

**CITY OF HICKORY
INVITATION TO BID AND CONTRACT**

MAIL SEALED BIDS TO:		DIRECT INQUIRIES TO:	
Engineering Division City of Hickory P.O. Box 398 Hickory, NC 28603		Kelly W. Winkler, P.E. City of Hickory, Senior Civil Engineer Phone: (828) 323-7416 rpatton@hickorync.gov	
Contract Number and Title: BID NO. 21-012 CITY OF HICKORY Public Safety Upgrades		Requirements-Type Contract <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Contract Period: See Exhibit B
Vendor Name:			
Mailing Address:		Terms: 100% Performance and Payment Bonds when awarded	
City:	State:	Zip:	Delivery: 90 Calendar Days After Notice to Proceed
Area Code and Phone Number:		Email address:	
Federal Employer Identification Number or Social Security Number:			

THIS BID INVALID IF NOT SIGNED AND NOTARIZED

AFFIDAVIT:

STATE OF _____ **COUNTY OF** _____, of lawful age, being first duly sworn, on oath says that:

1. Affiant is the duly authorized agent of the bidder/vendor and/or contractor submitting the competitive bid and executing the contract which is attached to this statement, and that as such agent, Affiant has the authority to bind the bidder/vendor, whether an individual, partnership, or corporation, for the purpose of negotiating and entering into said agreement, and for certifying the facts pertaining to the existence of collusion among bidders and between bidders and City officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
2. Affiant is fully aware of the facts and circumstances surrounding the making of the bid and/or the procurement of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bids;
3. Neither the bidder/vendor nor anyone subject to the bidder/vendor's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
 - b. to any collusion with any municipal official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract;
 - c. in any discussions between bidders and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the City of Hickory any money or other thing of value, either directly or indirectly, in procuring the contract to which his statement is attached.
4. Affiant further agrees to be held personally liable in the event that Affiant has misrepresented the scope or extent of Affiant's authority to bind the bidder herein, and to indemnify and hold harmless the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees of the aforementioned from all damages based upon such misrepresentation, including, but not limited to, all costs and attorney fees incurred, in addition to any other remedies available by law.

SIGNATURE OF AUTHORIZED AGENT

FIRM: _____

PRINT/TYPE NAME/TITLE

ADDRESS: _____
(City, State, Zip)

Subscribed & sworn before me this ___ day of _____, 20__.

PHONE: _____

Notary Public

My Commission Expires: _____

IMPORTANT INFORMATION AND INSTRUCTIONS

SECTIONS WITHIN THIS AGREEMENT: The pages of this agreement consist of:

- a. Invitation and Bidder Information
- b. Important information and Instructions
- c. General Conditions
- d. Special Conditions
- e. Federal Awards Contract Provisions
- f. Specifications / Description of Work to be performed
- g. Bid Form, Bonding Requirements

1. IMPORTANT DATES

Project Questions deadline: April 1, 2021

Bid Opening: April 9, 2021 at 2:00 p.m.

2. SUBMIT ALL PAGES

All pages of this document will be used as the contract. Bidders shall submit ALL pages of this document and supplemental pages with completed information.

3. BIDDER SHALL WRITE ON THE OUTSIDE OF SUBMITTAL ENVELOPE:

- a. Name of the General Contractor
- b. Project Title and Project Number: Public Safety Upgrades, Project No. 20-012
- c. Date of bid opening: April 9, 2021

4. BIDS SHALL NOT BE QUALIFIED WITH ANY STATEMENTS ON THE BID FORMS OR BY SEPARATE ATTACHMENT.

5. LIQUIDATED DAMAGES

As discussed in further detail under General Conditions, in the event the Contractor fails to substantially complete construction required under this agreement in the time allotted, Contractor shall reimburse the City for liquidated damages.

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GENERAL CONDITIONS

BIDDER – TO INSURE ACCEPTANCE OF THE BID, CAREFULLY FOLLOW THESE INSTRUCTIONS. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF YOUR BID WITHOUT FURTHER CONSIDERATION OR NOTICE TO YOU.

SEALED BIDS: All bid sheets and this form must be executed and submitted in a sealed envelope. (DO NOT INCLUDE MORE THAN ONE BID PER ENVELOPE.) The face of the envelope shall contain, in addition to the address on page one (1) of this document, the date and time of the bid opening and the contract number. Bids not submitted on this bid form shall be rejected. All bids are subject to the conditions specified herein. **Those that do not comply with these conditions are subject to rejection.** Bids will be considered only on first quality products. Bid files which include copies of specifications, drawings, schedules or special instructions are on file with the Purchasing Agent for the City of Hickory and may be examined during normal business hours.

1. **EXECUTION OF BID AND CONTRACT:** Bid and contract documents must contain an original signature of authorized representative in the space provided. Bid must be typed or printed in ink. Use of erasable ink is not permitted. **ALL CORRECTIONS MADE BY BIDDER/VENDOR TO BID PRICE MUST BE INITIALED.** Do not use white out, correction tape or other method of masking a correction.

2. **NO BID:** If not submitting a bid, respond by returning page one (1), marking it “NO BID,” and explain the reason in the space provided thereon. Failure to respond three (3) times in succession may be cause for removal of the supplier’s name from the bid mailing list, without further notice. NOTE: To qualify as having responded, bidder/vendor must submit either a bid or a written “NO BID,” and it must be received no later than the stated bid opening date and hour.

3. **OBJECTIONS/CHALLENGE:** Should a bidder/vendor have an objection to or challenge the specifications, the bidder/vendor is responsible for making this known in writing so as to reach the Purchasing Agent no later than seven (7) calendar days prior to the bid opening date. The envelope shall be marked in such a way so as to alert the Purchasing Agent of the urgency of the communication. The envelope must be marked indicating that the content is a challenge to a specified Invitation to Bid. For all challenges considered valid by the Purchasing Agent, all vendors on the original mailing list will be provided an addendum which addresses the challenge. Challenges/objections not considered valid will be so stated to the objecting party.

4. **BID OPENING:** Bid opening occurs at the time specified on the bid form. It is the Bidder/Vendor’s responsibility to assure that the bid is delivered at the proper time and place of the bid opening. Bids, which for any reason are not delivered, will not be considered. Offers by telegram, facsimile, electronic mail or telephone are not acceptable. NOTE: Bid files may be examined during normal working hours by appointment, after the date and time of bid opening. Bid tabulations WILL NOT be provided by telephone or facsimile. Bid tabulations will be provided by mail at the written request of the bidder/vendor. Bid and contract documents are the property of the City and are subject to the provisions of the North Carolina Open Records Act.

5. **WITHDRAWAL OF BID:** Bids may be withdrawn at any time prior to the bid opening date and time. After bids are opened, all bids will be considered firm and valid until award of contract is made.

6. **AWARDS:**

a. As the best interest of the City may require, the right is reserved to:

1. Award by individual item or project, group of items or projects, all or none, or a combination thereof.
 2. Award based upon a geographical district basis with one or more vendors.
 3. To reject any and all bids or waive any minor irregularity or technicality in bids received.
- b. Bidders/Vendors are cautioned to make no assumptions regarding their success on the awarding of any contract unless their bid has been evaluated as being responsive, the contract awarded by the City and appropriate documents executed. The City of Hickory reserves the right to add or delete any item from this contract when deemed to be in the best interests of the City.
7. **ACCEPTANCE OF CONTRACT:** This document constitutes only the Bidder/Vendor's offer until it is accepted on behalf of the City of Hickory and is executed by the Mayor or Manager and City Clerk on behalf of the City of Hickory.
8. **WAIVER:** The City of Hickory reserves the right to waive any general provisions, special provision or minor specification deviation when considered to be in the best interest of the City.
9. **CHANGES TO SPECIFICATIONS:** Bids are to be submitted in accordance with the specifications provided. Any exceptions to the specifications must be indicated in the place provided on the specification page(s) or by separate letter from the Bidder/Vendor, if a place is not provided in the specifications. Changes in specification reducing the quality, versatility or applicability of the product or service shall cause the rejection of the bid. The City shall make the final determination. Failure to notice the City of any deviation from the specification may cause the bid to be rejected at the discretion of the City.
10. **MISTAKES:** Bidders/Vendors are expected to examine the specifications, delivery schedule, bid prices and all instructions pertaining to supplies and services. Failure to do so will be at Bidder/Vendor's risk.
11. **INFORMATION:** The Bidder/Vendor must provide information pertinent to items you are bidding. Complete catalogues are not necessary. If furnished, however, the Bidder/Vendor must identify the exact location in the catalogue and circle or identify clearly the item being bid.
12. **MANUFACTURERS' NAMES AND APPROVED EQUIVALENTS:** Any manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The Bidder/Vendor may offer any brand for which he is an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's name and model number. Bidder/Vendor shall submit with his proposal sketches, descriptive literature and/or complete specifications. References to literature submitted with a previous bid will not satisfy this provision. The Bidder/Vendor shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to quote an alternate brand will be received and considered to be in complete compliance with the specifications as listed on the bid form.
13. **SAMPLES:** Samples of items, when called for, must be furnished free of charge and at no expense to the City. Each individual sample must be labeled with Bidder/Vendor's name,

manufacturer's brand name and number, contract number and item reference, or as specified in the attached special conditions. **Samples will not be returned.**

14. **TESTING:** When testing is required to determine if a sample or an awarded product meets specifications and it is determined that the product fails to meet specifications, the cost of testing shall be borne by the Vendor, both on samples and delivered products.

15. **NONCONFORMANCE TO CONTRACT CONDITIONS:** Items may be tested for compliance with specifications by appropriate testing laboratories or by the City. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with North Carolina Statutes. Items delivered not conforming to specifications will be rejected and returned to the Bidder/Vendor at the Bidder/Vendor's expense. Any violation of these stipulations may result in supplier's name being removed from the City of Hickory Purchasing Bidder/Vendor mailing list, and the City may pursue any and all other remedies available either in equity or by law.

16. **CONDITION AND PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current model at the time of the bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

17. **INSPECTION, ACCEPTANCE AND TITLE:** Inspection and acceptance will be at destination unless otherwise provided. "Destination" shall mean delivered to the receiving dock, department stockroom, or other point specified. The City accepts no responsibility for goods until accepted at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Bidder/Vendor until accepted by the ordering agency. The Bidder/Vendor shall be responsible for filing, processing and collecting all damage claims. However, to assist him in the expeditious handling of damage claims, the ordering department will:

- a. Record any evidence of visible damage on all copies of the delivering carrier's bill of lading.
- b. Report damage (whether visible or concealed) to the carrier and Bidder/Vendor, confirming such reports, in writing, within fifteen (15) days of delivery, requesting that the carrier inspect the damaged merchandise.
- c. Retain the item and its shipping container, including inner packaging material, until inspection is performed by the carrier, and disposition given by the Bidder/Vendor, or for a reasonable time after notification to the Bidder/Vendor.
- d. Provide the Bidder/Vendor with a copy of the carrier's bill of lading and damage inspection report.

18. **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all work performed pursuant to this Agreement shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.

19. **SERVICE AND WARRANTY:** Unless otherwise specified, the Bidder/Vendor shall define any warranty service and replacements that will be provided during and subsequent to this contract. Bidder/Vendors must explain on an attached sheet to what extent warranty and service facilities are provided. Unless otherwise indicated in this agreement, upon acceptance of this contract by the City, Bidder/Vendor expressly warrants that all articles, materials, supplies, equipment, and/or services covered in this contract will conform to the specification attached

hereto and made a part hereof; and further warrants that same shall be of good material and workmanship and free from defects.

20. **REMEDIES:** Failure to make delivery or to meet specifications authorizes the City to seek replacement goods or services elsewhere and to seek legal remedies against the defaulting Bidder/Vendor. If any of the goods and/or work performed fails to meet the warranties contained herein, Bidder/Vendor upon notice thereof from the City shall promptly correct or replace the same at Bidder/Vendor's expense. If Bidder/Vendor shall fail to do so, the City may cancel this order as to all such goods and in addition, may cancel the remaining balance of this order and pursue all other remedies available. After notice to the Bidder/Vendor, all such goods will be held at Bidder/Vendor's risk. The City may, and at the Bidder/Vendor's direction shall, return such goods to Bidder/Vendor at Bidder/Vendor's risk, and all transportation charges, both to and from original destination, shall be paid by Bidder/Vendor. Any payment for such goods shall be refunded by Bidder/Vendor unless Bidder/Vendor promptly corrects or replaces the same at its expense.

21. **AUTHORIZED USERS:** Bids shall cover requirements during the specified period for all municipal departments, boards, commissions, agencies and institutions.

22. **LIABILITY:** The Bidder/Vendor shall hold and save the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the Bidder/Vendor's breach of this contract or the Bidder/Vendor's negligence.

23. **INDEPENDENT CONTRACTOR:** The parties agree that Bidder/Vendor and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself as an agent or employee of the City of Hickory.

24. **PRICES AND TERMS:** Unless otherwise provided in the bid specifications, firm fixed prices shall be F.O.B. Hickory, North Carolina at the indicated department's address and include packing, handling and shipping charges fully prepaid by the Vendor. Bid prices shall be valid for a minimum of sixty (60) days from the date of bid opening.

25. **ACCEPTANCE OF PURCHASE ORDERS:** Bidder/Vendors are to accept only those purchase orders issued by the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned, prepared on Finance Department forms, unless instructed otherwise in the Invitation to Bid or executed Contract Agreement.

26. **PRICE ADJUSTMENTS:** Manufacturer's price increases, or other increases in the cost of doing business MAY NOT be passed on to the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees, nor may the Bidder/Vendor withdraw or cancel the contract, or any part of the contract for these reasons. Bidders/Vendors may only cancel the contract pursuant to the cancellation clause, if one is included as a part of the Invitation to Bid, and then only if the contractual obligation has been fulfilled by the Bidder/Vendor in accordance with the terms stated. Bids which reflect that the price of an item is based upon the "market price" or is "subject to increase" based upon some event, or otherwise indicates that prices reflected are infirm or subject to change will be deemed non-conforming unless the bid specifications specifically provide for price escalation.

27. **SUMMARY OF TOTAL SALES:** The Bidder/Vendor agrees to furnish the City of Hickory Purchasing Division a summary of sales, including total dollar amount, made under the contract at the end of each quarter, or as stipulated in the attached special conditions.

28. **PAYMENT:**

- a. **INVOICING:** The Bidder/Vendor shall be paid within a reasonable time after submission of proper certified invoices to the City at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay or processing invoices for payment. The company or corporation bidding shall be the only office authorized to receive orders, do the billing and invoicing and receive payment. If the Bidder/Vendor wishes to ship or service from a point other than the home office, he will furnish a list of these locations. **HOWEVER, NO ORDERS WILL BE PRESENTED TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.**
- b. **REQUIREMENTS ONLY PURCHASES:** The proposed contract shall be for the quantities actually ordered during the life of the contract only. **UNLESS OTHERWISE SPECIFIED, ALL CONTRACTS ARE REQUIREMENTS-TYPE CONTRACTS,** meaning that quantities indicated are only estimates of those actually needed, and actual quantities may be greater or less than those indicated. Billing shall be made in accordance with instructions by department or division issuing the purchase order, and only for quantities actually ordered and delivered. The City does not promise to purchase the quantity shown. The City reserves the right to purchase none of the product or more than shown.
- c. **DISCOUNTS:** Bidders/Vendors may offer a cash discount for prompt payment; however, such discounts shall not be considered in determining the lowest net cost for bid evaluation purposes. Bidders/Vendors are encouraged to reflect cash discounts in the unit prices quoted. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the office specified, whichever is later.
- d. **UNIFORM COMMERCIAL CODE:** All provisions of the Uniform Commercial Code shall be adhered to.

29. **EXTENSION:** At the end of the contract period, or upon the conclusion of a maximum of one (1) extension thereof, the contract may be extended for a period not to exceed twelve (12) months at the same price and conditions as in the original contract, by mutual agreement between the City and the Bidder/Vendor. The extended contract shall, upon the signing by both parties, become a binding agreement and shall remain in force and effect until terminated by either party, provided that either party to the contract shall have the option to terminate said extended contract upon thirty days' prior written notice of termination by one party to the other.

30. **CONFLICT OF INTEREST:** The Invitation to Bid hereunder is subject to the provisions of City of Hickory Charter and City Code. All Bidders/Vendors must disclose with the bid, the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, all Bidders/Vendors must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Bidder/Vendor's firm or any of its branches.

31. **PATENTS AND ROYALTIES:** The Bidder/Vendor, without exception, shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the City of Hickory. If the Bidder/Vendor uses any design, device or materials covered by letters,

patent copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost rising from the use of such design, device or materials in any way involved in the work.

32. **RELEASE OF PATENTS AND COPYRIGHTS:** The Contractor will relinquish ownership and exclusive rights to the Department of Housing and Urban Development and the City of Hickory for any patents and/or copyrights for any process, discovery or invention which arise or is developed in the course of or under this contract.

33. **FACILITIES AND EQUIPMENT:** The City reserves the right to inspect the Bidder/Vendor's facilities or equipment at any time with reasonable prior notice.

34. **BANKRUPTCY:** If the Bidder/Vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Bidder/Vendor, or if a receiver is appointed for the Bidder/Vendor, the City shall have the right to terminate this contract upon written notice to the Bidder/Vendor without prejudice to any claim for damages or any other right of the City under this contract to the time of such termination.

35. **ASSIGNMENT:** This contract shall not be assigned by the Bidder/Vendor without written consent of the City.

36. **ACCESS TO RECORDS:** The Bidder/vendor agrees to provide upon request audit materials to an auditor designated by the City.

37. **RETENTION OF RECORDS:** The Bidder/vendor will retain all records pertaining to this contract for a period of three (3) years after final payment and all other pending matters are closed.

38. **INSURANCE:** If insurance is required in the specifications to this Agreement, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City showing the City as an additional insured thereunder without cost to the City of Hickory prior to the awarding of the contract. This shall be accomplished by including a Certificate of Insurance with the bid package with the Certificate Holder being:
City of Hickory, P. O. Box 398, Hickory, NC 28603.

a. **General Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, a policy or policies under a comprehensive form as required by state law. In addition, the Bidder/Vendor shall have, during the term of the Contract, insurance in the minimum amount of Twenty-Five Thousand Dollars (\$25,000.00) property damages, arising from a single occurrence, One Million Dollars (\$1,000,000.00) for personal injuries arising from a single occurrence, and One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.

b. **Automobile Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, vehicle liability coverage in the amounts specified in Subparagraph a. of this section. In addition, the Bidder/Vendor shall have, during the term of the Contract, vehicle liability coverage as outlined in the attached specifications. If higher coverage is required by any regulatory entity with oversight of the Bidder/Vendor's business, the City Code, or other authority, then proof of the higher coverage must be provided. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the

aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.

- c. **Worker's Compensation:** The Bidder/Vendor shall procure and maintain in full force and effect for the period of the Contract, full workers' compensation insurance in accordance with the laws of the State of North Carolina to protect it and the City against liability under the workers' compensations and disease statutes of the State of North Carolina. A current certificate showing that the Bidder/Vendor has in force and effect the aforesaid insurance of a current certificate showing exemption from the requirement shall be maintained on file with the City Clerk of the City.

39. **BONDS: Bidder's Bonds and Performance bonds** in the full amount of the contract price quoted **are required** as set forth in the specifications attached hereto. If Bonds are required, the same shall be held under the following requirements and specifications unless otherwise indicated:

- a. **Bidder's Bonds:** If required as a part of the specifications of this contract, bids filed with the Purchasing Agent must be accompanied by a Bidder's Bond, certified check or cashier's check in the amount stated made payable to the City of Hickory. This amount will be retained by the City as damages in the event the successful Bidder/Vendor fails to comply with the terms of this Agreement, but shall in no way act as a remedy or limitation on damages available to the City, which may pursue any and all other remedies available either in equity or at law. All deposits and bonds will be returned to the unsuccessful Bidders/Vendors within a reasonable time after the contract has been awarded, and to the successful Bidder/Vendor upon full performance of the contract. Bonds or funds deposited do not accrue interest while held.
- b. **Performance Bonds:** If a Performance Bond is required under the specifications of this agreement, the successful Bidder/Vendor must, prior to the award of the Contract, post the bond, certified check or cashier's check in the amount stated made payable to the City of Hickory. The Bidder's Bond posted will be returned to the successful Bidder/Vendor upon posting of the Performance Bond and completion of any additional requirements for execution of the contract by the Bidder/Vendor. The Performance Bond will be released or returned to the Bidder/Vendor, as appropriate, after satisfactory completion of the contract and the performance period as stated in the specifications attached or any amendments thereto.

40. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to this Agreement. Bidder/Vendor specifically agrees that it shall be liable for failure to deliver or delay in delivery occasioned by and including, without limitations, strikes, lock-outs, inability of obtaining material or shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivisions thereof, unless governmental acts and regulations affecting delivery could not be found, recognized or discovered by due diligence on the part of the Bidder/Vendor prior to submission of the bid and the City Council's acceptance.

41. **LIQUIDATED DAMAGES.** If the Contractor shall neglect, fail, or refuse to complete the work within the time herein specified, then the Contractor does hereby agree, as a part of the consideration for the awarding of the contract to pay the City the sum of **\$250.00 (two hundred fifty dollars) per day**, not as a penalty, but as compensation to the City for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every

calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing ascertaining the actual damages the City would in such event sustain.

It is further agreed that time is of the essence to each and every portion of this contract and to the specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where, under the contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this contract.

42. **DISCRIMINATION:** Bidder/Vendor agrees, in connection with the performance of work under this contract, as follows:

- a. Bidder/Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. The Bidder/Vendor shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Bidder/Vendor agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth provisions of this section.
- b. The Bidder/Vendor agrees to include this non-discrimination clause in any subcontract connected with the performance under this contract.
- c. In the event of the Bidder/Vendor's non-compliance with the above non-discrimination clause, this contract may be terminated by the City. The Bidder/Vendor may be declared by the City ineligible for further contracts with the City until satisfactory proof of intent to comply is made by the Bidder/Vendor.

43. **DISTRIBUTION OF CONTRACT:** One (1) copy of the contract or award letter shall be furnished to each successful Bidder/Vendor as a result of this bid. It shall be the Bidder/Vendor's responsibility to reproduce and distribute copies of the contract to all distribution points listed in this bid that will accept orders and complete deliveries. No additions, deletions or changes of any kind shall be made to this contract by the Bidder/Vendor.

44. **ANTI-KICKBACK PROVISIONS:** Contractor shall comply with the applicable regulations (herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so called "Anti-Kickback Act" of June 13, 1934) 48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874 and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirement thereof.

45. **CONTRACT WORK HOURS AND SAFETY STANDARDS:** Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360; Title 40 U.S.C., Sections 327-332).

- a. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, which he has employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half time his basic rate of pay for all hours worked in excess of 40 hours in such work week.
 - b. **Violation/Liability for Unpaid Wages Liquidated Damages.** In the event of any violation of the clause set forth in Paragraph (1) of this section, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States or other appropriate governing or regulatory body for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in Paragraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in Paragraph (1).
 - c. **Withholding for Liquidated Damages.** The Owner shall withhold or cause to be withheld, from any monies payment on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in Paragraph (2) of this Section.
 - d. **Subcontracts.** The contractor shall insert in any subcontracts the clauses set forth in Paragraphs (1), (2) and (3) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts, which may be entered into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
 - e. **Questions Concerning Certain Federal Statutes and Regulations.** All questions arising under this contract which related to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said acts, or (d) the labor standards provisions of any other pertinent federal statute shall be referred through the Owner and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this contract.
46. **ADVERTISING:** In submitting a proposal, Bidder/Vendor agrees not to use the results therefrom as a part of any commercial advertising.
47. **TERMINATION FOR CONVENIENCE OF THE CITY:**
- a. The performance of work and/or delivery of ordered materials, supplies, equipment and/or services under this contract may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.
 - b. Any such termination shall be affected by the delivery to the Bidder/Vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective.

c. After receipt of a notice of termination, the Bidder/Vendor shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.

48. **VENUE:** This contract shall be governed by the laws of the State of North Carolina.

49. **INTEGRATED AGREEMENT:** This writing, with the attachments hereto, and any associated purchase orders constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. This Agreement may not be modified except in writing signed by both parties.

50. **DELIVERY OF NOTICES:** Any notices required or permitted by this Agreement will be considered sufficient if hand delivered or sent by certified mail to the party entitled to receive the notice at the address of that party set forth above. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.

51. **DOCUMENTS CONTAINING AGREEMENT:** This Agreement, in addition to this document, consists of:

- a. Instructions to Bidders and Bid Form
- b. Description of work to be performed (Exhibit "A");
- c. Section 01011 Bid Item Description

52. **SEVERABILITY:** If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Agreement or its application that can be given effect without the invalid provision or application.

53. **PARTIAL PAYMENTS:** Partial payments will be made once each month as the work progresses. Said payments will be based upon estimates prepared by the Contractor and approved by the Engineer for the value of the work performed and materials complete in place in accordance with the Contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with this contract.

From the total of the amount determined to be payable on a partial payment, 5% of such total will be deducted and retained by the OWNER until the final payment is made. The balance 95% of the amount payable, less all previous payments, shall be certified for payment.

The Contractor shall not receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by the ENGINEER to be a part of the final quantity for the item of work in question.

No partial payment shall bind the OWNER to the acceptance of any materials or work in place as to quality or quantity.

CONTRACTOR shall submit partial payment request for work completed by the 25th of the month. OWNER will make payment to the Contractor on or about the 25th of the following month.

56. **PAYMENT FOR MATERIALS ON HAND (IF APPLICABLE UNDER THE CONTRACT):** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract, plans, and specifications and are delivered to sites acceptable to the ENGINEER. Such delivered costs of

stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- A. The material has been stored or stockpiled in a manner acceptable to the ENGINEER at or on an approved site.
- B. The Contractor has furnished the ENGINEER with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- C. The Contractor has furnished the ENGINEER with satisfactory evidence that the material and transportation costs have been paid.
- D. The Contractor has furnished the OWNER legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- E. The Contractor has furnished the OWNER evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at anytime prior to use in the work.

The transfer of title and the OWNER's payment for such stored or stockpiled materials shall in no way relieve the Contractor of the responsibility for furnishing and placing such materials in accordance with the requirements of the Contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the Contract price for such materials or the Contract price for the Contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this contract.

SPECIAL CONDITIONS

1. **Federal funds will NOT be used** on this project and all applicable provisions of the Davis-Bacon Act are NOT included in this contract.
2. **Contractor shall provide certified payrolls** for all personnel including subcontractors working on the project.
3. **COMPLIANCE WITH LAWS:** The bidder, at his own expense, shall obtain and maintain all licenses, permits, liability insurance, workers' compensation insurance and shall comply with any and all other standards or regulations required by federal, state, and local statute, ordinance, executive order and rules during the performance of any contract between the bidder and the City. Any such requirement specifically set forth in any contract document between the bidder and the City shall be supplementary to this section and not in substitution thereof.
4. **SPECIFICATIONS:** Any obvious error or omission in specifications shall not inure to the benefit of the bidder but shall put the bidder on notice to inquire of or identify the same from the City. All construction and materials shall conform to the City of Hickory's Manual of Practice which includes the standard specifications and details.
5. **GUARANTEE:** Unless otherwise specified by the City, the bidder shall unconditionally guarantee the materials and workmanship on all material, construction, and/or services to be free from defect at the time of delivery and acceptance (to be determined by usage) by the City. If any defects are present which are due to faulty material, workmanship, and/or services, the bidder at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the City. These repairs or replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of the City. Standard manufacturer's warranties and other warranties normally offered by the bidder shall be in effect for all deliveries and shall be in addition to specific warranties or guarantees contained in this Bid. Statement of terms of standard warranty should be included with the bid.
6. **LICENSE:** All bidders must have proper license governing services provided.
7. **E-VERIFY COMPLIANCE:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with North Carolina Session Law 2013-418's E-Verify requirements to contract with local governments. E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. A completed E-Verify compliance statement is required to enter any contract with the City of Hickory.
8. **IRAN DIVESTMENT ACT:** The City only contract with entities that are not listed on the Iran Final Divestment List ("List") crated by the State Treasurer pursuant to N.C.G.S. 147-86.58, Iran Divestment Act ("Act"). Any contract with a company on the list is deemed as a void contract per State statute. The List can be found on the State Treasurer's website and is updated annually.
9. **COMPANIES BOYCOTTING ISRAEL ACT:** The City only contracts with entities that are not listed on the Companies that Boycott Israel Final Divestment List ("List") crated by the State Treasurer pursuant to S.L. 2017-193 (H161). Any contract with a company on the list is deemed as a void contract per State statute. The List can be found on the State Treasurer's website and is updated annually.

EXHIBIT "A"

DESCRIPTION OF WORK TO BE PERFORMED FOR THE CITY OF HICKORY

Bid No. 21-012

Contract of this project includes construction of PUBLIC SAFETY UPGRADES in Hickory. The project includes but is not limited to mobilization, rough grading, fine grading, stone base course, heavy-duty asphalt paving, drainage structure, drainage pipe, installation of utilities, and erosion control measures according to the project plans and specifications. See Bid Item Descriptions for complete details of the various bid items. The cost of any additional materials, labor, and equipment required to make a complete project shall be distributed among the various pay items. No additional payments will be made for work required for a complete project not shown on the project drawings.

GENERAL REQUIREMENTS

General Contractor's Responsibilities:

1. Visit the project site prior to submitting his bid and becoming familiar with site constraints, existing structures, above and below grade, and project scope.
2. Coordinate all work with other Contractors and Engineer.
3. Provide all work in accordance with the plans and specifications.
4. Remove all debris generated and clean up of site. Remove safety fences, barricades and all other temporary safety measures installed by General Contractor.
5. Update record drawings as work progresses.
6. Confirm dimensions prior to ordering of materials.

The City of Hickory's Responsibilities:

1. Hold a pre-construction conference with all Contractors and City Engineer representative.
2. Promptly respond to Contractor's questions and concerns.
3. Update record drawings as work progresses.

The City reserves the right to reject any and all Bids; and accept any Bid Items that best meets the needs of the City.

All Contractors' invoices shall be submitted to Engineer for approval on standard AIA payment request forms.

SPECIAL INSTRUCTIONS!

All pages of this document will be used as the contract. Bidders shall submit ALL pages of this document.

Bidder shall write on the outside envelope:

THE NAME OF THE GENERAL CONTRACTOR

THE NAME OF THE PROJECT –**Public Safety Upgrades**

BID NUMBER(S) OF PROJECT(S) – **21-012**

DATE AND LOCATION OF BID OPENING -**April 8,2021 at 1:30 p.m. at Engineering**

Department in City Hall

Bids shall not be qualified with any statements on the bid forms or by separate attachment.

The City reserves the right to reject any and all Bids; and reject any Bid Items that best meets the needs of the City.

Bidders should have no contact with elected or appointed officials during the bidding process. Any such contact will subject the bidder to immediate disqualification.

Do not include Federal tax or NC State and local sales or use taxes in your bid. The City of Hickory is exempt from federal tax. Contractor(s) shall submit a notarized certified Sales Tax Report (attached) for reimbursement of sales taxes by Owner.

Bid shall not be qualified with any statements on the bid forms or by separate attachment.

Note that liquidated damages in the amount of \$250 per calendar day are charged for any work required after the contract period ends.

EXHIBIT "B"

BID FORM

Bid No. 21-012

PROJECT: Public Safety Upgrades

The undersigned, as bidder, hereby declares that the only person(s) interested in the proposal as principal(s) is, are, named herein, and that no other person has any interest in this proposal, or in the contract to be entered into; that this proposal is made without connection with any other person, company, or parties making a bid proposal, and that it is in all respects, fair and in good faith, without collusion or fraud.

The bidder further declares that he has informed himself fully about all conditions regarding this bid, that he has examined the specifications and documents entitled **Public Safety Upgrades** relative thereto, and that he has satisfied himself about performance required by this bid.

Performance Bonds and Payment Bonds in the amount of 100% of the contract amount are required by the City.

The Bidder warrants that bid prices, terms and conditions quoted in the bid will be firm for a period of sixty (60) days from opening date or other time as specified in this request.

The Contractor agrees to complete all portions of the work described within **90 days** of issuance of Notice to Proceed.

By submitting this bid, Contractor agrees to coordinate his schedule with that of the City of Hickory forces working on this project to the fullest extent possible.

The City of Hickory reserves the right to deduct items above as deemed in the best interest of the City.

GENERAL CONTRACT: CITY OF HICKORY Public Safety Upgrades

BID NO. 21-012

No.	Item	Unit	Quantity	Unit Cost	Item Cost
1	Mobilization	L.S.	1	_____	_____
2	Rough Grading	L.S.	1	_____	_____
3	Fine Grading	L.S.	1	_____	_____
4	Aggregate Base Course	L.S.	1	_____	_____
5	Asphalt Pavement Int. Course	L.S.	1	_____	_____
6	Asphalt Pavement Surface Course	L.S.	1	_____	_____
8	Drainage	L.S.	1	_____	_____
9	Erosion Control	L.S.	1	_____	_____
10	Utilities	L.S.	1	-----	-----

TOTAL PUBLIC SAFETY UPGRADES COST \$ _____ .00

and 00/100 dollars

Addendum # _____
 Addendum # _____
 Addendum # _____
 Addendum # _____
 Addendum # _____

Date _____
 Date _____
 Date _____
 Date _____
 Date _____

Acceptance and entry into this Agreement by and on behalf of the City of Hickory is made this _____ day of _____, 2021.

CITY OF HICKORY,
A North Carolina Municipal Corporation

(SEAL)

Warren Wood, City Manager

Attest:

City Clerk

This document has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer

Approved as to form on behalf of the City of Hickory only:

Arnita M. Dula, Staff Attorney