



City of Petersburg

Purchasing Office
City Hall Annex
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Petersburg, Virginia 23803

MAR 4 2014 PM 3:45

Purchasing Agent
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February 27, 2014

Auditor of Public Accounts
Attention: Martha Mavredes - Auditor
PO Box 1295
Richmond, VA 23218

Dear Ms. Mavredes:

Pursuant to the Code of Virginia § 56-575.18

The Auditor of Public Accounts shall periodically review interim and comprehensive agreements. Enclosed is a copy of the City of Petersburg's executed interim agreement with Prestige Construction Group, Inc. and English Construction Company, in a joint venture under the Public-Private Education Facilities and Infrastructure Act of 2002 (Title 56, Chapter 22.1 of the Code of Virginia of 1950 amended). This interim agreement is for the Development of a New City Hall Building in the City of Petersburg, Virginia.

Should you have any questions you may contact me at the below listed number.

Sincerely,

Tangela Innis,
CPPB, MBA, VCCO, VCO, VCA
Purchasing Agent
804-733-2346
Attachment(s)

INTERIM AGREEMENT

This INTERIM AGREEMENT ("Agreement") is entered into this 19th day of February, 2014 ("Effective Date") by and between the CITY OF PETERSBURG, VIRGINIA ("City"), and PRESTIGE CONSTRUCTION GROUP, INC. and ENGLISH CONSTRUCTION COMPANY, INC., a joint venture ("Contractor").

RECITALS

1. On January 8, 2008, the City adopted "Public-Private Education Facilities and Infrastructure Act of 2002 – Guidelines," establishing procedures for the development of public facilities through public-private partnerships ("Implementing Procedures"), which procedures satisfy the requirements of the PPEA (as defined below).

2. On April 2, 2013, the Contractor, in association with Enteros Design, P.C., Timmons Group Inc., Thompson & Litton, Public Private Infrastructure, Inc. and Raymond James & Associates, submitted an Unsolicited PPEA Proposal (the "Conceptual Proposal") under the Public-Private Education Facilities and Infrastructure Act of 2002 (Title 56, Chapter 22.1 of the Code of Virginia of 1950, as amended (the "Virginia Code"), and such chapter hereinafter referred to as the "PPEA")) to provide certain design, permitting, development and construction services in connection with the development of a new city hall (as more fully described hereinafter, the "Project").

3. On or about May 9, 2013, the City published a notice of receipt of the Contractor's Conceptual Proposal and invited for consideration competing proposals, to be submitted to the City on or before June 27, 2013.

4. One (1) competing proposal was received by the City for conceptual stage consideration. Pursuant to the Implementing Procedures, the City subsequently posted notice of its decision to accept two (2) proposals for conceptual stage consideration on the City's website and made such conceptual stage proposals available for public inspection.

5. The City determined that, among other things, that it would be advantageous for the City to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available.

6. After reviewing the conceptual stage proposals, on or about September 12, 2013 the City selected two (2) proposals to advance to the detailed review stage in accordance with the Implementing Procedures, retaining the right to reject any proposal at any time for any reason.

7. On or about September 27, 2013, the Contractor submitted its detailed proposal (the "Detailed Proposal") to the City for detailed stage consideration.

8. After review of the Detailed Proposal, the City selected Contractor for negotiation of an interim agreement under the PPEA for the Project based upon Contractor's Conceptual Proposal, its Detailed Proposal and oral presentations, and upon the City's evaluations of those proposals and presentations. For the purposes of this Agreement, the joint venture of Prestige Construction Group, Inc. and English Construction Company, Inc., the Contractor, shall be the "Private Entity" as defined in the PPEA.

9. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Implementing Procedures, Contractor's Conceptual Proposal and Detailed Proposal, and discussions between representatives of the City and Contractor.

10. Having considered this Agreement and other information, the City has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Section 56-575.4(C) of the Code, and, accordingly, held a public hearing on the proposals on January 14, 2014 and posted this Agreement for public inspection in accordance with the PPEA and Implementing Procedures.

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to provide, or cause to be provided, professional architectural and engineering services and related services necessary to develop 30% design and engineering drawings for the City Hall Project to be developed on the site located at the northeast corner of the intersection of Washington and Union Streets in the City of Petersburg, as set forth in the Proposal, including an environmental analysis, survey, current space needs analysis, measurement and specifications, and project planning and development, as more particularly described in Attachment "A" attached hereto and by this reference incorporated herein (the "Services"). The 30% preliminary design package will include the following design submittal requirements, as a minimum:

- a. Basis of Design Narrative
- b. Building Systems and Equipment Checklist
- c. Project Costs (CSI division format)
- d. Value Engineering recommendations
- e. Geotechnical Report
- f. Calculations
- g. Preliminary (30% design) Drawings, consistent with the requirements of the Virginia 2013 Construction & Professional Services Manual

Notwithstanding anything to the contrary in Attachment "A", the Services shall also include local and SWAM/DBE participation, for which the Contractor shall submit to the City provide reporting with each invoice for payment and which shall not count any

member of the joint venture comprising the Contractor toward such participation; provision of at least 3 façade renderings as an early-stage deliverable, based upon the generally agreed-upon building layout and guidance provided by the City as to what kinds of design features may be desirable and undesirable; evaluation of LEED Silver design goals and preparing a LEED score card for the Project, to permit the City to determine whether to pursue LEED certification based upon such information; development of a "Local Business Involvement" plan, subject to review and approval by the City, which shall address, among other things, methods to promote local subcontractor and supplier interest in the project, encourage partnering among smaller firms, the use of job fairs and job opportunities (including but not limited to training) for veterans; participation in meetings for design presentation and review to refine design criteria and direction; and design of the Project so that total costs of design and construction shall fall within or below the target price established by the City, providing value engineering throughout the course of the Project to meet this goal.

During performance under this Agreement, the City's designated representative shall be Steven Hicks, Director of Public Works, and the Developer's designated representative shall be Robert Lee. Communications related to the Project shall be through these designated representatives; however, with respect to the City, only the City Manager, William E. Johnson, III, has authority to issue binding decisions. Copies of any notices or correspondence sent to the City shall also be sent to the City's consultant, Don Young of MBP, and Purchasing Manager, Tangela Innis.

2. COST OF SERVICES AND PAYMENT.

In consideration of the provision of Services by the Contractor, the City shall pay to the Contractor the total contract amount of Four Hundred Thousand and no/100 Dollars (\$400,000) (the "Contract Amount"). Attachment "B", attached hereto and by this reference incorporated herein, shall serve as the schedule of values for the Contract Amount.

The Contractor will submit four invoices for payment to the City, with each invoice being sent to Steven Hicks, Director of Public Works, with a copy to Tangela Innis, Purchasing Manager. The first invoice shall be submitted no sooner than 30 days following the Effective Date of this Agreement. The second invoice will be submitted on May 1, 2014; the third invoice will be submitted on July 1, 2014; and the fourth invoice will be submitted on September 1, 2014 or as soon thereafter as the Contractor has completed all Services required under this Agreement. Each invoice shall be accompanied by a schedule of values for the work that is subject of the invoice and shall be for the value of the services performed during the period for which payment is requested; provided, however, that the City shall not be required to pay more than \$200,000 in total invoices prior to June 30, 2014. The City shall have ten (10) days following receipt of an invoice to review each invoice; no later than the tenth day following receipt of an invoice, the City shall notify the Contractor whether it approves or rejects the invoice in whole or in part, providing explanation for any portions rejected. The City shall then pay the approved part of the invoice within thirty (30) days following its provision of notice to the Contractor. If all or any part of the invoice is rejected, the

Contractor shall promptly address the explanation provided by the City for such action and resubmit the part of the invoice, upon which the City's review cycle will start again.

3. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date first written above and shall continue until terminated pursuant to the terms of this Agreement.

This Agreement may be terminated in the event of substantial failure or default of the other party to perform in accordance with the terms hereof through no fault of its own.

Upon seven (7) days written notice to the Contractor, the City may, for its convenience and without cause, elect to terminate the Agreement. In such event, the City shall pay the Contractor for all work properly performed by the Contractor in accordance with the Agreement within thirty (30) days following the date of the notice.

4. COMPREHENSIVE AGREEMENT

Should the parties both conclude that the Project is feasible, it is their intention to negotiate a comprehensive agreement under the PPEA which shall address the completion of design, construction and commissioning of the Project. At direction of the parties, counsels for the City and the Contractor will begin work on the framework of the comprehensive agreement during performance of the Services under this Agreement, which they will use best efforts to complete promptly. The City's participation in negotiation of a comprehensive agreement shall not constitute an obligation of or commitment by the City to execute such comprehensive agreement prior to City Council approval, which approval may be granted, denied or conditioned in its sole discretion, retaining the right to reject any proposal at any time for any reason. The comprehensive agreement will address all issues necessary to completion of design, construction and commissioning of the Project, and shall also provide that the Contractor has voluntarily proposed thirty percent (30%) participation by MBE/DBE/SWAM firms in connection with the delivery of services contemplated by the comprehensive agreement, exclusive of any participation by any member of the joint venture comprising the Contractor. The Contractor acknowledges that such MBE/DBE/SWAM participation shall be a material term of the Comprehensive Agreement and agrees that it shall achieve such participation.

5. STANDARD OF CARE

The Contractor agrees that the standard of care for all professional design services performed under this Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the time and that the work, at a minimum shall be consistent with the Contractor's best work. Additionally, the Contractor represents and warrants that all persons performing any work on the Project under this Agreement shall be licensed and in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Agreement.

6. REPRESENTATIONS AND WARRANTIES.

A. The City hereby represents and warrants to the Contractor as follows:

- (1) The City is a municipal corporation duly chartered and operating under the laws of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.
- (2) Each person executing this Agreement on behalf of the City is duly authorized to execute each such document on behalf of the City.
- (3) Neither the execution and delivery by the City of this Agreement and any other documents executed concurrently herewith to which the City is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.
- (4) There is no action, suit, proceeding, investigation or litigation pending and served on the City as of the date of this Agreement which challenges the City's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the City is a party, or which challenges the authority of the City official executing this Agreement or the other related documents, and the City has disclosed to the Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the City is aware.
- (5) The City has sufficient funds to make the full payment to the Contractor.

B. The Contractor hereby represents and warrants to City as follows:

- (1) The Contractor represents that Prestige Construction Group, Inc., does business in Virginia as Prestige Construction Group, Inc., and that English Construction Company, Inc., does business in Virginia as English Construction Company, Inc., and in signing this Agreement as well as such comprehensive agreement as may be entered into between the parties, has full power and authority to bind itself to the terms thereof.
- (2) The Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which the Contractor is a party.
- (3) Each person executing this Agreement or any other related document on behalf of the Contractor has been or will at such time be duly authorized to execute each such document on behalf of the Contractor.

- (4) Neither the execution and delivery by the Contractor of this Agreement and the other related documents to which the Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Contractor or any other agreements or instruments to which it is a party or by which it is bound.
- (5) There is no action, suit, proceedings, investigation or litigation pending and served on the Contractor which challenges the Contractor's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Contractor is a party, or which challenges the authority of the Contractor official executing this Agreement or the other related documents; and the Contractor has disclosed to the City any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Contractor is aware.
- (6) The Contractor is in material compliance with all laws, regulations and ordinances applicable to the Contractor or its activities in connection with this Agreement and the other related documents.
- (7) Prestige Construction Group, Inc., and English Construction Company, Inc., have executed a joint venture agreement that is binding upon the parties and have delivered a copy of such agreement to the City.
- (8) The Contractor is a financially viable and capable entity and fully able to perform its obligations under this Agreement.

7. CHANGES IN THE WORK

Consistent with the Services the Contractor has agreed to provide as set forth in this Agreement, the Contractor will address comments received from the City by redesign, at no additional cost to the City unless such redesign is excessive based upon the stage of the Project. If the City by a written order make changes to the scope of Services that causes an increase or decrease in the cost of, or the time required for, the performance, then an equitable adjustment shall be made in the price and/or the delivery schedule. In the event the parties are unable to agree on the equitable adjustment to the price or delivery schedule, or both, then the Contractor shall proceed with the change order, but the Contractor shall be entitled to make a claim for additional compensation or additional time, or both in accordance with the provisions set forth in Section 9 of this Agreement.

8. OWNERSHIP OF PLANS

Upon payment of fees due to the Contractor for Services that have been performed under this Agreement, all drawings, specifications and other documents and data furnished by the Contractor to the City under this Agreement (collectively, the "Work Product") are deemed to be instruments of service, in which the Contractor hereby agrees to transfer and assign to the City all right, title and interest, including but not

limited to all copyrights, and further to obtain similar transfers and assignments to the City from all of the Contractor's consultants who produce such Work Product for the Project. This irrevocable transfer and assignment includes but is not limited to Work Product in paper and electronic forms, and all Work Product for the Project that have been or will be prepared or created by or on behalf of the Contractor for the Project, and including all rights in and to the copyright throughout the world and any renewals or extensions thereof, as well as any and all derivations, modifications, changes, translations, revisions, elaborations, adaptations or transformations of the Work Product. This provision shall not relieve the Contractor from, or modify the Contractor's sole responsibility for, any and all liability for all of its work under the Agreement. It is understood and agreed that all Work Product prepared by or on behalf of the Contractor for this Project will be applicable only in respect to the Project. The Work Product is not intended or represented to be suitable for use or reuse by the City or others for a material extension of the Project or on any other project. The City has the right, itself or by and through other design professionals, to modify the Work Product prepared by the Contractor for use in connection with the Project or for any other use whatsoever. The Contractor shall ensure that its consultants agree in writing to the transfer and assignment of all ownership rights in the Work Product produced by the consultants for the Contractor that the Contractor has agreed to provide to the City in this Agreement.

The City acknowledges that the Contractor or its consultants may have developed materials prior to entering into this Agreement, and may own other patent, trade secret and proprietary rights in techniques and concepts that were not conceived or first produced by the Contractor in connection with this Project (collectively "Contractor Intellectual Property"). Contractor Intellectual Property is proprietary to the Contractor and shall remain the Contractor's exclusive property. The Contractor will specifically identify to City all Contractor Intellectual Property. The Contractor hereby grants to the City a perpetual, worldwide, royalty free, paid-up, irrevocable, non-exclusive, transferable, sub-licensable license to Contractor's Intellectual Property to the extent it is incorporated in any Work Product delivered to the City by the Contractor hereunder. Submission or distribution of any Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Contractor and the Contractor's consultants.

9. INDEMNIFICATIONS

The Contractor will indemnify, defend and hold harmless the City and its officers, directors, members, partners, employees, agents, consultants and subcontractors against any claims as further described below:

The Contractor shall defend any action or proceeding brought against the City based on any claim that the Work Product, or any part thereof, or the operation or use of the Work Product or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. The City shall give prompt written notice to the Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. The Contractor shall indemnify and hold harmless the City from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against the City or the Contractor in any such

action or proceeding. The Contractor agrees to keep the City informed of all developments in the defense of such actions. If the City is enjoined from the operation or use of the Work Product, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, the Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work Product. If the Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at the Contractor's option and at the Contractor's expense, (i) modify the Work Product so as to avoid infringement of any such patent or copyright or (ii) replace said Work Product with Work Product that does not infringe or violate any such patent or copyright. These provisions shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by Contractor to the City or (ii) arising from modifications to the Work Product by the City or its agents after acceptance of the Work Product.

Contractor acknowledges that the City is a public entity and the Site is owned by a public entity and as such, the Site is immune from mechanic's liens, and Contractor hereby waives any and all mechanic's lien rights it may purport to have, and agrees that it shall neither file nor assert any such lien claims. Additionally, provided that the City is not in breach of its contractual obligation to make payments to the Contractor for the Services performed, the Contractor shall indemnify, defend and hold harmless the City from any claims or mechanic's liens brought against the City or against the Project as a result of the failure of the Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Services. Within three (3) days of receiving written notice from the City that such a claim or mechanic's lien has been filed, the Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If the Contractor fails to do so, the City will have the right to discharge the claim or lien and hold the Contractor liable for costs and expenses incurred, including attorneys' fees.

To the fullest extent permitted by laws and regulations, the Contractor shall indemnify and hold harmless the City and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against all liability, claims, costs, losses, and damages (direct and indirect, and including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Contractor's, or any Subcontractor's, Design Consultant's or any individual or entity directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, negligent or willful acts or omissions in the performance of the Services or this Agreement, provided that any such liability, claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself), including the loss of use resulting therefrom, except to the extent such injury, sickness, disease, death or property damage or destruction is caused solely by the negligence or willful misconduct of the City or any third party not a Subcontractor, Supplier or other individual or entity for whose acts the Contractor is liable.

If an employee of the Contractor, Design Consultant, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against the City, its officers, directors, employees, or agents, the Contractor's indemnity obligation set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for the Contractor, Design Consultant, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

10. DISPUTE RESOLUTION

Dispute Avoidance: The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. The Contractor shall continue to perform the work required under the Agreement and the City shall continue to satisfy its payment obligations to the Contractor, pending the final resolution of any dispute or disagreement between the Contractor and the City.

Initial Claim: If either the Contractor or the City believes that it is entitled to relief against the other for any event arising out of or related to the Agreement or related to the Project, such party shall provide written notice of its intent to make a claim to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained elsewhere in this Agreement. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice of intent shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief; the actual claim shall be made as soon thereafter as possible. All claims by the Contractor must be made not later than 60 days after final payment, and must include the specific contractual adjustment or relief requested and the basis of such request. Each party agrees to promptly respond, in writing, to claims of the other party, but no later than 60 days after submission of a fully documented claim. If the claiming party is not satisfied with such decision, it shall undertake the dispute resolution process set forth below.

Litigation: Whenever a party disagrees with the other party's final decision on a claim or dispute arising under or related to this Agreement, its sole right of appeal shall be by filing, within six (6) months of date of the other party's final decision, litigation in either the Circuit Court of the City of Petersburg, Virginia or the United States District Court for the Eastern District of Virginia, and may pursue all available appeals from such courts. These two courts shall have exclusive and binding jurisdiction and venue over any and all claims arising under this Agreement.

Voluntary Mediation: Prior to filing litigation, the parties may first endeavor to resolve any disputes or claims between them through direct negotiations, and if such

direct negotiations fail, by non-binding mediation, with the site of the mediation being held in or near the City of Petersburg, Virginia. If the parties agree to attempt mediation, then within 30 days of receipt of the notice requesting mediation, the Contractor and the City shall attend a formal mediation conducted by a single, impartial mediator appointed by and under the rules of The McCammon Group. The parties shall share evenly the fees of the mediator and each shall bear its own costs involved in participating in the mediation. If they opt to mediate, the City and the Contractor shall participate in the mediation process in good faith. The process shall be concluded within 45 days of filing of the notice requesting mediation. Should the dispute or claim remain unresolved following mediation or should the time limit for filing litigation set forth in this Agreement occur during the course of mediation, either party may proceed to file litigation in order to preserve its rights, but mediation shall not extend the time period set forth to file litigation. If the claim or dispute is not resolved by mediation, failure to file an appeal of the other party's final decision within six (6) months after such decision is issued in writing shall result in the other party's final written decision becoming final and subject to no further appeal.

Injunctive Relief: Nothing in this Agreement shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Petersburg, Virginia if circumstances so warrant.

Consequential Damages: NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THE CITY NOR THE CONTRACTOR SHALL BE ENTITLED TO SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING UNDER ANY LEGAL, IMAGINED OR REAL CIRCUMSTANCE ARISING IN CONTRACT, WARRANTY, TORT NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT, STRICT LIABILITY OR ANY OTHER PERMISSIBLE THEORY FOR ANY CLAIM, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING FROM THE OTHER PARTY TO THIS AGREEMENT.

11. ANNUAL APPROPRIATION.

The financial obligations of the City contained in this Agreement are subject to annual appropriation.

12. FILING WITH AUDITOR OF PUBLIC ACCOUNTS

Within thirty (30) days after the date of this Agreement, the City shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) or Section 56-575.18 of the Code of Virginia.

13. FINANCIAL STATEMENTS

Both members of the joint venture comprising the Contractor agree to provide the City with copies of their complete and current financial statements on an annual basis. The financial statements provided need not be audited, but if either member of the joint

venture does have the financial statements audited, they shall supplement their initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. The Contractor hereby designates such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.

14. INSURANCE

The Contractor will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the City of Petersburg as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.

The Contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Contractor to be insured by a group self insurance association that is licensed by the Virginia Bureau of Insurance. The Contractor will also carry employers liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.

The Contractor will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.

The Contractor will maintain professional liability insurance with a limit of at least \$1,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a *claims made* basis, this should be noted. If the Contractor has professional liability insurance on a *claims made* basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better. City of Petersburg should be listed as an additional insured on the policy. The endorsement must be issued by the insurance company.

A notation on the certificate of insurance is not sufficient.

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to additional insured endorsements. All wording limiting the insurer responsibility to notify the City of Petersburg of any cancellation or non renewal of the coverage must be removed.

15. NONDISCRIMINATION.

The Contractor covenants and agrees that during the performance of this Agreement:

A. The Contractor shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to Title 2.2, Chapter 42, Sections 4200 *et seq.* of the *Code of Virginia*; Sections 2.2-4310 and 2.2-4311 of the *Code of Virginia*; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and all applicable rules and regulations.

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an equal opportunity employer.

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 15.

B. The Contractor will include the provisions of the foregoing subsections (1), (2) and (3) in every subcontract or purchase order of over \$ 10,000, so that the provisions will be binding upon each subcontractor or vendor.

16. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section 16, "drug-free workplace" means a site for the performance of work done in connection with this Agreement where the employees of the Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

B. The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all the Contractor, subcontractor and supplier personnel at the Project:

(1) The manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and

(2) The impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

17. ILLEGAL ALIENS.

The Contractor does not, and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

18. INDEPENDENT CONTRACTOR.

The parties understand and agree that the Contractor, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the City.

19. GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Virginia.

20. CONTRACT DOCUMENTS.

In addition to the Attachments previously referenced, the following documents are incorporated by reference into and made an integral part of this Agreement:

- (a) Contractor's Proposal dated April 2, 2013.
- (b) Contractor's Detailed Proposal dated September 27, 2013.

21. CONDITIONS PRECEDENT AND SUBSEQUENT TO AGREEMENT'S EFFECTIVENESS

It shall be a condition precedent to this Agreement's effectiveness that: (i) it first be approved by the City Council as evidenced by the signature of the City Manager on behalf of the Owner on the signature pages hereof; and (ii) it shall be executed in full with all exhibits attached by the City and Contractor on or before February 20, 2014.

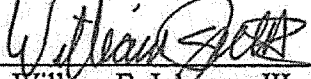
22. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be

one and the same instrument. It shall not be necessary in making proof of this Interim Agreement or any counterpart hereof to produce or account for the other counterparts.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.

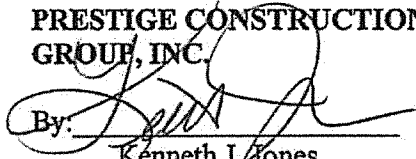
CITY OF PETERSBURG

By: 
William E. Johnson, III.
City Manager


APPROVED AS TO FORM:


Brian K. Telfair
City Attorney

**PRESTIGE CONSTRUCTION
GROUP, INC.**

By: 
Kenneth J. Jones
President

**ENGLISH CONSTRUCTION
COMPANY, INC.**

By: 
Allen M. Hamblen
Project Executive

53739685_3

30% DESIGN SCOPE OF WORK

ARCHITECT

Program Verification

- a. Meet with the City to review program areas and department spaces
- b. Update the building space list and program sheets
- c. Meet with City Officials and the Team to review and finalize the building program
- d. Produce a final building program space list

Schematic Design

- a. Coordinate the building site plan with the Civil Engineer
- b. Conduct a code analysis and review with the Code Official
- c. Schematic design level floor plans
- d. Exterior building elevations
- e. 3D building model and exterior renderings of major elevations
- f. Schematic Design narrative
- g. Coordination with the Team
- h. Presentation meeting with the City and the ARB

Design Development (30% Design Drawings)

- a. Update the code analysis and review with the Code Official
- b. Building Code summary sheet
- c. Architectural site plan
- d. Sequence of Construction Activities
- e. Design to meet the Silver certification level of the LEED program of USGBC
- f. Design development level floor plans with notes and dimensions
- g. Roof plan with roof drains and slopes
- h. Exterior elevations with notes and dimensions
- i. Building sections
- j. Stair and elevator plans and sections
- k. Interior elevations of major design areas such as the Lobby and Council Chambers
- l. 3D computer model
- m. Interior millwork elevations
- n. Enlarged bathroom plans and elevations
- o. Reflected ceiling plans
- p. Door schedule
- q. Finish schedule
- r. Partition schedule
- s. Preliminary finish selections
- t. Design narrative and outline specifications to include LEED certification process
- u. Team coordination
- v. Participate with the team in a limited Value Engineering review

(VE will focus on elements that do not require major redesign of the building)

- w. Presentation and review meeting with the City

STRUCTURAL, MECHANICAL, ELECTRICAL AND PLUMBING ENGINEERS

Representatives from Thompson & Litton will attend three (3) design-related meetings in Petersburg, Virginia. The meetings will be at Kick-off, 50% and 95%. Representatives from each discipline will attend one (1) VE meeting during the VE process.

Thompson & Litton will prepare preliminary design documents considered to be approximately 30% of the design effort for mechanical, electrical, plumbing, fire protection, and structural portions of the work. The documents would include the following:

- a. **Design Narrative** describing building systems.
- b. **Outline Specifications** consisting of specification titles only.
- c. **Calculations** for each discipline, including preliminary generator, domestic water pump, and fire pump sizing.
- d. **Structural Drawings** to include the design criteria including applicable codes and standards as well as loading; foundation plan indicating a shallow spread footing system and tentative size of footings; roof and floor framing plans indicating type of system and tentative member size and depths; Typical Sections of foundation perimeter, floor, and roof framing identifying materials, thicknesses, and depths; and identification of the proposed lateral force resisting system including the type and elements.
- e. **Mechanical Drawings** to include floor plans showing single line system layouts, tentative supply, return and exhaust quantities, and equipment locations; equipment schedules with tentative sizes, capacities, and features; size and locations of fans, pumps, compressors, etc.; and preliminary layout of equipment rooms.
- f. **Electrical Drawings** to include lighting plans showing tentative locations of fixtures and required lighting levels; power distribution plans showing location of service, generators, and panel boards; tentative locations of interface points for communications, fire alarm, EMCS, and other pertinent systems; plans indicating tentative locations of receptacles, telephone, and computer outlets and switches; fire protection information including tentative locations of the main system panels, control, and trouble signaling equipment; and rough-in only for video/audio visual systems and emergency radio systems.
- g. **Plumbing Drawings** to include plans noting fixture types and locations; routing of main supply lines and tentative sizes; riser diagrams; location of water supply and distribution, sanitary drainage, storm drainage, and sprinkler services to the building; fixture schedule; location and types of water heaters, storage tanks etc.; and gas piping layout and connected load.
- h. **Fire Protection** to include system description and partial plans (including riser diagram) for a sprinkler system in accordance with NFPA 13. A head layout is not included.
- i. **Information Technology System MEP Planning** would include mechanical and electrical preliminary design for the server room based on IT system equipment and data details provided by the Client. Coordination and one (1) meeting with the Client's IT personnel are included.

SURVEYING

Topographical Survey

Perform topographical survey on 2.5 acres including overlap into adjacent roads and parcels. This survey along with the boundary line adjustment plat information that has been provided by the City will constitute the base mapping for the project.

UNDERGROUND UTILITY LOCATION SURVEY

Perform underground utility survey to designated and map underground facilities on the project site and adjacent right of ways. This survey will include horizontal designation through geophysical methods and is defined as Quality level "B" by the American Society of Civil Engineers (ASCE).

The accuracies of the marking are subject to the depth and electrical conductivity of the utility as well as site conditions and manhole access. Plastic and fiber optics lines without tracer wires may be unlocatable.

This service does not include the use of ground penetrating radar or location of sanitary and storm lines including laterals and roof drains, irrigation systems or abandoned lines.

GEOTECHNICAL INVESTIGATION

Geotechnical services will include performance of soil test borings, test pit excavations, laboratory testing of soil samples, and preparation of an engineering report for the accessible areas on the site outside of existing building footprints to include demolition areas of the existing buildings performed by the City.

Field Exploration

- a. Stake the borings in the field by conventional or GPS surveying methods.
- b. Contact MISS Utility to locate public underground utilities.
- c. Perform 14 Standard Penetration Test (SPT) borings using a drill rig in accordance with ASTM D1586. Seven (7) borings will be performed in the proposed building area. Six of the building borings will be performed to a depth of 25 feet, and the other boring will be performed to a depth of 70 feet. Seven borings will be performed in the proposed pavement area to a depth of 10 feet. Total proposed drilling is 290 feet. Boring depths are referenced to the existing ground surface. Borings will be performed to indicated depths, or auger refusal, whichever occurs first.
- d. Up to six test pits will be performed with a rubber-tired backhoe in the vicinity of former basements. Anticipated excavation depths are 5 to 6 feet. After performing test pits, excavated soils will be tamped back into the excavation with the backhoe bucket.
- e. Prepare estimate of potential quantities of rubble and unsuitable material associated with the test pit areas.
- f. Following drilling operations, water levels will be measured in boreholes. Borings will then be backfilled to the ground surface with drill cuttings. For borings in existing asphalt, the ground surface will be replaced with compacted, asphalt cold patch. Representative portions of soil samples will be returned to our office for visual classification and laboratory testing.

Laboratory Testing

Laboratory testing will consist of natural moisture contents, Atterberg limits, grain size analysis, standard Proctor, and California Bearing Ratio (CBR) test on representative soils samples.

Geotechnical Engineering Report

We will prepare a geotechnical engineering report based on results of soil test borings, test pit excavations, laboratory testing, and our engineering analysis. Geotechnical recommendations will include building foundation type, including maximum allowable foundation capacities and embedment. We will also prepare recommendations that address site preparation and grading, suitability of on-site soils to be used as fill, fill placement and compaction, seismic site classification, floor slab support considerations, lateral earth pressure considerations (if below grade walls or retaining walls will be constructed), pavement design considerations, and excavation and construction quality control considerations.

CIVIL ENGINEERING

Provide civil engineering documents and coordinate with the team to achieve 30% design documents.

- a. Prepare schematic layout of the site utilizing Architect's site plan and building footprint information. Plan will utilize base map information.
- b. Prepare a ITE trip generation data report to determine if a Traffic Impact Analysis is required
- c. Prepare schematic grading and establish finished floor elevation of building.
- d. Prepare schematic utility plan showing location of water and sewer services to the building.
- e. Prepare preliminary storm water management design computations to address water quality and water quantity compliance for the site.
- f. Prepare preliminary E&S plans for all required land disturbance permits
- g. Submit plans to Owner and Architect for review and approval. Revise schematic plans per Owner and Architect comments to address 30% comments.
- h. Attend progress meetings as needed with design team through design of schematic plan phase.
- i. Attend City development review meetings as needed with city staff and design team for presentation and review of schematic plans.
- j. Address comments and concerns from review meeting and revise plans as necessary to reflect a final schematic plan.

ASSUMPTIONS AND EXCLUSIONS

Additional Services Not Included in the Above Scope-of-Work:

- a. Design services not identified in the above Scope-of-Work.
- b. Security, Data, audio visual, video conferencing, CCTV, emergency radio or Intercom systems including system selection and final equipment selection.
- c. On-site fire flow testing.
- d. Solar electrical systems.
- e. Lightning protection system.
- f. Hazardous materials identification or documents
- g. Furniture and equipment selection and specifications
- h. Excessive redesign
- i. ALTA or Boundary Surveys
- j. Easement Plats
- k. Irrigation Plans
- l. Review or Permit Fees (Developer will prepare and file permit applications)
- m. Wetlands Permitting

City of Petersburg

New City Hall Project

Prestige/English

1/13/2014

Interim Agreement Schedule of Values

| Item | Value |
|----------------------------|----------------------|
| Program Verification | \$ 18,590.00 |
| Schematic Design | \$ 64,710.00 |
| Design Development | \$ 92,665.00 |
| Structural | \$ 30,591.00 |
| Sprinkler | \$ 5,307.00 |
| Plumbing/Mechanical | \$ 39,524.00 |
| Electrical | \$ 33,103.00 |
| Surveying | \$ 7,300.00 |
| Geotechnical Investigation | \$ 10,800.00 |
| Civil Engineering | \$ 9,000.00 |
| LEED Services | \$ 38,309.00 |
| Prestige | \$ 25,051.00 |
| English | \$ 25,050.00 |
| Total | \$ 400,000.00 |