**City:** The City of Charlottesville, Virginia, including all its officers, officials, agencies, departments, divisions, and all of the employees and agents thereof.

**Claim:** A demand or assertion by one party seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract for Construction. The term "claim" also includes other disputes and matters in question between the City and the General Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate claims rests with the party making the claim.

**Construction:** The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

**Construction Documents:** Plans, specifications, approved change orders, revisions, and addenda, and other information approved by the City, which set forth in detail the Work to be performed for this Construction Project.

**Contract Documents:** The documents identified in the City's Fixed Price Construction Contract.

**Contract Price:** The dollar amount for which the Builder agrees to perform the Work which is the subject of the Contract For Construction.

**Contract Specifications:** The written requirements for materials, equipment, systems, standards and workmanship for the Work and for performance of related services.

**Contractor.** An alternative way of referring to the General Contractor, the person with whom the City has entered into the Contract for Construction.

**Defective:** An adjective which, when modifying the word "work" refers to work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or which does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to the Professional's recommendation of final payment, excluding any damage caused by the Owner or a third party whose actions are not subject to the General Contractor's control.

**Drawing:** A page or sheet of the Construction Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location and dimensions of various elements of the Work. The graphic representations include, but are not limited to: plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

**Field Order:** A written order issued by the Professional which clarifies or explains the plans or specifications, or any portion or detail thereof, without changing the design, the Contract Price, the time for Substantial Completion or the date of Final Completion.

**Float:** The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between the Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project float.

**Float, Free:** The time (in days) by which an activity may be delayed or lengthened without having an impact upon the start day of any activity following in the chain.

**Float, Total:** The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the time for Completion or the Contract Completion Date.

**Final Completion:** The stage of construction when the Work has been completed in accordance with the Contract for Construction and the City has received all documents and items necessary for closeout of the Work.

**General Contractor:** Also referred to within the Contract for Construction as the "Contractor," this is the person with whom the City has entered into the Contract for Construction.

**Hazardous Substances:** The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

**Occupancy, beneficial:** The condition after Substantial Completion but prior to Final Completion, at which time the Project is sufficiently complete and systems operational such that the City could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the City accepts the Project for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

**Occupancy, partial:** Partial occupancy or use occurs when the City occupies or uses any completed or partially completed portion of the work, at a stage when such portion is designated by a separate agreement between the City and the General Contractor, in accordance with Section 12.2 of these General Terms and Conditions.

**Person:** The term "person" includes any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

**Plans:** The term used to describe the group or set of project-specific drawings which are included in the Contract Documents.

**Product Data:** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the General Contractor, or a subcontractor, manufacturer, supplier or distributor, to illustrate materials or equipment for some portion of the Work.

**Professional:** An individual or entity, including but not limited to an architect, engineer, geo-technical engineer or consultant, land surveyor, landscape architect, or other professional engaged directly by the City to provide design, engineering, testing or other services in relation to the Project.

**Project:** The planned construction undertaking which is the subject of this Contract for Construction.

**Project Manual:** A volume assembled for the Work, which may include the bidding requirements, sample forms, documents, etc.

**Related Party:** Any affiliated entities of the City of Charlottesville (including, without limitation, agencies, departments, divisions or commissions of the City of Charlottesville) and their respective officers, officials, office holders, and employees.

**Samples:** Physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**Shop Drawings:** Drawings, diagrams, schedules and other data specially prepared for the Work by the General Contractor or a subcontractor, manufacturer, supplier or distributor, to illustrate some portion of the Work.

**Site:** The geographical location where the Project is to be constructed, and where the Work by the General Contractor is to be performed.

**Specifications:** That part of the Project Manual/Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in detail and provide information for a Building Official to determine code compliance and for the Contractor to perform the Work.

**Subcontractor:** A person having a direct contract with the General Contractor, or with any other subcontractor, for the performance of the Work. The term “subcontractor” includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

**Submittals:** Documents prepared by the General Contractor or a subcontractor, manufacturer, supplier or distributor, consisting of: Shop, fabrication, setting or installation drawings, diagrams, illustrations, schedules, samples, brochures, performance charts, instructions, diagrams, or other, similar data or items. The purpose of submittals is to demonstrate conformance of some portion of the Work with the requirements of the Contract Documents.

**Substantial Completion:** The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so that the City can occupy or use the Work for its intended purpose(s).

**Supplier:** A manufacturer, fabricator, distributor, materialman or vendor who provides material(s) for the Project but who does not provide on-site labor.

**Total Project Construction Cost:** The total cost to the City to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses required to be obtained by the General Contractor, and modifications necessitated by local conditions.

**Work:** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the General Contractor to fulfill the General Contractor’s obligations.

In construing this Construction Contract, the parties hereto agree that the following standards and directives shall apply:

**Computation of Time:** When the Contract requires any notice to be given, or an act to be done, a certain time before a specified event or deadline, then there must be that time, exclusive of the day for such specified event or deadline, but the day on which the notice is given or an act done shall be counted as part of the time. When the Contract requires any notice to be given, or an act to be done, within a certain time after a specified event or deadline, then that time shall be allowed in addition to the day on which the specified event or deadline occurred. When the last day fixed by this Contract for the commencement of any action, or the giving of any notice, falls on a Saturday, Sunday, legal holiday, or any day on which Charlottesville City Hall is closed, then the notice or act may be given on the next day that is not a Saturday, Sunday, legal holiday, or other day on which Charlottesville City Hall is closed.

**Day:** Unless otherwise specified, the word “*day*” shall be construed to mean a calendar day.

**Headlines.** The headlines of the several articles, sections and paragraphs of this Contract are intended as mere catchwords to indicate the contents of the articles, sections or paragraphs, and such headlines shall not be deemed or construed as titles of such articles, sections or paragraphs, or as any part thereof, nor, unless otherwise expressly provided by the Contract, shall any headlines be so deemed or construed following any amendment or modification of a particular article, section or paragraph.

**Month.** Unless otherwise expressed, the word “*month*” shall be construed to mean a calendar month.

**Severability.** In the event that any provisions of this Contract, or the application of any requirements stated herein to any person or circumstances, are determined invalid by a court of competent jurisdiction, such judicial determination shall not affect the validity of other provisions or requirements of this Contract which can be given effect without the invalid provisions or applications.

## ARTICLE 1 THE CONTRACT DOCUMENTS

- 1.1 **Additional Sets Of Documents:** Any additional copies of Construction Documents required by the General Contractor for execution of its scope of the Work (beyond the number of copies specified in this Construction Contract) shall be made by the General Contractor at its cost and expense.
- 1.2 **Return Of Documents To City:** Upon request, the General Contractor shall return to the City all copies of Construction Documents, including reproducible sets, if any, furnished to the General Contractor, upon final acceptance of the Work or termination of this Contract For Construction, whichever occurs first. Otherwise, the General Contractor shall retain records of this Construction Contract as required by Article 15.
- 1.3 **Electronic Media:** The General Contractor may request that the Construction Documents be furnished to it on electronic media. To the extent that such documents are available on electronic media, the General Contractor will be furnished one (1) set of the requested information on electronic media. Any additional electronic copies of Construction Documents shall be made by the General Contractor at the General Contractor's cost and expense. The General Contractor shall return one copy of electronic Construction Documents to the City upon final acceptance of the Work or termination of the Contract For Construction, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.
- 1.4 **Minimum Requirements:** Requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.5 **City Disclaimer Of Warranty:** The City has requested that the Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the City makes no representation or warranty, of any nature whatsoever, to the General Contractor concerning such documents. The General Contractor hereby acknowledges and represents that it has not, does not, and will

not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made.

- 1.6 **Conflicts In Documents:** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
  - 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
  - 1.6.3 As between plans and specifications, the requirements of the specifications shall govern;
  - 1.6.4 As between the General Conditions of the Construction Contract and the plans or specifications, the General Conditions shall govern;
  - 1.6.5 As between the Construction Contract Form and the General Conditions of the Construction Contract, the Contract Form shall govern.
  - 1.6.6 As between the Supplemental Conditions and any General Conditions or the Contract Form, the Supplemental Conditions shall govern.
- 1.7 **Shop Drawings And Submittals:** Shop drawings and other submittals from the General Contractor or its subcontractors and suppliers do not constitute a part of this Contract. The General Contractor shall not perform any Work requiring shop drawings or other submittals unless such shall have been approved in writing by the Professional. All Work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents; however, approval by the Professional or the City shall not be evidence that Work installed or performed pursuant thereto conforms with the requirements of this Contract. Neither the City nor the Professional shall have any duty to review partial submittals or incomplete submittals. The General Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The General Contractor shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the City or the Professional. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the General Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or that it will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 1.8 **Contract Changes:** The General Contractor understands and agrees that the Contract For Construction cannot be changed except as expressly provided by the Contract Documents. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties.
- 1.9. **On-Site Documents.** The General Contractor shall keep an updated copy of this Contract for Construction at the Site. Additionally, the Contractor shall keep copies of all approved shop drawings and other submittals at the Site.

## ARTICLE 2 GENERAL CONTRACTOR'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency of Construction Documents:** Prior to submission of its Bid, but in all events prior to signing this Contract For Construction, the General Contractor has received and carefully reviewed and evaluated the Construction Documents and agrees that the Construction Documents are complete and sufficient for bidding, negotiating, costing, pricing and construction of the Project.
- 2.1.1 The General Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the City and the

Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or among the Construction Documents; and, (ii) variances it discovers between the Construction Documents and any applicable laws, statutes, building codes, rules and regulations.

- 2.1.2 If the General Contractor performs any Work which it knows or should have known involves: (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the General Contractor shall be responsible for the consequences of such performance.
- 2.2 Sufficiency Of Site Conditions: Prior to submission of its Bid, but in all events prior to signing this Contract For Construction, the General Contractor certifies that it has:
- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and,
  - (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of its obligations under this Contract.
- 2.3. In addition, if the Scope of the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the General Contractor certifies that it has:
- (i) reviewed all available as-built and record drawings, plans and specifications; and,
  - (ii) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of its Bid, but in all events prior to signing this Contract For Construction.
- 2.4. Claims against the City or Related Parties resulting from the General Contractor's failure to familiarize itself with the Site or pertinent documents shall be deemed waived by the General Contractor.
- 2.5. The General Contractor shall commence performance of its obligations under this Contract for Construction, upon receipt of a written notice to proceed issued by the City.

### **ARTICLE 3 GENERAL CONTRACTOR'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

- 3.1 **Performance Of Work:** The General Contractor shall supervise and complete its obligations under this Contract For Construction, using its best skill and attention. The General Contractor shall furnish management, supervision, coordination, labor and services which (i) expeditiously, economically and properly complete its scope of the Work; (ii) comply with the requirements of this Contract For Construction; and, (iii) are performed in a workmanlike manner and in accordance with the standards currently practiced by persons and entities performing or providing comparable management, supervision, labor and services on projects of similar size, complexity and cost.
- 3.1.1 The General Contractor shall not damage, endanger, compromise or destroy any part of the Work or the Site, including by way of example, and without limitation: work being performed by others on the Site, monuments, stakes, bench marks and other survey points, utility services, and existing features, improvements or structures on the Site. Should the General Contractor damage, compromise or destroy any part of the Project or the Site, the General Contractor shall be fully and exclusively responsible for and bear all costs associated therewith.

- 3.1.2 All services rendered by the General Contractor shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.3 The General Contractor shall, in the performance of its obligations under this Contract for Construction, cooperate and communicate with the City and all other persons or entities working for or with the City, as necessary for satisfactory and timely completion of the Project.
- 3.1.4 The General Contractor understands and acknowledges that the Scope of Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The General Contractor shall conduct all its activities so as not to interfere with the construction of, or other construction activities on the Site.
- 3.1.5 The General Contractor shall conduct all its activities so as not to interfere with ongoing business and other activities at the site. The General Contractor shall perform construction services and conduct all activities only in such locations and in such manner as specifically contemplated by the Construction Documents.
- 3.1.6 The General Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique, of whatever kind, and shall pay all royalties and license fees associated therewith. The General Contractor shall hold the City, its officers, agents and employees, harmless from and against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of this Contract for Construction, including its use by the City; unless such invention, process, technique, article or appliance is specifically named by the City in the specifications or plans as being acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or plans as acceptable for use in carrying out the Work, the General Contractor has or acquires information that the same is covered by letters of patent, making it necessary to secure the permission of the patentee, or other, for the use of the same, the General Contractor shall promptly advise the City and the Professional. The City may direct that some other invention, process, technique, article or appliance be used. Should the General Contractor have reason to believe that the invention, process, technique, article or appliance so specified is an infringement of a patent, and fail to inform the City and the Professional, the General Contractor shall be responsible for any loss or liability due to the infringement.

**3.2 Compliance With Governmental Requirements:**

- (i) The General Contractor shall comply with all applicable laws, statutes, codes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Work, the Project and the Site;
- (ii) The General Contractor shall prepare and file documents required to obtain and obtain all necessary governmental approvals and permits for construction of the Project, including building permit(s); and,
- (iii) The General Contractor shall give all notices required of it by governmental authorities relating to the Work, the Project, or the Site.
- (iv) This Construction Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1 of the Code of Virginia, relating to labor unions and the “right to work.” The General Contractor and its subcontractors, whether residents or nonresidents of the Commonwealth of Virginia, who perform any Work related to the Project, shall comply with all of said provisions.

- (v) By signing this Construction Contract, the General Contractor certifies that it does not and will not during the performance of the Contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (vi) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, as 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. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative warrant.
- (vii) The Virginia Uniform Statewide Building Code applies to the Work and is administered by the local Building Official. The Building Permit will be obtained by the General Contractor and paid for by the Contractor. All other permits, local license fees, business fees, taxes or similar assessments shall be obtained and paid for by the Contractor.
- (viii) The General Contractor, if not licensed as an asbestos abatement contractor or a roofing/flooring/siding (RFS) contractor in accordance with §54.1-514 of the Code of Virginia, shall have all asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors, as appropriate for the Work.
- (ix) If the Contract Documents indicate that lead-based paint is present on existing materials, components or surfaces, the General Contractor shall conform to the following: (1) The requirements set forth in 59 Federal Register 45,672 (September 2, 1994) Proposed Rule - *Lead; Requirements for Lead-based Paint Activities (Proposed Rules)* in selecting and performing the means, methods and procedures for performing the Work. When the Final Rule, to be codified at 40 CFR 745, supersedes the Proposed Rule, the General Contractor shall be responsible for conforming to the Final Rule, as of the effective date set forth therein; (2) The requirements for employee protection contained in 29 CFR Part 1926, Subpart D, and the requirements for record-keeping contained in 29 CFR Part 1910; and (3) The Virginia Department of Labor and Industry's Emergency Regulation published in the May 27, 1996 Virginia Register, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI.
- (x) If the General Contractor violates laws or regulations that govern the Project, the General Contractor shall indemnify and hold the City harmless from and against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the General Contractor, the General Contractor shall indemnify and hold the City harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that result from such violation.

3.3 **Safety:** Safety shall be a prime concern of the General Contractor at all times. The General Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and performing construction, including Site safety and safety precautions and programs.

3.4 **Concurrent Records:** For any period in which it is engaged in activities on the Site, the General Contractor shall, concurrently with its performance, maintain detailed daily records of activities on the Site. Upon request, the City shall be provided copies of such records.

3.5 **As-Built Drawings:** The General Contractor shall maintain at the Site at least one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications, in good order and accurately marked, depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the City, the Professional(s), and the City's consultants, including

quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the General Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

- 3.6 **Quality Control And Testing:** Unless otherwise provided in this Contract For Construction, the City shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The General Contractor shall be responsible for the coordination of all tests and inspections and shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or additional compensation will be allowed on account of any testing, re-testing, inspection, re-inspection, or rejection of Work when defective or deficient Work is found. The General Contractor shall be responsible for any costs associated with testing, re-testing, inspection, or re-inspection which may be required as a result of defective or deficient Work.
- 3.7 **Incident Reporting:** The General Contractor shall immediately notify the City and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 3.8 **Hazardous Substances Notice:** The General Contractor shall immediately notify the City and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the General Contractor encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the General Contractor shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the City; and, (v) take any other steps necessary to protect life and health.
- 3.9 **City's Use of and Access to the Site:** The General Contractor shall perform the Work so as not to interrupt any ongoing business operations or other construction activities on the Site.
- 3.9.1 The General Contractor shall provide the City, Related Parties, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction activities and operations with those of others. The General Contractor understands and acknowledges that the City or its Related Parties may need access to or use of certain areas of the Site on which Work is being or has been performed, prior to the General Contractor's achievement of Substantial Completion. The General Contractor agrees that no such occupancy, access or use shall constitute the City's acceptance of any Work.
- 3.9.2 Except as specifically contemplated by the Construction Documents, the General Contractor shall not enter any occupied area of the Site or Structure unless first approved and scheduled by the City. The General Contractor understands and acknowledges that the City may incur damages if the operations of any condominium unit owners or their tenants (other than the City) are interrupted or impaired as a result of the Work.
- 3.10 **Site Control And Cleanup:** During construction, the General Contractor shall maintain good order on the Site. The General Contractor shall maintain the Site in a reasonably clean condition during performance of the Work and shall periodically remove from the Site all construction debris. Upon completion of the Work, the General Contractor shall remove from the Site all construction materials and waste, rubbish, other debris, equipment, sheds and similar items related to, produced by or required for its scope of the Work and shall thoroughly clean the Site of all debris, trash, excess materials and equipment. No final payment will be made to the General Contractor until satisfactory final clean-up is accomplished and

inspection is made by the City and the Professional(s), accompanied by the General Contractor. If the City must engage in clean-up activities at any time during the construction period, the full cost of the clean-up shall be deducted from moneys due the General Contractor, and the General Contractor shall pay any deficiency amount to City.

- 3.11 **Commissioning:** The General Contractor shall, through the City's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning.
- 3.11.1 The General Contractor shall provide the City with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for systems start-up and delivery and training prior to commissioning and occupancy of the Project.
- 3.11.2 The General Contractor shall meet with individual(s) designated by the City not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.
- 3.12 **Idling Reduction Requirement: Bidders/Offerors,** contractors and subcontractors are required to comply with the City of Charlottesville's Idling Reduction Policy for Motor Vehicles and Equipment, policy number 100-12. This policy can be made available to any Bidder/Offeror by submitting an email request to [purchasing@charlottesville.gov](mailto:purchasing@charlottesville.gov).

#### **ARTICLE 4 GENERAL CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, AND SUPPLIERS**

- 4.1 **Project Staffing:** The General Contractor shall staff the Project with qualified individuals and entities responsible for its obligations and performance hereunder.
- 4.1.1 The General Contractor shall, in writing, on or before the Commencement Date specified in the Notice to Proceed issued by the City, name a representative (the "Builder's Representative") to serve as its primary communication contact with the City and the Professional(s).
- 4.1.2 The General Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The General Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The General Contractor shall immediately remove from the Site, for the duration of the Project, any personnel, including personnel of any subcontractor, making an inappropriate racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The General Contractor shall immediately remove from the Site, for the duration of the Project, any personnel, including personnel of any subcontractor, who is incompetent or careless.
- 4.1.5 During the performance of this Construction Contract, the General Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability, or any other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The General Contractor shall be required to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Also, the General Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall be required to state that it is an equal opportunity employer. The

General Contractor shall be required to include the provisions of this paragraph in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

4.1.6. During the performance of this contract the contractor shall be required:

- (i) to provide a drug-free workplace for the contractor's employees; (ii) to post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and (iii) to state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace. For the purposes of this paragraph, "drug-free workplace" means the Site for the performance of services or the provision of goods in connection with the specific contract resulting from this solicitation at which site the contractor's employees are prohibited from engaging in the unlawful manufacture, sale distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract. The General Contractor shall include the provisions of this paragraph in every subcontract, so that the provisions will be binding upon each subcontractor.

4.1.7 The General Contractor shall not perform any construction work unless he (i) has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage. Contractor shall not allow any subcontractor to perform any work on a City construction project unless the subcontractor has obtained, and continues to maintain for the duration of such work, such worker's compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended. Contractor shall include the provisions of this paragraph within each of its subcontracts, so as to bind each subcontractor.

4.2 **Subcontractor / Supplier Contracts:** The General Contractor shall enter into written contracts with its subcontractors and suppliers, if any, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the City and the General Contractor that the obligations of the General Contractor's subcontractors and suppliers, if any, inure to the benefit of the City and the General Contractor, and that the City be a third-party beneficiary of the General Contractor's agreements with its subcontractors and suppliers.

4.2.1 The General Contractor shall, as soon as practicable after signing the Contract for Construction, notify the City and the Professional in writing of the names of all subcontractors proposed for the principal parts of the Work, and of such others as the Professional may direct. Where the specifications establish qualifications or criteria for subcontractors, manufacturers or persons performing Work on the Project, the General Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The General Contractor shall not employ or utilize any subcontractor that the City may, within a reasonable time, object to as unsuitable. Neither the City nor the Professional shall direct the General Contractor to contract with any particular subcontractor unless provided in the specifications or Invitation for Bids.

4.2.2 The General Contractor shall make available to each subcontractor and supplier, if any, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

- 4.2.3 The General Contractor shall engage each of its subcontractors and suppliers with written contracts which preserve and protect the rights of the City and include the acknowledgment and agreement of each subcontractor or supplier that the City is a third-party beneficiary of the contract. The General Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the City, the General Contractor's subcontractors and suppliers will perform services for the City.
- 4.2.4 The General Contractor shall include in its agreements with its subcontractors and supplier(s) a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the General Contractor, and that it will abide by those terms, conditions and requirements.
- 4.2.5 The City may select a particular subcontractor for a certain part of the Work and designate on the Invitation for Bids that the subcontractor shall be used for the part of the Work indicated and that the subcontractor has agreed to perform the Work for the subcontract amount stipulated on the bid form. The General Contractor shall include the stipulated amount, plus his Contractor markups, in the bid. In such case, the General Contractor shall be responsible for that subcontractor and its work, and the subcontractor shall be responsible to the General Contractor for its work, just as if the General Contractor had selected the subcontractor.
- 4.3 The General Contractor shall be fully responsible to the City for all acts and omissions of his agents and employees and all succeeding tiers of subcontractors and suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between the City or the Professional and any subcontractor, supplier or other person, nor shall it create any obligation on the part of the City or Professional to pay for or to see to the payment of any money or monies due to any subcontractor, supplier or other person except as may otherwise be required by law.
- 4.4 The General Contractor shall be fully responsible for its invitees to and at the Site, and for those of its subcontractors, suppliers and their employees, including any acts or omissions of any such invitee.
- 4.5 The General Contractor agrees that it alone is responsible for all dealings with its subcontractors and suppliers, and their subcontractors, employees and invitees, including, but not limited to: the subcontractors' or suppliers' claims, demands, actions, disputes and similar matters, unless specifically provided otherwise by this Contract or by statute.
- 4.6 **Resolution Of Trade Disputes:** The General Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

## ARTICLE 5 GOODS, PRODUCTS AND MATERIALS

- 5.1 **Quality Of Materials:** The General Contractor shall furnish goods, products, materials, equipment and systems which:
- (i) comply with the requirements of this Contract For Construction;
  - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
  - (iii) are new (unless otherwise specified or permitted) and without damage;

- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and,
- (vii) beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation And Use Of Materials:** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the General Contractor shall so inform the City and the Professional and shall proceed as directed by that Professional, unless otherwise directed by the City. The General Contractor shall coordinate and interrelate all trade contracts and subcontracts, to ensure compatibility of goods, products, materials, equipment and systems required by the Construction , and to ensure the validity of all warranties and guarantees.

5.3 **Unsuitable Materials:** With respect to goods, products, materials, equipment or systems which the General Contractor knows or should have known are unsuitable or unavailable at the time of Bid submission, no claim with respect to the unsuitability or unavailability of such goods, products, materials, equipment or systems will be entertained unless such a claim, stating proposed alternatives, was made in writing and submitted with the original Bid. Approval by the City and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the City and that Professional, should such items be defective or not as previously represented. Should the General Contractor furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents, which require supplemental materials or installation procedures different from or in addition to those required for specified items, the General Contractor shall provide such goods, products, materials, equipment or systems at no increase in the Construction Contract Price.

5.4 **Security For Work In Progress:** The General Contractor shall provide its own security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

## ARTICLE 6 DOCUMENTS AND INFORMATION

6.1 **Information From City:** The City shall provide the General Contractor with information reasonably necessary to assist the General Contractor in performing its services including, if applicable:

- (i) the Site legal description and any required survey;
- (ii) all written and tangible material in its possession concerning conditions below ground at the Site;
- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and,
- (iv) the City's pertinent Project dates and key milestone dates.

6.2 **Resolution Of Questions:** The General Contractor shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

- 6.3 **Processing Of Documents:** When requested to do so by the City, the General Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the City to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project, which approvals are not otherwise required to be obtained by General Contractor; and, (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 6.4 **Sufficiency Of City Information:** The furnishing of information by the City to the General Contractor shall not relieve the General Contractor of its responsibility to evaluate information and documents provided by the City. The General Contractor shall timely notify the City in writing of any additional information needed or services required from the City in order for the General Contractor to perform the Work.

## ARTICLE 7 SUBMITTALS

- 7.1 **Submittal Schedule:** Within a reasonable time, but no later than fifteen (15) days after execution of the Contract for Construction, the General Contractor shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated shop drawings and other submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and, (iii) set forth specific dates for submission of the listed submittals. The General Contractor shall review and approve all submittals prior to submission to a Professional.
- 7.2 **Processing Of Submittals:** The General Contractor shall in timely fashion review, approve if appropriate, and forward shop drawings and other submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed by the General Contractor, except at his own risk, until such approval has been given.
- 7.2.1 A Professional is responsible to the City, but not to the General Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.
- 7.2.2 The General Contractor shall perform all Work in accordance with approved submittals. Approval of the General Contractor's submittals by a Professional shall not relieve the General Contractor from responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals.
- 7.2.3 The General Contractor shall furnish to the Professional for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of any machinery and mechanical or other equipment which the Contractor contemplates incorporating in the Work. When Submittals are required for materials, the General Contractor shall furnish full information concerning the material or articles which it contemplates incorporating in the Work. When required samples shall be submitted for approval by the Professional, at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval(s) shall be at the risk of subsequent rejection.
- 7.2.4 Submittals shall be forwarded to the Professional sufficiently in advance of construction requirements to allow reasonable time for the Professional's review. Submittals shall be accompanied by a letter of transmittal which shall list the Project Title, the Submittals included, the specification section number applicable to each, and the date shown on each Submittal. Submittals shall be complete in every respect and shall be bound in sets. Each Submittal shall be

clearly marked to show each item, component, and/or optional feature proposed to be incorporated into the Project. Cross reference to the plans or specifications shall be made as needed to identify the use for which the item or component is intended.

- 7.2.5. The General Contractor shall check all Submittals for compliance with the requirements of the Contract Documents. The Contractor shall be solely responsible for checking all dimensions and coordinating all materials and trades to ensure that the components or products proposed, individually or in combination, will fit in the space available and that they will be compatible with other components or products provided. The Contractor shall clearly note, in writing, any and all items which deviate from the requirements of the Contract Documents, and the reason(s) for deviation shall be included with the Submittal. Deviations shall be marked in bold face type or lettering and listed on a separate page or pages containing the heading "DEPARTURES FROM DRAWINGS AND SPECIFICATIONS." Submission of any Submittal to the Professional shall constitute the Contractor's certification that the equipment and material shown in the Submittal is that proposed to be incorporated into the Project, is in compliance with the Contract drawings, specifications and other requirements of the Contract Documents (unless otherwise indicated), and can be installed in the allocated spaces.
- 7.2.6 If a Submittal indicates a departure from the requirements of the Contract Drawings, Specifications or other requirements of the Contract Documents, then the Professional may reject the Submittal, or, if he deems it to have merit, may recommend it to the City, who shall approve or reject it as the City, in its sole discretion, sees fit. Any departure from the Contract Documents must be further authorized by a Change Order, if a reduction or increase in the Contract Price is appropriate.

## **ARTICLE 8 GENERAL CONTRACTOR'S INSPECTION OF AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK**

- 8.1 **Rejection And Correction Of Work In Progress:** During the course of Project, the General Contractor shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, code, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Site, the Work or the Project.
- 8.1.1 The General Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The General Contractor shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
- 8.1.2 The General Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the City or other trade contractors or subcontractors caused by the General Contractor's correction or removal of rejected Work.
- 8.2 **Covered Or Concealed Work:** If a portion of its scope of the Work has been covered, the General Contractor shall, if notified to do so by the City or a Professional, uncover the designated portion for observation and then replace it.
- 8.2.1 If the designated portion of the Work was covered contrary to the request of the City or the Professional, or to requirements specifically expressed in the Construction Documents, the General Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.
- 8.2.2 If the designated portion of the Work was covered prior to a specific request by the City or the Professional that it remain uncovered, the General Contractor shall receive additional

compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

## ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

- 9.1 **Change Order Requests:** Any party to the construction process may request changes to the Work, compensation or applicable schedules.
- 9.1.1 With respect to such requests for changes by the General Contractor, the General Contractor shall prepare and submit a change order request to the designated Professional.
- 9.1.2 With respect to requests for changes by parties other than the General Contractor, the General Contractor shall promptly review and respond to any such change order requests submitted by the Professional.
- 9.1.3 When requested to do so, the General Contractor shall prepare and submit to the Professional drawings, specifications or other data in support of a change order request.
- 9.1.4 Each change order shall detail time and monetary impacts of the change, whether the change order is considered alone or with all other changes that occur during the course of the project.
- 9.2 **City-Directed Changes:** The City, by Construction Change Directive, and without invalidating or breaching the Contract, may direct the General Contractor to implement changes in the Work so long as the Work the City is requiring is not outside of the general scope of this Contract For Construction. The General Contractor, upon written direction from the City, shall proceed with such change.
- 9.2.1 The Professional, without the City's prior approval, may authorize or direct the General Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, Project scope, or approved design elements, and the General Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by a written field order and executed by the General Contractor.
- 9.2.2 Construction Change Directives may be utilized to order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, the Contract Price and Contract Time to be adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Upon receipt of a Construction Change Directive, the General Contractor shall promptly proceed with the change in the Work involved and shall advise the Professional of the General Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining any proposed adjustment in the Contract Price or Contract Time. A Construction Change Directive signed by the General Contractor indicates the agreement of the General Contractor therewith. Such agreement shall become effective immediately and shall be recorded as a Change Order.
- 9.3 **Administration Of Changes:** The Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.4 **Compensation For Changes:** With respect to all change order requests involving credit to the City or additional compensation to the General Contractor, the General Contractor shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the scope of the Work involved in the proposed change; and, (iv) provide a reasonable price quotation to the designated Professional.

- 9.4.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the General Contractor shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the City may require the General Contractor to perform the subject Work on a time and material basis.
- 9.4.2 The General Contractor shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract for Construction, and shall not be entitled to additional reimbursement for its home office, other non-job site or indirect overhead expenses, or tools necessary for construction.
- 9.4.3 It is the responsibility of the General Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.4.4 Under no circumstances may any change order(s) be used to increase the amount of this fixed price contract, without adequate consideration to the City, for any purpose, including, but not limited to, relief of the General Contractor from the consequences of an error in its bid.
- 9.4.5 The following may constitute allowable costs for changes in the Work, subject to 9.4.2, above: (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the City; (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable; (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change, the cost shall be the rental rate according to the terms of the rental agreement, which the City shall have the right to approve in advance. If owned by the Contractor, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment; (4) Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the City's request, the Contractor shall provide proof of his notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. There shall be no Contractor mark-up to the cost of the increase in the premium; (5) Contractor and Subcontractor overhead costs as follows: if a Subcontractor, at any tier, does all or part of the changed Work, the Subcontractor's markup on that Work for overhead and profit shall not exceed fifteen percent (15%) and the Contractor's markup of a Subcontractor's Work, and all intervening tiers of Subcontractors, shall not exceed a total of ten percent (10%); if the General Contractor does all or part of the changed Work, then its markup for overhead and profit on the changed Work it performs shall not exceed fifteen percent (15%). (6) Other costs, expressly agreed to by the City in writing that are directly attributable to the change in Work, with the exception of those set forth below.
- 9.4.6 Allowable costs for changes in the Work shall **exclude** the following: (1) Costs due to the negligence of the Contractor, any Subcontractor, Supplier, their employees or other persons for whom the Contractor is responsible, including, without limitation, costs for correction of defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment; (2) Home office expenses including payroll costs for the Contractor's officers, executives, administrators, project managers, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work; these costs are deemed overhead included in the percentage markups allowable in 9.4.4, above. (3) Home and field office expenses, including, without limitation: expenses of home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, utilities, telephone and office equipment and other general overhead expenses..

- 9.4.7 All Change Orders must state that the Contract Time for Completion or Completion Date is not changed, or that the Time for Completion/Completion Date is either increased or decreased by a specific number of days. The old Time for Completion/Completion Date, and if changed, the new Time for Completion/Completion Date must be stated on the face of each Change Order.
- 9.4.8 The acceptance by the General Contractor of any payment made by the City under a Change Order shall be and operate as a release to the City of all claims by the Contractor and of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change order. The execution of any Change order by the City shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship, or operate to release the Contractor or his surety from any obligation arising under the Contract or any Performance or Payment Bond.
- 9.5 **Performance Of Changes:** Upon receipt of a field order, change directive, or change order, the General Contractor shall proceed to promptly perform the change in the Work. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.6 **Disputes Regarding Changes:** If the General Contractor disputes a decision regarding: (i) whether a change has occurred; (ii) whether a change in the Work will result in adjustment of its compensation or applicable schedules; or (iii) the amount of any adjustment of compensation or applicable schedules, the General Contractor shall notify the City in writing of the dispute, as provided below. Once placed in dispute, the General Contractor shall nevertheless carry out the change, if directed so to do by City. The General Contractor will not prejudice any claim that it may have with respect to that change so long as the General Contractor notifies the City in writing; however, failure to timely notify the City in writing shall constitute the General Contractor's waiver of any claim resulting from the change.
- 9.6.1 In the event a change order request is approved by the City in the absence of an agreement with the General Contractor as to cost, time, or both, the appropriate Professional will: (i) receive and maintain all documentation pertaining thereto required of the General Contractor; (ii) examine such documentation on the City's behalf; (iii) take such other action as may be reasonably necessary or as the City may request; and, (iv) make a written recommendation to the City concerning any appropriate adjustment in the construction cost or time.
- 9.7 **Necessity For Signed Writing:** No act, omission or course of dealing shall alter the requirement that change orders must be in writing and signed by the City, and that change orders are the exclusive method for effecting any adjustment to the General Contractor's compensation or applicable schedules. The General Contractor understands and agrees that neither its compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order. The execution of a change order by the General Contractor shall constitute conclusive evidence of the General Contractor's agreement to the ordered changes in the Work, to the Construction Contract as thus amended, to the Contract Price as amended, and to the time for performance by the General Contractor. The General Contractor, by executing the change order, waives and forever releases any claim against the City for additional time or compensation, with respect to the changes specified therein.
- 9.8 **Consent of Surety:** The General Contractor shall notify and obtain the consent and approval of the General Contractor's surety with reference to all change orders, if such notice, consent or approval is required by the City, the Professional, the surety or by applicable law. The General Contractor's execution of the change order shall constitute the General Contractor's warranty to the City that the surety has been notified of, and consents to such change order, and the surety shall be conclusively deemed to have been notified of such change order and to have expressly consented thereto.
- 9.9 **Work Subject to Change Order:** Neither the General Contractor nor any subcontractor(s) shall commence any work which is, or by provisions of this Contract is required to be, the subject of a change order, unless and until the required Change Order has been fully executed by both the City and the General Contractor.

**ARTICLE 10  
FINANCIAL CLAIMS AND LIENS**

- 10.1 **Notification Regarding Liens:** The General Contractor shall immediately notify the City and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by anyone against the City, the Professional(s), the General Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.
- 10.2 **Discharge of Liens:** The General Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the General Contractor shall, within a reasonable period of time, but in no event more than fourteen (14) calendar days after request and at its own cost, promptly obtain discharge and release of such lien or claim by filing the appropriate bond. If the General Contractor fails to have any such lien or claim discharged and released, or fails to file the appropriate bond, the City shall have the right to pay all sums necessary to obtain such a discharge and release, and the General Contractor shall bear and be liable to the City for all expenses incurred by the City in so doing, including, without limitation, reasonable attorneys fees.

**ARTICLE 11  
CITY'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION**

- 11.1 **City's Designated Professional Representative:** Unless otherwise directed by the City, the Professional designated on Page 1 of this Contract for Construction shall act as the City's representative from the effective date of this Contract until one (1) year from the date the General Contractor achieves Substantial Completion.
- 11.2 The Professional will (i) be the City's design representative during performance of the Work; (ii) consult with and advise the City on all design and technical matters; (iii) be the City's representative in dealing with the General Contractor on all such matters; and, (iv) administer this Contract For Construction.
- 11.2.1 Unless otherwise directed by the City, the City and the General Contractor shall communicate with each other in the first instance through the designated Professional. The City's instructions, directions and other relevant communications or directives to the General Contractor will be issued through the designated Professional.
- 11.2.2 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the City's advisor on claims.
- 11.3 **Professional Site Visits:** The Professional will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work for substantial compliance with (i) this Contract For Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and, (iii) applicable laws, statutes, codes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 **Professional Rejection Of Work:** The Professional may disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, codes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.5 **Professional Evaluations:** The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed

appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.

- 11.5.1 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).
- 11.6 **Professional Submittal Activities:** The Professional will review and approve, reject or take other appropriate action on submittals (e.g., shop drawings, product data, samples, proposed equal materials or equipment and requested substitutions) within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and, (iii) the City's budgeted Total Project Construction Cost. The Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The General Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performing its scope of the Work.
- 11.7 **Professional Interpretations:** The Professional shall, when requested to do so in writing by the General Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. The Professional's interpretations and decisions relating to artistic effect shall be final, if not inconsistent with this Contract For Construction.
- 11.8 **Professional Change Order Activities:** The Professional will consult with and advise the City concerning, and will administer and manage, all change order requests and change orders on behalf of the City.
- 11.9 **Professional Pay Application Activities:** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the General Contractor and shall authorize payment by the City to the General Contractor in writing. After the General Contractor's scope of the Work is determined to be finally complete and the Professional determines that the General Contractor has completed the Scope of the Work, the Professional will determine whether the General Contractor is entitled to final payment, and if so, the Professional will certify that determination to the City in writing.
- 11.10 **Professional Relationship To General Contractor:** The duties, obligations and responsibilities of the General Contractor under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Professional. The General Contractor shall not be a third-party beneficiary of any agreement by and between the City and any Professional. The duties of the General Contractor to the City shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the City.

## ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion:** Substantial Completion of the General Contractor's Work shall be deemed to have occurred on the first day on which both of the following circumstances exist: (i) the General Contractor's Work passes, or has passed, a Substantial Completion inspection, and (ii) the General Contractor has produced all required Substantial Completion documentation and items.
- 12.1.1 The General Contractor shall accomplish Substantial Completion of its scope of the Work on or before the required date of Substantial Completion specified in this Construction Contract.

- 12.1.2 When the General Contractor believes that its Work, or a portion thereof which the City agrees to accept separately, is substantially complete, it shall notify the City and the Professional that its Work is ready for a Substantial Completion inspection.
- 12.1.3 At or prior to the substantial completion inspection, the General Contractor will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the City and the General Contractor the responsibilities for security, utilities, damage to the Work and insurance;
  - (ii) include a list of items to be completed or corrected prior to final payment and state the time within which the General Contractor will complete or correct listed items; and,
  - (iii) contain signature lines for the City, the General Contractor and the Professional.
- 12.1.4 Upon receipt of notification from the General Contractor the appropriate Professional will coordinate with the City and the General Contractor a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.1.5 At inspection(s) to determine whether the General Contractor's Work is substantially complete, the Professional will:
- (i) inspect the General Contractor's Work;
  - (ii) list additional items to be completed or corrected; and,
  - (iii) determine, in consultation with the City, whether Substantial Completion of the General Contractor's Work has occurred.
- 12.1.6 If the General Contractor's Work is determined not to be substantially complete, the General Contractor shall continue to prosecute the Work until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the City until the Work is determined to be substantially complete.
- 12.1.7 On or prior to the date of Substantial Completion, the General Contractor shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the City's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the General Contractor of any deficiencies.
- 12.1.8 When the City, the General Contractor and the appropriate Professional agree that the General Contractor's Work has passed the Substantial Completion inspection and the General Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and time line for the completion of Work needing completion and correction.
- 12.2 **Partial Occupancy or Use:** The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate written agreement with the General Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and General Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage (if any), security, maintenance, heat,

utilities, damage to the Work, and Insurance, and if the City and the General Contractor have also agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the General Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work at the time of partial occupancy or use shall be determined by written agreement between the City and the Contractor, or if no agreement is reached, by decision of the Professional. When the General Contractor considers a portion of the Work partially occupied or used by the City to be substantially complete, the General Contractor shall prepare a list and submit it to the Professional as provided by Section 12.1

12.3 **Final Completion:** Final Completion of the General Contractor's Work shall be deemed to have occurred on the first day on which both of the following circumstances exist: (i) the General Contractor's Work passes, or has passed a Final Completion inspection, and (ii) the General Contractor has produced all required Final Completion close-out documentation and items.

12.3.1 The General Contractor shall accomplish Final Completion of its scope of the Work on or before the required date of Final Completion specified in this Construction Contract.

12.3.2 When the General Contractor believes its scope of the Work is finally complete, the General Contractor shall notify the City and the appropriate Professional that the Work is ready for a Final Completion inspection.

12.3.3 Upon receipt of such notification from the General Contractor, the Professional will coordinate with the City and the General Contractor a date for inspection of the Work to determine whether the Work is finally complete.

12.3.4 At the Final Completion inspection to determine whether the General Contractor's Work is finally complete, the Professional will:

- (i) inspect the General Contractor's Work;
- (ii) determine whether the General Contractor has satisfactorily completed or corrected all items on the list included with the Declaration of Substantial Completion;
- (iii) determine whether the General Contractor's Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, codes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and, (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and,
- (v) determine, in consultation with the City, whether the General Contractor's Work is finally complete.

12.3.5 If the General Contractor's Work is not finally complete, the General Contractor shall continue to prosecute the Work until the Work is finally complete and the inspection process shall be repeated at no additional cost to the City until the Work is finally complete.

12.3.6 On or prior to the date of Final Completion, the General contractor shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;

- (iii) certification and affidavit that all insurance required of the General Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the City;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the City or the real property which is the subject of this Construction Contract;
- (vi) full, final and unconditional certification and affidavit that all of the General Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the General Contractor's scope of the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and,
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the General Contractor's Work.

12.3.7 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the General Contractor, and will immediately inform the General Contractor of any deficiencies and omissions.

### **ARTICLE 13 GENERAL CONTRACTOR'S WARRANTIES AND GUARANTEES**

13.1 **One-Year Warranty:** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, for a period of one (1) year after the date of Substantial Completion, or the date of acceptance by the City, whichever is later, the General Contractor shall, upon request by the City or the Professional, promptly correct all failures or defects in the Work.

13.1.1 The General Contractor shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the City, the Professional, and any necessary subcontractors and suppliers of the date of the walk-through inspection, and request their participation therein. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the General Contractor fail to promptly correct any failure or defect, the City, a Related Party, or any successor in interest or assignee of either, may take whatever action(s) it deems necessary to remedy the failure or defect and the General Contractor shall promptly reimburse the City or Related Party for any expenses or damages incurred as a result of the General Contractor's failure to correct the failure or defect.

13.1.3 Nothing contained in this Section 13.1 shall be construed to establish a period of limitation with respect to the General Contractor's obligations under this Contract For Construction. This Section

13.1 relates only to the General Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the General Contractor's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the General Contractor's liability with respect to any contractual obligations set forth within this Section 13.1 or contained elsewhere within this Construction Contract.

13.2 **Express Warranties And Guarantees - General Contractor:** In addition to the warranties and guarantees set forth elsewhere herein, the General Contractor expressly warrants and guarantees to the City:

- (i) that the Work complies with the Construction Documents as well as all applicable laws, statutes, codes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and, (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the Work is and shall be in compliance with the requirements of this Contract For Construction, and that the Work is and shall be performed in a workmanlike manner.

13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers:** The General Contractor shall require that each of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the City and the General Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction which warranties, guarantees and undertakings shall run to the benefit of the City, Related Parties, and the successors in interest and assigns of each, as well as the General Contractor.

13.4 **Non-Exclusivity And Survival:** The warranties and guarantees set forth in this Article, shall be in addition to all other warranties, whether express, implied or statutory, and they shall survive the City's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

13.5 **Commencement Of Obligations:** Unless otherwise specified, all of the General Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically-designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the City, whichever is later.

## ARTICLE 14 CITY'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

14.1 **City's Representative:** The City shall designate a Representative to serve as the City's primary communication contact with the General Contractor. The name and address of the City's Designated Representative shall be as set forth on Page 1 of the Contract for Construction.

14.2 **City's General Duties**

14.2.1 The City shall timely compensate the General Contractor in accordance with this Contract For Construction.

14.2.2 Unless otherwise specifically required to be provided by the General Contractor within the scope of Work, the City shall secure and pay for all Project testing.

- 14.2.3 The City shall review documents prepared by the General Contractor in a timely manner and in accordance with schedule requirements. Review by the City shall be solely for the purpose of determining whether such documents are generally consistent with the City's intent. No review of such documents shall relieve the General Contractor of any of its responsibilities with respect thereto.
- 14.2.4 The City shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the General Contractor, for any of the foregoing purposes, be deemed the agent of the City.
- 14.2.5 The City shall furnish water, gas and electrical energy only as they exist at the Site prior to the commencement of construction. The General Contractor shall be responsible to provide and pay for extensions from and means of using such utilities.
- (i) The City will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through meters designated by the City for the General Contractor's use in connection with construction. However, the City shall not pay for (a) water which is wasted or expended without proper regard for ecological and conservation considerations; (b) electrical energy expended in electric heating devices; or (c) utilities for General Contractor's field offices.
  - (ii) Acceptance by the General Contractor of the use of water, gas and electrical energy furnished by the City constitutes a release from the General Contractor to the City of all claims and liability for any damages or losses which may be incurred by the General Contractor as a result of water, gas and electrical energy outages or voltage variations or surges, and the General Contractor's agreement to indemnify and hold the City harmless from such claims and liability asserted by any subcontractor(s).

## ARTICLE 15 GENERAL CONTRACTOR'S COMPENSATION

- 15.1 **Unit Prices:** If any portion of the Contract Price is determined by the application of unit prices, the number of units contained in the General Contractor's Compensation Schedule is an estimate only, and the compensation to the General Contractor shall be determined by the actual number of units incorporated in, or required by, the Work.
- 15.2 **Schedule Of Values:** Within the time designated within this Contract for Construction, the General Contractor shall prepare and present to the City and the Professional the General Contractor's schedule of values, apportioning the Construction Contract Price among the different elements of the scope of the Work, for purposes of periodic and final payment. The General Contractor's Schedule of Values shall be presented in the format, and with such detail and supporting information, requested of the General Contractor by the Professional or City. The General Contractor shall not imbalance or artificially inflate any element of its Schedule of Values. If the Schedule of Values is determined to be inappropriate, or if any supporting documentation or data is deemed to be inadequate, the Schedule of Values shall be returned to the General Contractor for revision or for additional supporting documentation or data. Upon the Professional and City's acceptance of the Schedule of Values, as evidenced by the Professional's signature, the Schedule of Values shall be used to process and pay the General Contractor's payment requests and shall be deemed to constitute a reasonable, balanced basis for payment of the Contract Price to the General Contractor. The Schedule of Values shall not be changed without written change order authorized by the City.
- 15.3 **Invoicing Procedures:** In accordance with the procedures and requirements set forth in this Article, the General Contractor shall invoice the City and the City shall pay the General Contractor the Construction Contract Price.

15.3.1 Not less than once every thirty (30) calendar days following the Commencement Date, but no more frequently than once per calendar month, the General Contractor shall submit invoices to the City requesting payment in accordance with the Schedule of Values for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the City or the Professional requests. At a minimum the invoice shall:

- (i) state the total Construction Contract Price;
- (ii) state the amount due for labor, materials and equipment provided during the preceding 30 days; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the City), be accompanied by written proof that the City has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
- (iii) provide an itemized statement or other general breakdown of the various phases or parts of the General Contractor's Scope of Work, as related to the Construction Contract Price;
- (iv) state the value of the various phases or parts actually performed during the period covered by the invoice;
- (v) state any previously invoiced amounts and credit payments made;
- (vi) state the total amount due, less any retainage; and,
- (vii) have attached such lien waivers, or other documentation verifying the General Contractor's payment to subcontractors and suppliers as the City or Professional may request, in their sole discretion.

15.4 **Payment Procedures:** The General Contractor's invoices, and any other requests for payments authorized by this Contract, must be approved by the Professional and must meet the minimum requirements set forth in section 15.3, above, as condition(s) precedent to the City's obligation to pay. Payments issued by the City shall be deemed timely if postmarked at least two (2) business days before the Payment Date identified in Paragraph 15.4.1 below, or any alternative payment due date stated in this Article.

15.4.1 The required payment date shall be either: (i) the date on which payment is due under the terms of this Construction Contract; or (ii) if such date is not established by the Contract, not more than forty-five days after goods or services are received or not more than forty-five days after an invoice in a form acceptable to the City is rendered, whichever is later. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions, to the extent any such contract specifically provides for separate payment for such partial delivery or execution. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the City shall notify the General Contractor in writing of such defect or impropriety. Any disputed amounts determined by the City to be payable to the General Contractor shall be due thirty (30) days from the date the dispute is resolved.

15.4.2 The City's signature to this Construction Contract constitutes its certification that, as of the date of signature, public funds are available and have been appropriated in the amount specified in the original Contract documents as and for the Contract Price. Payment and performance obligations of the City are expressly conditioned upon the availability of and appropriation by the City of public funds therefor in each subsequent fiscal year. When public funds are not appropriated or are otherwise unavailable to support continuation of performance by the City in a subsequent fiscal period, this contract and the City's obligations hereunder shall automatically expire, without liability or penalty to the City, and the General Contractor shall be reimbursed for the reasonable

value of any non-recurring costs incurred but not amortized in the price of the products, supplies or services delivered under this Construction Contract. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Contractor with written notice of any non-appropriation or unavailability of funds affecting this Contract.

- 15.4.3 If Contractor is an individual, then he or she shall register as a vendor with the City of Charlottesville and provide the City's Department of Finance with his Social Security Number *on or before* commencement of performance of construction services under this Contract. If Contractor is a proprietorship, partnership, or corporation, then Contractor shall register as a vendor with the City of Charlottesville and provide its federal employer identification number(s) to the City's Department of Finance *on or before* its commencement of performance of construction services under this Contract.
- 15.4.4 Unless otherwise specified within the Contract Documents, the City will make progress payments to the contractor, in installments based upon an estimated percentage of completion. With each installment, the contractor shall be paid at least ninety-five percent (95%) of the total amount earned, as determined and approved by the Professional, withholding the balance as retainage, to assure faithful performance of the contract. Amounts withheld may be included in the final payment to the contractor. Where the General Contractor utilizes a subcontractor in connection with a City construction contract, and the subcontract provides for progress payments, then the General Contractor shall be subject to the same percentage limitations with respect to progress payments made to subcontractors.
- 15.4.5 The General Contractor shall have the option to use an escrow account procedure for utilization of the City's retainage funds, when contracting directly with the City for contracts involving \$200,000 or more of public funds, where portions of the contract price are to be retained, where such contracts are for: construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, drainage structures and the installation of water, gas, sewer lines and pumping stations. In the event a Contractor elects to utilize the escrow account procedure, then any subcontract for such public project which provides for progress payments shall be subject to the same escrow account procedures.
- (i) The Contractor shall indicate its election to use the escrow account procedure, by completing the escrow agreement form and contract included in the Bid Documents for this Project. The form and contract shall be submitted to the City within fifteen (15) calendar days after the Contractor is notified of the award of the contract. If the escrow agreement form and contract are not submitted within the 15 day period, then the Contractor shall forfeit its right to the use of the escrow account procedure.
  - (ii) In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent, and the surety shall execute an escrow agreement form. The Contractor's escrow account shall be a trust company, bank or savings institution with its principal office located in the Commonwealth of Virginia.
  - (iii) This escrow account procedure shall not apply to public contracts for construction of railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities or the construction or maintenance of solid waste or recycling facilities and treatment plants.
- 15.5 **City's Right To Refuse Payment:** The Professional's approval of the General Contractor's invoice shall not preclude the City from exercising any of its remedies under this Contract. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any set-offs claimed by the City. The City shall have the right to refuse to make payment of any invoice, and, if

necessary, may demand the return of a portion or all of the amount previously paid to the General Contractor due to:

- (i) the General Contractor's failure to perform its scope of the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;
- (ii) the General Contractor's failure to correctly and accurately represent the work performed in a payment request, or otherwise;
- (iii) the General Contractor's performance of its scope of the Work at a rate or in a manner that, in the City's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the General Contractor's failure to use funds previously paid the General Contractor by the City, to pay General Contractor's Project-related obligations including, but not limited to, the General Contractor's subcontractors, materialmen, and suppliers;
- (v) claims made, or claims likely to be made, against: (a) the City, (b) the property which is the subject of this Construction Contract, or (c) the Professional. The General Contractor's failure to attach to any invoice the lien waivers or other documentation required by section 15.3.1 (vii) of this Construction Contract shall constitute *prima facie* evidence of such claims likely to be made;
- (vi) loss caused by the General Contractor or the General Contractor's subcontractors, or suppliers; and,
- (vii) the General Contractor's failure or refusal to perform any of its material obligations to the City.

15.6 **General Contractor's Right To Refuse Performance For Non-Payment:** If within thirty (30) calendar days from the applicable Payment Date, the City, without cause or basis under this Contract, fails to pay the General Contractor any amounts then due and payable to the General Contractor, the General Contractor shall have the right, in addition to all other rights and remedies contained herein, to cease performance of its scope of the Work until receipt of proper payment, after first providing fourteen (14) calendar days' advance written notice to the City of its intent to cease work.

15.7 **Correction Of Past Payments:** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the City shall notify the General Contractor in writing of such defect or impropriety. Any disputed amounts determined by the City to be payable to the General Contractor shall be due thirty (30) calendar days from the date the dispute is resolved.

15.8 **Interest On Outstanding Amounts Due:** No interest shall accrue when payment is delayed due to a dispute between the City and the Contractor, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. No interest shall accrue on any retainage which is withheld by the City to assure performance of this Contract.

15.9 **Invoice Warranties And Guarantees:** The General Contractor expressly warrants and guarantees to the City that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the City;

- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and,
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the General Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the General Contractor, or its subcontractors or suppliers.

15.10 **General Contractor's Signature:** The signature of the General Contractor on any invoice constitutes the General Contractor's certification to the City that (i) the General Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by the Contract; (ii) the General Contractor has paid its subcontractors and suppliers, if any, their proportional share of all previous payments received from the City; and, (iii) the amount requested is currently due and owing.

15.11 **Taxes:** The General Contractor shall incorporate into the Contract Price, and shall pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into its scope of the Work which were legally required at the time of execution of this Contract For Construction, whether or not yet effective or merely scheduled to go into effect. The General Contractor shall secure, defend, protect, hold harmless, and indemnify the City or Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the City and Related Parties by any taxing authority with respect to such taxes. The General Contractor shall cooperate with and assist the City in securing qualified refunds of any sales or use tax paid by the City or General Contractor on goods, products, materials, equipment or systems. Any refund secured shall be paid to the City.

15.12 **Compensation of General Contractor's Subcontractors and Suppliers.** Within seven days after receipt of amounts paid to the General Contractor by the City, for work performed by a subcontractor, the General Contractor shall take one of the following two actions: (i) pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor; or (ii) notify the City and the subcontractor, in writing, of the contractor's intention to withhold all or a part of the subcontractor's payment, specifying the factual basis and reason for the nonpayment. The General Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment requirements with respect to each lower-tier subcontractor.

In the event that the General Contractor has not received payment from the City for work performed by a subcontractor under this Contract, the General Contractor will pay such subcontractor within sixty (60) days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor issued the invoice. The General Contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of this Contract. However, in the event that the General Contractor withholds all or a part of the amount invoiced by the subcontractor under the terms of this Contract, the General Contractor shall notify the subcontractor within fifty (50) days of the receipt of such invoice, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. Payment by the City pursuant to this Contract shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of the General Contractor's receiving payment for amounts owed to the General Contractor.

15.12.1 The City shall have no obligation to pay, and shall not be responsible for payments to the General Contractor's subcontractors or suppliers. However, the City reserves the right, but shall have no duty, to make payment jointly to the General Contractor and to any of its subcontractors or suppliers in the event that the City becomes aware that the General Contractor fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if utilized by the City, shall create no rights in favor of any person or entity beyond the right of the

named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

- 15.13 **Final Payment:** Prior to becoming entitled to receive final payment, and as a condition precedent thereto, the General Contractor must achieve Final Completion. The City shall, subject to its rights set forth in this Contract for Construction, make final payment of all sums due the General Contractor within fourteen (14) calendar days of the Professional's execution of a final approval for payment.

## **ARTICLE 16 SCHEDULE REQUIREMENTS**

- 16.1 **Construction Schedule:** The General Contractor shall submit to the City and to the Professional a Construction Schedule, which shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the City, the General Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include

- (i) the required Commencement Date, and the required dates of Substantial Completion and Final Completion;
- (ii) any guideline and milestone dates required by the City;
- (iii) any applicable subcontractor and supplier sub-schedules;
- (iv) a submittal schedule which allows sufficient time for review of documents and submittals;
- (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and,
- (vi) required decision dates;
- (vii) the critical path method (CPM) schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract, as opposed to a random (or scattered) format. It shall be time-scaled on a weekly basis, and it shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other submittals for approval, approval of shop drawings by the Professional, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed. Failure to include any element of Work shall not excuse the General Contractor from completing all required Work within the time for completion established by the Contract Documents and any interim deadlines established therein. The General Contractor shall allow sufficient time in the CPM schedule for adverse weather anticipated and for the Professional to conduct whatever associated reviews or inspections as may be required under the Professional's contract with the City. If the Professional and the Contractor are unable to agree as to what constitutes sufficient time, the City shall determine the appropriate duration for such review or inspection activities.

- (viii) Each Work activity shall be assigned a time estimate by the General Contractor. One day shall be the smallest time unit utilized.
  - (ix) The CPM schedule shall identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and shall clearly highlight all activities on the critical path. Total Float and free Float shall be indicated for each activity. Float time shall not be considered for the exclusive use or benefit of either the City or the General Contractor, but must be allocated in the best interest of completing the Work within the time established by the Contract document. Extensions of the time for completion, when granted by Change Order, will be granted only when equitable time adjustment exceeds the total Float in the activity or path of activities affected by the change.
  - (x) The CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price.
  - (xi) The CPM schedule shall also show the planned workforce (crew size and number of crews) and the major pieces of equipment required for each activity on the schedule.
  - (xii) Acceptance of the schedule by the City does not indicate agreement with, nor any responsibility for, the proposed or actual duration of any activity shown on the accepted schedule. The General Contractor shall update the latest accepted CPM schedule as often as necessary to finish within the time for completion specified within the Contract Documents.
- 16.1.3 By reviewing the Construction Schedule, the City and the Professional do not assume any of the General Contractor's responsibility that the Construction Schedule be coordinated or complete, or for timely and orderly completion by the required dates of Substantial Completion and Final Completion, and any milestone dates required by the City, and review and acceptance of the Construction Schedule by the City and a Professional shall not relieve the General Contractor of any of its responsibilities established under this Contract.
- 16.1.4 The General Contractor shall review and compare, on a weekly basis, the actual status of the Work against the Construction Schedule. The General Contractor shall discuss, on a weekly basis, the status of the Work with the Professional.
- 16.1.5 The General Contractor shall periodically, but no less frequently than once per month prepare a revised Construction Schedule, showing actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. In addition, a revised Construction Schedule shall be prepared by the General Contractor whenever the General Contractor anticipates that performance of the Work will be delayed or in fact has been delayed. Each updated Construction Schedule shall be accompanied by a narrative report which: (i) states and explains any modifications of the critical path schedule, if any, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and, (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and any other milestone dates established by this Contract.
- 16.1.6 The General Contractor, in submitting its bid, acknowledges that it has taken into consideration normal weather conditions. In addition to the specified anticipated days of adverse weather noted elsewhere in the Contract Documents, the Contractor shall anticipate one day of adverse weather impact for each day of actual adverse weather during the months of January, February, March and

December (“adverse weather impact days”). Upon commencement of on-site Work and continuing throughout construction, the General Contractor shall keep a daily record of weather conditions, and shall record the occurrence of actual adverse weather days and any resultant impact to normally scheduled work. To be counted as an adverse weather delay day, adverse weather must prevent work on critical activities for fifty percent (50%) or more of a scheduled work day. The General Contractor shall submit to the Professional a written adverse weather report for each calendar month, to be submitted to the Professional within five (5) calendar days following the last day of the reporting month being reported. Failure to submit the required written report within the time specified shall constitute a waiver by the General Contractor of any and all claims for delay due to adverse weather conditions occurring during the month for which the report was required to be submitted.

- 16.1.7 The General Contractor’s critical path schedule must reflect anticipated adverse weather days, and adverse weather impact days, for all weather dependent activities.
- 16.1.8 The date established by the Contract Documents for Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The General Contractor may plan for an early completion; however, extensions of time, damages for delay, and all other matters between the City and the Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by the General Contractor.
- 16.2 **Delay In Performance:** If at any time the General Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, the General Contractor shall: (i) immediately notify the designated Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates established by this Contract.
- 16.3 **Modifications To Time For Performance:** The General Contractor shall determine and promptly notify the City and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates established by this Contract, are necessary. No such adjustments shall be effective unless approved in writing by the City and Professional(s).
- 16.3.1 If the General Contractor wishes to make a claim for an increase in the time for performance, written notice shall be given to the City and to the Professional. The General Contractor’s claim shall include an estimate of cost and of probable effect of delay on progress of the Work.
- 16.3.2 If the total number of actual weather days, plus adverse weather impact days, exceeds the anticipated adverse weather days specified in the Contract Documents, then the excess days may be used as a basis to determine whether the General Contractor is entitled to a time extension. If adverse weather conditions are the basis for a claim for additional time, any claim for such extension shall be documented by data substantiating that weather conditions were abnormal for the period of time, and that the weather conditions could not have been reasonably anticipated and had an adverse effect on the scheduled construction (e.g., that adverse weather conditions persisted for a time period exceeding the Contract Allowance for adverse weather days, etc.). All of the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of the delay) must be furnished to the City before any consideration will be given to a claim for an extension of time. Any claim for an extension of time under this paragraph must be supported by a delay in completion of the entire Project shown on the critical path of the accepted Schedule required by the Project. Extensions may be granted only for delays in completion of the Project, not for that portion of any delay that consumes only “float” time. A notice of claim for extension of time based on abnormal weather must be submitted to the City within the time specified in Paragraph 25.2 of these General Terms and Conditions; thereafter, the General Contractor shall have twenty-one (21) days from the last day of the calendar month in which the occurrence of bad weather that is the subject of the claim took place to submit all

evidence and supporting data required by this paragraph. The provisions of this paragraph shall be read together with Paragraph 4 of the Special Terms and Conditions applicable to this contract, regarding the General Contractor's obligations to keep records and submit monthly reports tracking adverse weather conditions. For the purposes of compliance with Paragraph 25.2 of these General Conditions, a notice of claim based on adverse weather days received by the City within five (5) business days (i.e., Monday-Friday) of an adverse weather event occurrence shall be deemed submitted "at the time of occurrence" of that event.

- 16.4 **Early Completion:** General Contractor may attempt to achieve Substantial Completion on or before the required date of Substantial Completion. However, such planned early completion shall be for the General Contractor's sole convenience and shall not create any additional General Contractor rights or City obligations under this Contract For Construction, nor shall such early completion unilaterally change the required dates of Substantial Completion or Final Completion. The City shall not pay the General Contractor any additional compensation for achieving Substantial Completion or Final Completion prior to the required dates nor will the City owe the General Contractor any compensation, should the City cause the General Contractor not to achieve, or should the City decline to accept, Substantial Completion or Final Completion earlier than the dates established by this Contract.
- 16.5 **Modification Dates Of Substantial Completion Or Final Completion:** The General Contractor may propose modifications to the required dates of Substantial Completion or Final Completion. The City may (in its sole discretion), but is not required to accept General Contractor's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted written change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the General Contractor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the dates, as modified.
- 16.6 **Document Review:** The General Contractor shall provide documents to the City and the Professional for review in accordance with schedule requirements and with sufficient lead time to allow the City and the Professional reasonable time for review.
- 16.7. **Bar Graph Schedule:** For contracts with a price of \$100,000 or less, the City may elect to use of a Bar Graph Schedule, by notifying the Contractor, in writing, of that election (notice provided in bid documents or other contract documents, e.g. special conditions, shall suffice). Where a bar graph schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other submittals for approval, approval of shop drawings by the Professional, the manufacture and delivery of material, the testing and installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor. It shall be the General Contractor's sole responsibility to submit a schedule, and to keep the schedule updated, to provide for accomplishing Substantial Completion of the Work, and any interim deadlines, by the date(s) established within the Contract Documents. The General Contractor shall allow sufficient time in the schedule for adverse weather anticipated, and for the Professional to conduct whatever associated reviews or inspections as may be required under the Professional's contract with the City. If the Professional and the Contractor are unable to agree as to what constitutes sufficient time, the City shall determine the appropriate duration for such review or inspection activities.

## ARTICLE 17 LIQUIDATED DAMAGES

- 17.1. **Time Is Of The Essence:** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the City will incur damages if the General Contractor's scope of the Work is not completed in accordance with the required dates of Substantial Completion and Final Completion. The General Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that: (i)

the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

17.2 **Failure To Timely Achieve Completion:** The parties hereto mutually understand and agree that the City will sustain substantial monetary and other damages in the event of a failure or delay by the General Contractor in the completion of its scope of the Work. If the General Contractor inexcusably fails to achieve Substantial Completion by the date established by this Contract, then the General Contractor shall pay to the City, as liquidated damages for delay and not as a penalty, the daily amount specified in this Contract for Construction, for each and every day after the required date of Substantial Completion until actual Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that General Contractor is terminated by City for default and shall apply until Substantial Completion has been achieved by any other contractor(s) hired to complete the Work. If the General Contractor inexcusably fails to achieve Final Completion by the required date of Final Completion established in this Contract, the General Contractor shall pay to the City, as liquidated damages for delay and not as a penalty, the daily amount specified in this Contract for Construction, for each and every day after the required date of Final Completion until actual Final Completion.

17.3 **Compensable or Excusable Delays:**

- (i) If the General Contractor is delayed at any time in the progress or performance of its scope of the Work by: (a) acts or omissions of the City ; (b) major changes ordered by the City in the Scope of Work; or (c) any other cause which the City determines may justify the compensation of the General Contractor for the delay (individually and together referred to as “Compensable Delays”), then the General Contractor's compensation shall be equitably adjusted to cover the General Contractor's actual and direct increased costs attributable to such Compensable Delay.
- (ii) If the General Contractor is delayed at any time in the progress or performance of its scope of the Work by: (a) acts or omissions of the City; (b) major changes ordered by the City in the Scope of Work; (c) fire; (d) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the General Contractor; (e) unavoidable casualties; (f) causes beyond the General Contractor's control which the City agrees in writing are justifiable; or (g) any other cause which the City determines may justify the delay (individually and together referred to as “Excusable Delay”), then the Construction Schedule shall be extended for a period equal to the length of such Excusable Delay, but only if:
  - (1) the General Contractor gives notice of its delay claim to the City within the time specified in Section 25.2 of these General Terms and Conditions. For the purposes of compliance with Paragraph 25.2 of these General Conditions, a notice of claim received by the City within five (5) business days (i.e., Monday-Friday) after the beginning of such Excusable Delay shall be deemed submitted “at the time of occurrence” of the qualifying event. Following submission of the required notice of claim, the General Contractor shall have twenty-one (21) days from the last day of the calendar month in which the occurrence of the event that forms the basis of the claim took place to submit all evidence and supporting data that may be required by the City.
  - (2) the delay is not in any way caused by default or collusion on the part of the General Contractor, or by any cause which the General Contractor could reasonably control or circumvent; and
  - (3) the General Contractor would have otherwise been able to timely perform all of its obligation under this Contract, but for such delay.
- (iii) Any delay which does not qualify as a Compensable Delay or Excusable Delay under this Contract shall be deemed and designated an “Unexcused Delay.”

- (iv) Delay caused by labor disputes, picketing, employee boycotts, or the like, which directly or indirectly involves employees of the General Contractor, or its subcontractors and suppliers, is not the responsibility of the City and will result in time extensions only if agreed to in writing by the City, at its sole discretion, at the time such events arise. The General Contractor shall notify the City in writing of any delay it attributes to labor disputes, picketing, employee boycotts, or the like, which directly or indirectly involves employees of the General Contractor, or its subcontractors and suppliers, immediately upon becoming aware thereof.

- 17.4 **City's Right To Withhold Payment:** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the General Contractor will inexcusably fail to achieve Final Completion by the date of Final Completion, the City shall be entitled, but not required, to withhold from any amounts otherwise due the General Contractor the daily amount specified as and for liquidated damages for each calendar day of the unexcused delay. If and when the General Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the General Contractor those funds withheld, but no longer applicable, as liquidated damages;

## ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Unusual Conditions:** If (i) the General Contractor encounters concealed or unforeseen conditions, of an unusual nature, which may affect the performance of the Scope of Work; or (ii) the site conditions encountered vary from those indicated by the Construction Documents; and, (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the General Contractor, the General Contractor shall promptly, but in no event later than three (3) business days (i.e., Monday-Friday) after first encountering such conditions, notify the Professional and the City before conditions are disturbed, to give the Professional and the City an opportunity to observe the condition in its undisturbed state. The General Contractor may also choose to designate this notice as a notice of claim pursuant to Paragraph 25.2 of these General Conditions.

- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the General Contractor's cost of, or time required for, performance of its scope of the Work, the General Contractor's compensation or time for performance or both will be equitably adjusted.

- 18.1.2 Following receipt of the General Contractor's Notice any adjustments agreed to by the City with respect to the General Contractor's compensation or extensions of time attributable to unforeseen site conditions must be made by change order. Within fourteen (14) calendar days after the City notifies the General Contractor of the results of its investigation pursuant to Paragraph 18.1.1, the General Contractor shall (i) submit a proposed change order request (if the City has determined that an equitable adjustment should be granted) or (ii) submit evidence and supporting documentation in support of any claim that the General Contractor may wish to pursue arising out of the circumstances that formed the basis of the notice given by the General Contractor pursuant to Paragraph 18.1.

- 18.1.3 The General Contractor's failure to notify the Professional and City as required by this Article shall constitute a waiver of any claims, of any nature whatsoever, arising out of or relating to such concealed or unknown condition.

## ARTICLE 19 GENERAL CONTRACTOR'S RECORDS

- 19.1 **Preparation Of Records:** The General Contractor shall, concurrently with performance of its services, prepare written records substantiating and documenting all services rendered, construction performed and all goods furnished.

19.2 **Retention Of Records:** Except as otherwise specifically provided in this Construction Contract, the General Contractor shall keep and retain records performing to this Project, including, without limitation, copies of all specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings, electronic messages, transmissions or recordings, and other items which document the Project, its design, and its construction. The General Contractor shall maintain all such records for a period of five (5) years after the date of Final Completion, or for any longer period of time as may be required by law or good construction practice. If the General Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this five (5) year period, the General Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.3 **Access To Records:** Upon the request of the City, the General Contractor shall make its records available to the City (including, without limitation, the City's authorized or designated representatives), and to the representatives or agents of any state, federal or other regulatory authority requesting such records, during normal business hours. The City, as well as any state, federal or other regulatory authority, shall have the right to inspect, examine, review and copy the General Contractor's records at the copying party's reasonable expense. Failure by the General Contractor to keep or provide access to records required by this Contract shall be reason to exclude the related costs from amounts which might otherwise be payable by the City to the General Contractor under this Contract.

## **ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

20.1 **Nature And Use Of Information:** All information, documents, and electronic media furnished by the City to the General Contractor (i) belong to the City; (ii) are proprietary records of the city; (iii) are furnished solely for use on the Project; (iv) shall be kept confidential by the General Contractor; and (v) shall not be used by the General Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the City hereunder is specifically authorized in writing by the City in advance. The City hereby grants to the General Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Scope of Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

20.2 **City Ownership Of Information:** All information, documents, and electronic media prepared by or on behalf of the General Contractor for the Project shall be and remain the sole property of the City free of any retention rights of the General Contractor. The General Contractor hereby grants to the City an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the General Contractor for the Project, free of any copyright claims, trade secret rights or other proprietary rights with respect to such documents.

20.3 **Disclosure Of Information:** The General Contractor shall not disclose any information it receives from the City to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.

20.4 **Instructions To Employees:** Because it is difficult to separate proprietary and confidential information from that which is not, the General Contractor shall instruct its employees and agents to regard all information which is not in the public domain as proprietary and confidential.

20.5 **Non-Publication:** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the City's common law copyrights or other reserved rights.

## **ARTICLE 21 GENERAL INSURANCE REQUIREMENTS**

21.1 **General Insurance Requirements:** Unless otherwise required, each Required Insurance policy:

- (i) shall be issued by an insurance carrier authorized to do business within the Commonwealth of Virginia and rated A- VIII or better, by A. M. Best Company or equivalent rating from an alternate recognized ratings agency, and otherwise acceptable to the City;
- (ii) shall be kept in force throughout performance of the General Contractor's services;
- (iii) shall be an occurrence policy;
- (iv) shall include completed operations insurance;
- (v) shall contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insured shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;
- (vi) where additional insured required, such policy shall not have a restriction on the limits of coverage provided to the City as an additional insured. The City shall be entitled to protection up to the full limits of the Contractor's policy regardless of the minimum requirements specified in the Contract.

Each insurance policy required by this Agreement shall be endorsed to include the following clauses ("Required Endorsements"):

- (i) Should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 30 days in advance; and
- (ii) The City of Charlottesville, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects the operations and activities of (or on behalf of) the named insured, performed under contract with the City of Charlottesville.

21.2 **Proof Of Insurance:** Prior to performance of any services on the Project, the General Contractor shall (i) have all required insurance coverage in effect; and (ii) deliver to the City certificates of insurance for all lines of coverage which provides that the coverage evidenced thereby should not be substantially modified or canceled without 30 days prior written notice to the City; and (iii) deliver to the City endorsements to the policies which require the City and its officials, officers, and employees and agents be named as "additional insured". Policies which require this endorsement include Commercial General Liability.

Such endorsements must be approved by the City, acceptable endorsements include ISO forms CG 20 10 10 01 and CG 20 26 07 04, among others; and (iv) upon the request of the City, provide any other documentation satisfactory to the City in its sole discretion, evidencing the required insurance coverage, including but not limited to a copy of the insurance policy and evidence of payment of policy premiums,. The General Contractor shall require each of its subcontractors and suppliers to have coverage per the requirements herein in effect, prior to the performance of any services by such subcontractors and suppliers. Further, the General Contractor shall ensure that all Required Insurance coverages of its subcontractors and suppliers is and remains in effect during performance of their services on the Project and certifies by commencement of the Work that his insurance and that of subcontractors is in effect and meets the requirements set forth herein. The City shall have no responsibility to verify compliance by the General Contractor or its subcontractors and suppliers.

- 21.3 **Effect Of Insurance:** Compliance with insurance requirements shall not relieve the General Contractor of any responsibility to indemnify the City for any liability to the City, as specified in any other provision of this Contract For Construction, and the City shall be entitled to pursue any remedy in law or equity if the General Contractor fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract shall not be negated or reduced by virtue of any insurance carrier's denial of insurance coverage for the occurrence or event which is the subject matter of the claim, or by any insurance carrier's refusal to defend any named insured.
- 21.4 **Waiver Of Subrogation:** The General Contractor hereby releases and discharges the City of and from all liability to the General Contractor, and to anyone claiming by, through or under the General Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

## ARTICLE 22 GENERAL BOND REQUIREMENTS

- 22.1 **General Bond Requirements:** The General Contractor shall be required to provide performance and payment bonds, and the penal sum of each bond shall be in an amount not less than the Contract Price, as adjusted by any change order(s). Each bond shall:
- (i) be in a form approved by the City and the City Attorney, be made payable to the City, and be filed with the City;
  - (ii) incorporate by reference the terms of this Contract For Construction;
  - (iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);
  - (iv) be executed by a company licensed and authorized to do business in the Commonwealth of Virginia;
  - (v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so;
  - (vi) be, in the case of a performance bond, conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract;
  - (vii) be, in the case of a payment bond, for the protection of claimants who have and fulfill contracts to supply labor or materials to the General Contractor, or to any subcontractors, in the prosecution of the Work which is the subject of this Contract for Construction;
  - (viii) be, in the case of a payment bond, conditioned upon the prompt payment for all labor or materials supplied to the General Contractor, or to any subcontractors, in the prosecution of the Work which is the subject of this Contract for Construction.
- 22.2 **Delivery Of Bonds:** The General Contractor shall deliver any required bond(s) and power(s) of attorney to the City prior to commencement of the Work.
- 22.3 **Subcontractor Bonds.** Nothing in this Article shall preclude the General Contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the subcontract conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor or furnishing materials as required by the subcontract.

**ARTICLE 23  
CITY'S RIGHT TO STOP WORK**

- 23.1 **Cease And Desist Order:** If the General Contractor fails to perform, refuses to perform, or fails to correct defective Work as required, or if the General Contractor persistently fails to carry out the Work in accordance with the Contract, the City may, by written notice, order the General Contractor to cease and desist performing the Work until the cause for the order has been eliminated to the satisfaction of the City. Upon receipt of such instruction, the General Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's order has been corrected, until the cause no longer exists, or until the City instructs the General Contractor in writing to resume performance of the Work.
- 23.1.1 The General Contractor shall not be entitled to an adjustment in the time for performance, or the Contract Price, as a result of any order to cease and desist, because any such stoppage is considered to be the fault of the General Contractor.
- 23.1.2 The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the General Contractor or any other individual or entity.
- 23.1.3 In the event the City issues instructions to cease and desist, and in the further event that the General Contractor fails and refuses within seven (7) calendar days to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another contractor, and the General Contractor shall be responsible for the cost incurred by the City to carry out the Work.
- 23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the City may have against the General Contractor.

**ARTICLE 24  
TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION**

- 24.1 **Termination For Cause By City:**
- 24.1.1 The City may terminate this Contract For Construction for cause if the General Contractor breaches this Contract For Construction, through any act or omission, by:
- (i) refusing, failing, or being unable to properly manage or perform the Work required for the Project;
  - (ii) refusing, failing or being unable to maintain applicable schedules, or to supply the Project with sufficient numbers of workers, properly skilled workers, or proper materials;
  - (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
  - (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Site, the Work or the Project;
  - (v) refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction (including, without limitation, failure to comply with any required insurance provisions), or as otherwise defined elsewhere herein.
  - (vi) Each of the foregoing items shall be deemed a material breach and default of this Contract.
- 24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the City may give notice to the General Contractor setting forth the nature of the default, requesting cure within seven (7) calendar days from the date of notice, and notifying the General Contractor that failure to cure within the 7 day period shall entitle the City to immediately terminate the Contract. At any time thereafter, if the General Contractor fails to initiate the cure and continue to cure the default, the City, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the General Contractor's scope of the Work, including supplying workers, material and equipment which the City deems expedient to complete the General Contractor's scope of the Work;
- (ii) contract with other builder(s) to complete all or any part of the General Contractor's scope of the Work, including supplying workers, material and equipment which the City deems expedient to complete the General Contractor's work;
- (iii) take such other action as is necessary to correct such failure; and,
- (iv) give notice to the General Contractor of immediate termination.

24.1.3 If the City terminates this Contract for cause, the City may also, without prejudice to any other rights and remedies:

- (i) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the General Contractor;
- (ii) directly pay the General Contractor's subcontractors and suppliers any compensation due to them from the General Contractor;
- (iii) finish the General Contractor's Work by whatever means the City may deem expedient; and,
- (iv) require the General Contractor to assign the General Contractor's right, title and interest in General Contractor's subcontracts or orders to the City.

24.1.4 If the City terminates this Contract for cause and takes possession of materials, tools, construction equipment and machinery on the Site owned or leased by the General Contractor, then the General Contractor's compensation shall be increased by fair payment, either by purchase or rental at the election of the City, for any materials, tools, construction equipment and machinery items retained, subject to the City's right to recover from the General Contractor its damages resulting from the termination of the Contract.

24.1.5 If the City terminates this Contract for cause and a court of competent jurisdiction subsequently determines the termination was without cause, then said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

## 24.2 Termination For Cause By General Contractor:

24.2.1 The General Contractor may terminate this Contract For Construction for cause if the City materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to make payment to the General Contractor in accordance with the requirements of this Construction Contract, without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any Public authority or quasi-public authority having jurisdiction over any Project;
- (iii) refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the General Contractor may give notice to the City setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the City fails to cure the default within seven (7) calendar days, the General Contractor, without prejudice to any rights or remedies, may give notice to the City of immediate termination.

- 24.3 **Termination For Convenience:** The City may terminate this Contract for Construction, at any time, for its convenience, upon thirty days' advance written notice to the General Contractor. In the event of such termination the Contractor shall be compensated for services and work performed prior to the effective date of termination.
- 24.3.1 Upon receipt of written notice from the City of a termination for the City's convenience, the General Contractor shall cease operations as directed by the City in the notice; take any actions necessary, or any actions that the City may direct, for the protection and preservation of the Work; and, except for Work directed to be performed prior to the effective date of termination, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of a termination for the City's convenience, the General Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents prior to the effective termination date, in accordance with the approved Schedule of Values and Certificate(s) of Payment, and the General Contractor shall also be entitled to receive reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The General Contractor shall not be entitled to compensation or damages for lost profits, or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the amounts specified in this paragraph, the City shall have no further obligations to the General Contractor, of any nature whatsoever. In no event shall a termination for the convenience of the City terminate the obligations of the Contractor's surety on its payment or performance bond(s).
- 24.4 **General Contractor's Compensation When General Contractor Terminates For Cause:** If this Contract For Construction is terminated by the General Contractor pursuant to Paragraph 24.2 then the City shall pay the General Contractor specified amounts due for Work actually performed prior to the effective termination date. In addition, unless otherwise expressly agreed by the City and the General Contractor in writing, then the City shall pay the following additional amounts to the General Contractor:
- (i) reasonable direct costs incurred by the General Contractor in preparation for performance of the terminated portion of its scope of Work, plus a fair and reasonable allowance for costs incurred by the General Contractor in the process of effectuating the termination, and a fair and reasonable allowance for costs of overhead incurred by the General Contractor specifically in contemplation of its performance of the terminated portion of its scope of Work.
  - (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.
- 24.5 **General Contractor's Compensation When City Terminates For Cause:** If this Contract For Construction is terminated by the City for cause, no further payment shall be made to the General Contractor until Final Completion of the Project. Upon Final Completion the General Contractor shall be paid the remainder of the Contract Price less all costs and damages incurred by the City as a result of the default of the General Contractor, including liquidated damages applicable thereto.
- 24.6 **Limitation On Termination Compensation:** Regardless of the reason for termination or the party terminating, the total sum paid to the General Contractor shall not exceed the Contract Price, as properly adjusted and reduced by the amount of payments previously made and any penalties or deductions incurred pursuant to any other provision of this Contract, and shall in no event include any duplication of payment(s).
- 24.7 **General Contractor's Responsibility Upon Termination:** Regardless of the reason for termination or the party terminating, if this Contract For Construction is terminated, the General Contractor shall, unless notified otherwise by the City,
- (i) immediately stop work;
  - (ii) reduce its staff, services and outstanding Commitments in order to minimize the cost of termination;
  - (iii) terminate outstanding orders and subcontracts;
  - (iv) settle the liabilities and claims arising out of the termination of subcontracts and orders; and,
  - (v) transfer title and deliver to the City such completed or partially completed Work, and, if paid for by the City, materials, equipment, parts, fixtures, information and such contract rights as the General Contractor has.

- 24.8 **Lack Of Duty To Terminate:** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the City or the General Contractor to exercise that right for the benefit of the City, General Contractor or any other persons or entities.
- 24.9 **Limitation On Termination Claim:** If the General Contractor fails to file a claim within sixty (60) days from the effective date of termination, the City shall not be obligated to pay the General Contractor any amount other than that owed to the General Contractor for services actually performed and expenses actually incurred prior to the effective termination date.
- 24.10. **Availability and Appropriation of Funds.** Payment and performance obligations of the City, beyond those appropriated in the initial fiscal year of this Contract, are expressly conditioned upon the availability of and appropriation by the City of public funds therefor in each subsequent fiscal year. When public funds are not appropriated or are otherwise unavailable to support continuation of performance by the City in a subsequent fiscal period, this contract and the City's obligations hereunder shall automatically expire, without liability or penalty to the City.

## ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION

- 25.1 **Applicable State Law:** This Contract For Construction shall be deemed to be entered into in the Commonwealth of Virginia and the City of Charlottesville, Virginia. The Contract shall, in all aspects, be governed by and interpreted under the laws of the Commonwealth of Virginia.
- (i) as required by Va. Code §2.2-4311 and Code of the City of Charlottesville Chapter 2, Article XV, § 2-431, during performance of this contract, the General Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, 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 the General Contractor. The General Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The General Contractor, in all solicitations or advertisements for employees placed by or on behalf of the General Contractor, shall state that such General Contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section. The General Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- (ii) as required by Va. Code §2.2-4312, during performance of this contract, the General Contractor shall (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace. For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with the contract awarded to the Contractor in accordance with this procurement transaction, where the Contractor's employees are prohibited from engaging in the unlawful manufacture, sale distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of services in connection with the contract.
- 25.2 **Contract Claims, Submission to City.** Contractual claims, whether for money or other relief, shall be submitted to the City in writing no later than sixty (60) days after final payment; however, written notice of the General Contractor's intention to file any such claim shall have been given by the General Contractor to the City at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude the City from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the Work. Pendency of claims shall not delay payment of any amounts agreed by the parties to be due in the final payment. The City has established Contract Claims Resolution policy, and a copy of such policy is available upon request from the City's Procurement Office.
- 25.3 **Administrative Appeals to City.** The City has established an administrative appeals process for resolution of the following types of claims: protests of a decision to award a contract; award of a contract; appeals from refusals to allow a withdrawal of

bids; appeals from disqualifications of bidders (including, without limitation, refusals to pre-qualify bidders and decisions to debar a contractor); appeals from determinations of non-responsibility. The established procedure is included in the Contracts Claims Resolution policy, and a copy of such policy is available upon request from the City's Procurement Office. The process is summarized here as follows:

- 25.3.1 Administrative appeals for the types of claims described in paragraph 25.3 above shall be directed to the City's Director of Finance within ten (10) days of the time the bidder or contractor knows or should have known of the matter being disputed, protested or appealed, except that appeals from disqualifications (e.g., refusal to pre-qualify, decision to debar) may be filed within thirty (30) days of the receipt of notice of the action taken. The appeal shall be in writing, and shall set forth in detail the factual circumstances forming the basis for the appeal.
- 25.3.2 The Director of Finance, or his/her designee, shall conduct an investigation and shall render a written decision within ten (10) days of receiving an appeal. In the course of investigation the Director of Finance may request additional written details, may request meetings of the parties involved, and may schedule a hearing at which the parties involved shall appear in person and present further information.
- 25.4. **Court Actions:** Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be litigated and prosecuted only in the state court districts located in Charlottesville, Virginia, and any litigation with respect hereto shall be brought in the Circuit Court for the City of Charlottesville. Notwithstanding the foregoing, any final judgment may be enforced in other jurisdictions in any manner provided by law;
  - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
  - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and,
  - (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 25.5 **Mutual Discussion:** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 25.6 **Arbitration Preclusion:** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.

## ARTICLE 26 DAMAGES AND REMEDIES

- 26.1 **General Contractor's Repair:** The General Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.
- 26.2 **General Contractor's Reimbursement:** The General Contractor shall promptly reimburse the City for any expenses or damages incurred by the City as a result of (i) the General Contractor's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the General Contractor or of which the General Contractor was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the General Contractor.
- 26.3 **Indemnification:** Contractor shall indemnify and hold harmless the City, its officers, officials, and employees from and against any and all liabilities, damages, and costs arising out of third party claims, to the extent caused by the willful misconduct, negligent act, error or omission of the Contractor or anyone for whom the Contractor is legally responsible, subject to any limitations of liability expressly set forth within this contract.

- 26.4 **Royalties, Patents and Copyrights:** The General Contractor shall pay all royalties and license fees. To the fullest extent permitted by law, the General Contractor shall defend, protect, hold harmless, and indemnify the City from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights. The General Contractor shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is expressly required by the Contract Documents or where the copyright or patent violation(s) are contained in drawings, specifications or other documents prepared by the owner or Professional. However, if the General Contractor has reason to believe that a required design, process or product is an infringement of a copyright or patent, the General Contractor shall be responsible for such loss unless such information is promptly given to the City.
- 26.5 **Non-Exclusivity Of City's Remedies:** The City's selection of any one or more remedies allowed by this Contract for breach hereof shall not limit the City's right to invoke any other remedy available to the City at law or by virtue of any other provision of this Contract.
- 26.6 **Waiver Of Damages:** The General Contractor shall not be entitled to, and hereby waives any monetary claims and damages, of any nature whatsoever, arising from or related to any of the following: lost income, lost profits, lost financing, loss of reputation, lost business opportunities, loss of management or employee productivity or of the services of such persons; unabsorbed overhead, and principal office expenses (including, without limitation, the compensation of personnel stationed there, for losses of financing, business and reputation and for loss of profit). Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
- 26.7 **Interest:** The City is entitled to interest on all amounts due from the General Contractor that remain unpaid thirty (30) days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Such interest shall be calculated and shall accrue at a rate of one percent (1%) per month.

## ARTICLE 27 ADA COMPLIANCE AND NON-VISUAL ACCESS TO DOCUMENTS

- 27.1 **Americans With Disabilities Act Compliance:** If the City requests a formal report or work product, the Contractor is required to deliver the report to comply with the Americans with Disabilities Act (ADA) and, as may be applicable, the Rehabilitation Act of 1973. The formal report shall be provided in a .PDF; HTML or other text-based format in which optical character recognition is provided, and in which any photographs, images, diagrams, maps, etc. are marked by adequate "alt tags" and "long description tags," to the end that the contents of the report will be readable by a screen reader for the sight impaired.
- 27.2 **Section 508 Compliance:** All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of the City of Charlottesville (the "City") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Act, §2.2-3500 through 2.2-3504 of the Code of Virginia.
- 27.3 **Non-Visual Access To Technology:** All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of the City of Charlottesville shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Contract:
- (i) Effective, interactive control and use of the Technology shall be readily achievable by non visual means;
  - (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
  - (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
  - (iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the forgoing nonvisual access standards shall not be required if the City determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available, or (iii) exclusion of the technology access clause is otherwise justified in accordance with applicable laws.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the forgoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

#### IV. SPECIAL TERMS AND CONDITIONS

- A. ANTITRUST: By entering into a contract, a contractor conveys, sells, assigns, and transfers to the City of Charlottesville all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Charlottesville under said contract.
- B. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the City.
- C. BID TABULATIONS: Tabulations of bids are a matter of public record and are available upon request.
- D. BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The City's SAP electronic solution offers vendor self-service registration. Vendors are not required to register prior to bidding, however, purchase orders cannot be issued and payment to vendors cannot be processed to a non-registered vendor. Go to <https://www.charlottesville.gov/purchasing>.
- E. DEBARMENT STATUS: By participating in this procurement, bidders/offerors certify that they are not currently debarred by the federal government, the Commonwealth of Virginia, or any local government or public authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation. Bidder/Offeror further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently so debarred. If a bidder/offeror is created or used for the purpose of circumventing a debarment decision against another bidder/offeror, the non-debarred bidder/offeror will be debarred for the same time period as the debarred bidder/offeror.
- F. ERROR IN EXTENSION OF PRICES: In the case of an error in the extension of prices, the unit price shall govern.
- G. ETHICS IN PUBLIC CONTRACTING: Per the Code of Virginia §2.2-4367, by submitting a bid/proposal, the bidder/offeror certifies that their bid/proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- H. INSURANCE: By signing and submitting a bid/proposal under this solicitation, the bidder/offeror certifies that if awarded the contract, it will purchase and maintain, at its sole expense, and from a company or companies authorized to do business within the Commonwealth of Virginia, insurance policies containing the following types of coverages and minimum limits, protecting from claims which may arise out of or result from the bidder's/offeror's performance or non-performance of services under this Contract, or the performance or non-performance of services under this Contract by anyone directly or indirectly employed by the bidder/offeror or for whose acts it may be liable:
- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. This policy shall specifically list Virginia as a covered state.
  - b. Employer's Liability - \$100,000. This policy shall specifically list Virginia as a covered state.
  - c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury, advertising injury, contractual liability, and products and completed operations coverage. The City of Charlottesville and its officers, employees, agents and volunteers must be named as an additional insured and so endorsed on the policy.
  - d. Umbrella Liability excess of General and Automobile Liability - \$2,000,000 per occurrence and in the aggregate
  - e. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be operated or driven on city property while under contract.)
    1. Companies relying on use of employees' personal vehicles must provide proof of "non-owned" or "for-hire" automobile liability coverage.
- I. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR IFBs: Failure to submit a bid on the official City form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the

solicitation may be cause for rejection of the bid; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid, which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

- J. PRECEDENCE OF TERMS: In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
  
- K. QUALIFICATIONS OF BIDDERS/OFFERORS: The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the services/furnish the goods and the bidder/offeror shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect bidder's/offeror's physical facilities prior to award to satisfy questions regarding the bidder's/offeror's capabilities. The City further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder/offeror fails to satisfy the City that such bidder/offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
  
- L. RENEWAL OF CONTRACT: Contract shall be for one-year beginning the date the of ratified contract with the option to renew under the terms of the original agreement for up to five (5) additional one-year terms if agreed upon in writing by both parties. Prior to the expiration date of the initial contract or any subsequent renewal, the Contractor may request price adjustments to be effective during the upcoming contract period. Price increases shall be limited to no more than the percentage increase in the Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W), U. S. City Average, All Items, Not Seasonally Adjusted, for the most recently published twelve months as published by the U. S. Department of Labor, Bureau of Labor Statistics. The base price to which any adjustments will be made shall be the prices in effect during the contract term prior to the proposed term. The City reserves the right to negotiate increases in excess of validated CPI if deemed to be fair and reasonable and in the best interest of the City.



## **VI. ATTACHMENTS**

ATTACHMENT A	SAMPLE COI AND GUIDE TO THE ACCORD FORM
ATTACHMENT B	PRICING SCHEDULE
ATTACHMENT C	BIDDER'S INFORMATION and REFERENCES
ATTACHMENT D	CERTIFICATION OF NO COLLUSION
ATTACHMENT E	CITY OF CHARLOTTESVILLE WORKERS' COMPENSATION Certificate of Coverage
ATTACHMENT F	CONTRACTOR CERTIFICATION OF COMPLIANCE WITH VIRGINIA CODE SECTION 22.1-296.1
ATTACHMENT G	LIVING WAGE REQUIREMENT
ATTACHMENT H	CITY STANDARD TRAIL DETAIL

ATTACHMENT A

**SAMPLE C.O.I. and GUIDE TO THE ACORD FORM**

Explanation: The Sample C.O.I. and Guide to the Acord Form below is for informational purposes only. Bidders are not required to submit a C.O.I or Endorsement(s) with their bid response. Prior to performance of any services or delivery of goods, the Bidder shall (i) have all required insurance coverage in effect; (ii) the Bidder shall deliver to the City certificates of insurance for all lines of coverage. The Bidder shall be responsible that such coverage evidenced thereby shall not be substantially modified or canceled without 30 days prior written notice to the City; and (iii) the Bidder shall deliver to the City Endorsements to the policies which require the City and its officials, officers, employees, agents and volunteers be named as “additional insured”.

Sample C.O.I. and Guide to the Acord Form

**ACORD CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY) 07/01/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER - Insurance agency /broker who issues certificate  
 PRODUCER: Insurance Agency/ Broker  
 123 Main St., Anytown, VA 21234

CONTACT NAME: John Doe, Agent  
 PHONE (AG, No. Ext): (123)456-7890  
 FAX (AG, No.): (123)456-7890

INSURER(S) AFFORDING COVERAGE: INSURER A: Insurance Company 1 NAC #: 123456  
 INSURER B: Insurance Company 2 NAC #: 567890  
 INSURER C: Insurance Company 3 NAC #: 112233

NAMED INSURED - Must be legal name of contracting party.  
 INSURED: XYZ Contractor  
 456 South St., Anytown, VA 21234

POLICY EFFECTIVE DATE - prior to or same as effective date of contract

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	AGGREGATE LIMIT	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X X	123456	12-1-2014	12-1-2015	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Per one person) \$ PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/CP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> UNLMD AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	567890	12-1-2014	12-1-2015	COMBINED SINGLE LIMIT (Per occurrence) \$1,000,000 BODILY INJURY (Per person) \$ PROPERTY DAMAGE (Per accident) \$
B	UMBRELLA LIAB EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE		112233	12-1-2014	12-1-2015	EACH OCCURRENCE \$1,000,000 AGGREGATE \$2,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in RI) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	ABC123	12-1-2014	12-1-2015	EL EACH ACCIDENT \$100,000 EL DISEASE - EA EMPLOYEE \$100,000 EL DISEASE - POLICY LIMIT \$500,000
D	Professional Liability		XYZ456	12-1-2014	12-1-2014	Per claim \$1,000,000 Aggregate \$1,000,000

MUST INCLUDE THE TYPES OF INSURANCE REQUIRED BY CONTRACT

POLICY FORM - Should be "occurrence"

ADDITIONAL INSURED - City of Charlottesville must be named and endorsed (separate document) as additional insured

LIMITS OF INSURANCE - Must be the same or greater than contract requirements

POLICY NUMBER - Must match the number on the separate endorsement document

DESCRIPTION OF OPERATIONS - ACTIVITIES / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 The City of Charlottesville and its officers, employees, agents and volunteers are named as additional insured with respect to General Liability for work and completed operations as required by written contract.

CERTIFICATE HOLDER - Must be City of Charlottesville  
 CERTIFICATE HOLDER: City of Charlottesville  
 325 4th St NW  
 Charlottesville, VA 22903

CANCELLATION  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  
 AUTHORIZED REPRESENTATIVE: John Doe, Agent

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**ATTACHMENT B**

**PRICING SCHEDULE**

**IFB# 24-36**

**Title: ON-CALL PARKS CONSTRUCTION AND REPAIR SERVICES**

Line Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price
1	20,000	SF	Asphalt Surfaced Areas- per the City Standard Trail Detail		
2	5,000	SF	Stone Dust Surfaced Areas- per the City Standard Trail Detail		
3	10	TON	Demolish cement/asphalt and haul out debris		
4	2,000	SF	Geo-tech fabric		
				Basis of Award:	

**Additional Pricing**

Line Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price
1	1,000	SF	Application of Pramitol- per manufacture's rate and label instructions for application under asphalt or stone dust surfaces		
2	1	HR	Grading work		

**Name And Address Of Firm:**

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

E-mail Address: \_\_\_\_\_

Class: \_\_\_\_\_ Specialty Codes: \_\_\_\_\_

Virginia Contractor License No. \_\_\_\_\_

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

By: \_\_\_\_\_  
 (Signature In Ink)

Name: \_\_\_\_\_  
 (Please Print)

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

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

Telephone Number: (\_\_\_\_) \_\_\_\_\_

State Corporation Commission

ATTACHMENT C

**BIDDER'S INFORMATION and REFERENCES**

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive.

1. Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Bidder's Primary Contact:

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

3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:

\_\_\_\_\_ Years \_\_\_\_\_ Months

4. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

A. Company: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

B. Company: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

C. Company: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

D. Company: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

I certify the accuracy of this information.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT D**

City of Charlottesville

**CERTIFICATION OF NO COLLUSION**

The undersigned, acting on behalf of \_\_\_\_\_, does hereby certify in connection with the procurement and bid to which this Certification of No Collusion is attached that:

This bid is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce; nor is this bid the result of, or effected by, any act of fraud punishable under Article 1.1 of Chapter 12 of Title 18.2 of the Code of Virginia, 1950 as amended (Sec.18.2-498.1 et seq.)

\_\_\_\_\_  
Signature of Company Representative  
\_\_\_\_\_  
Name of Company  
\_\_\_\_\_  
Date

**ACKNOWLEDGMENT**

STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to-wit:

The foregoing Certification of No Collusion bearing the signature of \_\_\_\_\_ and dated \_\_\_\_\_ was subscribed and sworn to before the undersigned notary public by \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**CODE OF VIRGINIA**

Sec.18.2-498.4 Duty to provide certified statement. -

A. The Commonwealth, or any department or agency thereof, and any local government or any department or agency thereof, may require that any person seeking, offering or agreeing to transact business or commerce with it, or seeking, offering or agreeing to receive any portion of the public funds or moneys, submit a certification that the offer or agreement or any claim resulting therefrom is not the result of, or affected by, any act of business or commerce; or any act of fraud punishable under this article.

B. Any person required to submit a certified statement as provided in paragraph A above who knowingly makes a false statement shall be guilty of a Class 6 felony. (1980,c.472.)

ATTACHMENT E

**CITY OF CHARLOTTESVILLE**  
**WORKERS' COMPENSATION**  
**Certificate of Coverage**

Section 2.2-4332, Code of Virginia, requires construction contractors and subcontractors to obtain and maintain workers' compensation insurance while performing work on behalf of the City of Charlottesville.

Evidence of coverage must be provided prior to commencement of Work.

This form must be completed and returned to the City.

The undersigned organization stipulates that it:

- A. has workers' compensation insurance and is in compliance with the Workers' Compensation statutes of the Commonwealth of Virginia.  Yes  No  
Insurance Company \_\_\_\_\_  
Policy expiration date \_\_\_\_\_
- B. is self-insured for workers' compensation.  Yes

Title of Construction Contract: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Signed by: \_\_\_\_\_

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

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

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

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

**ATTACHMENT F**

**CONTRACTOR CERTIFICATION OF COMPLIANCE  
WITH VIRGINIA CODE SECTION 22.1-296.1**

---

Contractor: \_\_\_\_\_

Contract / Bid / RFP No.: \_\_\_\_\_

Contractor acknowledges that any contract resulting from this solicitation for services may require Contractor, Contractor's employees or other persons within Contractor's control to have direct contact with City of Charlottesville Public School students on school property during regular school hours or during school-sponsored activities. As evidenced by the authorized signature below, Contractor hereby certifies to the City of Charlottesville and to the Charlottesville City School Board that all persons who will provide such services for or on behalf of the Contractor on public school property have not been convicted of a felony or any offense involving the sexual molestation, or physical or sexual abuse, or rape of a child, or the solicitation of any such offense; or any crime of moral turpitude.

Contractor hereby acknowledges that, pursuant to Virginia Code section 22.1-296.1, any person making a materially false statement regarding any such offense shall be guilty of a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services.

Contractor hereby agrees that this Certification shall be binding throughout the contract term, and that it will provide immediate notice to the City of Charlottesville and the Charlottesville City School Board of any event that renders this certification untrue.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name and Title of Person Making Certification

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT G**

**Living Wage Requirement**

The contract resulting from this solicitation is subject to the City of Charlottesville Living Wage Ordinance, City Code Section 22-9. The ordinance requires that persons employed by the Contractor, directly or indirectly, are to be paid no less than \$15.00/hour while performing work on City property under this contract.

The contractor shall include the provisions of this clause in all subcontracts for work to be performed by subcontractors under this contract so that provisions of this clause are binding upon subcontractors.

**THE ATTACHED CERTIFICATION MUST BE COMPLETED AND RETURNED WITH YOUR BID.**

If the Certification is not received, or if any one or more of the certification(s) is not answered in the affirmative, the City may determine that you are a non-responsible bidder, and/or your bid may be deemed non-responsive.

The Contractor shall keep and preserve payroll and other records which show wages provided to each employee assigned to perform services under this Contract, for a period of three (3) years after the expiration or termination of this Contract. Such records shall include, at a minimum, the following information for each employee working on this contract, with respect to the time the employee is performing services on property owned or controlled by the City: employee name, home address (city, state, zip code), home phone number, social security number, job classification, date of hire, employer benefit contribution, and hourly pay under this contract. (A computer printout highlighting this information for each applicable employee is acceptable) Upon request of the City, the Contractor shall provide records to the City’s Purchasing Agent or authorized representative, or shall permit the City’s Purchasing Agent, or authorized representative, to examine, and make copies of such records at reasonable times during Contractor’s regular business hours.

For any period for which the Contract is renewed, the Contractor shall be required to adjust employees’ wages to correspond to the Living Wage rate designated by the City Council as of July 1 of the fiscal year in which the renewal takes effect.

Violation of City Code Section 22- 9 during performance of this Contract, as determined by the Purchasing Agent, shall be grounds for termination of this Contract and debarment of the Contractor.

**BREAKDOWN OF WEEKLY LABOR**

Provide the employee title, the unloaded employee hourly rate, and the total hours per week for all employees who will be assigned to this contract per the City’s Living Wage Requirement.

**A. LABOR:**

Employee Title	Employee Unloaded Labor Rate	Labor Rate UOM	Total # of hours per week
	\$	HR	

**City of Charlottesville  
Living Wage Compliance Certification**

**Must Be Submitted With Bid**

This contract is subject to living wage requirements. A completed copy of this Living Wage Compliance Certification must be included with your bid.

Bid For (Brief Description of Work) \_\_\_\_\_  
IFB Number: \_\_\_\_\_

I hereby certify that, in the event I am awarded a contract as a result of this procurement transaction, I will comply with the living wage requirement set forth in the Code of the City of Charlottesville, § 22-9, as amended. I understand that if I make a false statement within this certification, or if I fail to comply with the living wage requirement during performance of the contract, that shall be grounds for termination of the contract and debarment.

**By signing this certification, I also certify as follows:**

1. I will keep and maintain records demonstrating compliance with the living wage requirement, as required by the terms and conditions of this procurement transaction.	__ Yes __ No
2. The employees working on this City contract will receive a pay rate that meets or exceeds the City's Living Wage requirement?	__ Yes __ No
3. If any subcontractors will perform work in connection with this contract, such contractors will receive a pay rate that meets or exceeds the City's Living Wage requirement	__ Yes __ No
4. To the extent I have identified subcontractors within my bid, I have named only Subcontractors who have agreed to comply with the City's living wage requirement as well as the record-keeping obligations specified within the terms and conditions of this procurement transaction.	__ Yes __ No

**I certify that the above information is correct and agree to the conditions specified:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name and Title (Please print)

\_\_\_\_\_  
Signature

Date \_\_\_\_\_

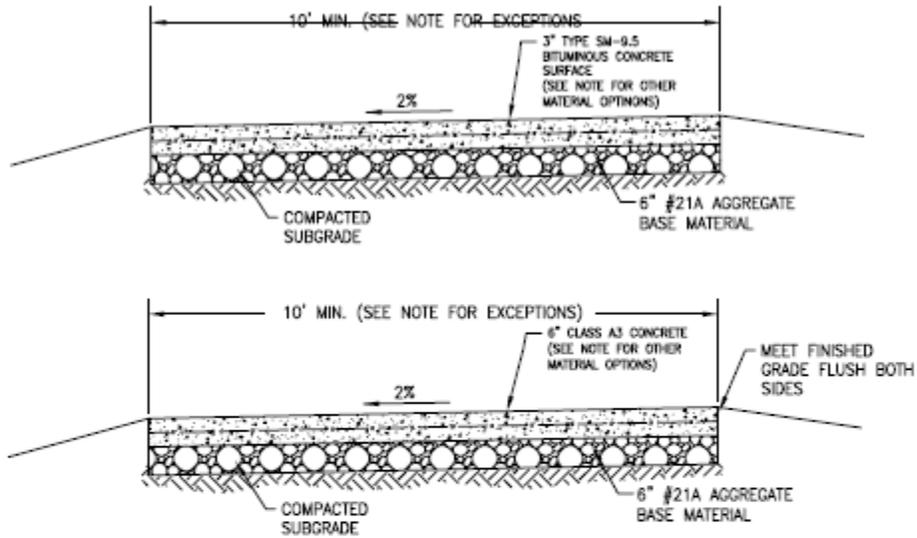
**STATISTICAL INFORMATION**

Please answer the following questions to help us determine the effect of the Living Wage ordinance on this Contract:

Did the City Living Wage Ordinance require you to increase the hourly rate persons would have been paid under this contract?	__ Yes __ No
If yes, what was <i>the increase</i> in the hourly rate required?	\$ _____/hr
How many employees will receive the increased hourly rate	_____
Of those, how many show residence <i>in the City</i> ?	_____

ATTACHMENT H

CITY STANDARD TRAIL DETAIL



BIKE/MULTI-USE TRAIL

NOTE: 8' MINIMUM WIDTH ALLOWED IN SPECIAL CASES PER APPROVAL OF CITY ENGINEER OR DESIGNEE.  
ALT. NON-ERODIBLE SURFACES MAY BE ALLOWED FOR PATHS THAT WILL NOT HAVE VEHICULAR CROSSING PER APPROVAL OF CITY ENGINEER OR DESIGNEE.  
CRUSH-AND-RUN/STONE DUST MAY BE SUBSTITUTED AS AN ACCEPTABLE SURFACE TYPE PER APPROVAL OF CITY ENGINEER OR DESIGNEE.