

INVITATION TO BID



BID NUMBER 2024-006

FIRE TRAINING FACILITY (BURN ROOM)

Prepared by:

James A. Carter
Mayor

CITY OF PIKEVILLE
243 Main Street
Pikeville, Kentucky 41501
(606) 437-5100
Fax Number (606) 437-5106

Philip Elswick
City Manager

www.pikevilleky.gov

The City of Pikeville is an Equal Opportunity Employer

INVITATION TO BID

BID NUMBER 2024-006

FIRE TRAINING FACILITY (BURN ROOM)

Bid Opening Date: March 27, 2024

Bid Opening Time: 2:00 p.m.

Address: 243 Main Street, Pikeville, Kentucky 41501

Proposal/Bid Category: Public Safety

Pre-Bid Meeting: N/A

Pre-Bid Date: N/A

Pre-Bid Time: N/A

Address: N/A

Sealed bids will be received by the City of Pikeville for the above referenced project until **2:00 p.m.** prevailing local time on **March 27, 2024**. Bids must be received by the above-mentioned date and time. Mailed bids should be sent to:

City of Pikeville
ATTN: Robbi Bentley, City Clerk
243 Main Street
Pikeville, Kentucky 41501

The Contract Documents may be examined at the same location or at: www.pikevilleky.gov/bids

Proposals or bids received shall be publicly opened and read aloud in the meeting room of City Hall immediately after the close of the bid period. **Proposals or bids delivered after the stated time and date will be rejected and will be returned.** The City of Pikeville assumes no responsibility for submissions that are not properly addressed and/or delivered to the office of the City Clerk. The City of Pikeville does not prescribe the method by which submissions are to be transmitted; therefore, it cannot be held responsible for any delay, regardless of the reason, in transmission of the submission by carriers. Bidders have the option of hand deliver to insure timely delivery. All sealed bids shall state the name of the bid on the outside of the envelope, along with the company name and address. The City does not disclose the names of other bidders or the number thereof prior to the opening of the bids.

Check One:		Proposed Price:	Proposed Delivery:
<input type="checkbox"/> Bid Specifications Met	<input type="checkbox"/> Exceptions to Bid Specifications <i>(Exceptions shall be itemized and attached to submittal.)</i>	<i>If a purchase contract, include price below. If not, see Bid Form if applicable.</i> \$ _____	_____ days after acceptance of bid.

Submitted by: _____
 (Company)

Signature: _____

Address: _____

Name (Typed/
 Printed): _____

City, State
 & Zip: _____

E-Mail: _____

Phone: _____

Date: _____

ADDITIONAL ENCLOSED DOCUMENTS

BID NUMBER 2024-006

<u>Documents</u>	<u>Enclosed</u>
I. Instructions to Bidders	<input checked="" type="checkbox"/>
II. Advertisement	<input checked="" type="checkbox"/>
III. Bid Form	<input checked="" type="checkbox"/>
IV. Scope of Work	<input checked="" type="checkbox"/>
V. Technical Specifications	<input checked="" type="checkbox"/>
VI. Contract or Construction Agreement	<input checked="" type="checkbox"/>
VII. Request for Proposal Details	<input type="checkbox"/>
VIII. Request for Qualifications Details	<input type="checkbox"/>
IX. Exhibits/Plans	<input type="checkbox"/>

INSTRUCTIONS TO BIDDERS

GENERAL INSTRUCTIONS

NOTE TO PROPOSERS OR BIDDERS: Proposal or Bid submission does not constitute an agreement or a contract with the City of Pikeville.

ALTERNATE PROPOSALS OR BIDS: It is not the intention of the specifications contained herewith to eliminate any proposer or bidder; however, quoted items must equal or exceed stated specifications.

ADDITIONAL INFORMATION: While not necessary, the proposer or bidder may include any product brochures, software documentation, sample reports, or other documentation that may assist the City of Pikeville in better understanding and evaluating the proposer's or bidder's response. Additional documentation shall not serve as a substitute for other documentation which is required to be submitted with the proposal or bid.

At the time of submission, each proposer or bidder will be presumed to have inspected the site, if necessary, and to have read the scope and to be thoroughly familiar with the project plans and contract documents (including any and all addenda). The failure or omission of any proposer or bidder to examine any form, instrument, or document shall in no way relieve them from any obligation with respect to this request or bid.

All proposals or bids and any additional submitted information becomes the property of the City of Pikeville and will not be returned to the proposer or bidder regardless of any provision contained in the bid document to the contrary.

PROPOSAL OR BID SUBMISSION: All pages of the original proposal or bid shall be signed. Typed quotation sheets are preferred; however, if hand written, the sheets must be legible and in ink. Any pricing information that is illegible may result in the rejection of the proposal or bid.

The proposer or bidder must submit one original signed hardcopy unless otherwise instructed in the Request for Proposal, Scope of Work, or Specifications. The submission must be sealed in a container with the project name, the proposer or bidder's name and the opening date clearly marked on the outside of the envelope. The proposal or bid shall be addressed and delivered to: City of Pikeville, ATTN: City Clerk, 243 Main Street, Pikeville, KY 41501 prior to the bid opening scheduled time.

ANY BIDS NOT RECEIVED PRIOR TO THE SCHEDULED OPENING DATE AND TIME WILL BE REJECTED AND RETURNED UNOPENED.

FAILURE TO SUBMIT REQUIRED DOCUMENTATION: Failure to submit ALL forms and information required may be grounds for disqualification.

LIABILITY: The City of Pikeville is not liable for any expenses incurred in connection with the preparation of proposals or bids.

ADDENDA AND INTERPRETATIONS: No interpretation of the meaning of the plans, specifications, or other pre-bid documents will be made to any bidder orally.

Each request for such interpretation should be in writing addressed to: City of Pikeville, Attn: City Clerk, 243 Main Street, Pikeville, KY 41501 or by e-mail to: robby.bentley@pikevilleky.gov and to be given consideration must be received at least three (3) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addendum to the specifications which, if issued, will be emailed to prospective bidders and posted to the City's website: www.pikevilleky.gov. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his/her bid as submitted. All addenda so issued shall become part of the contract documents.

WARRANTY: Bidder warrants said goods and services for a period of at least one (1) year after installation, unless otherwise specified in the bid documents and warrants that such goods and services shall meet all City and State specifications. Part of the City of Pikeville's bid or RFP/RFQ evaluation includes an evaluation of any product or service warranties offered in the submittal. Any warranty offered with your products and/or services should be fully outlined and disclosed within your bid or RFP/RFQ submittal. Any warranty information provided in the bid or RFP/RFQ submittal is considered to be the final warranty unless changes are negotiated and included in the final contract. Absolutely no alterations initiated by the vendor will be considered following execution of the contract and no additional warranty signatures or similar documents will be required from the vendor for completion of any work or delivery of any products

KENTUCKY OPEN RECORDS LAW: At the time a proposal or bid is submitted to the City, the proposer or bidder shall identify any information that is submitted as part of the bid that is proprietary or confidential in nature and not subject to release for public inspection. The City of Pikeville will protect any proprietary or confidential information to the extent allowable under the Kentucky Open Records Act.

NEW GOODS, FRESH STOCK: Unless otherwise specifically stated, all Contractors will provide new commodities, fresh stock, latest model, design, or package.

COMPLIANCE WITH LAWS AND REGULATIONS: Each bidder shall comply with all Federal, State, and Local regulations concerning this type of service.

METHOD OF AWARD: For bids, award will be made to the lowest responsive (compliance with specifications) and responsible bidder meeting specifications. The City of Pikeville reserves the right to consider as a part of the bid evaluation the qualifications and experience of the bidder, the stated warranty, stated delivery schedule, service, features, upgrades, and payment terms in addition to any other criteria specifically set out in the Scope of Work or Specifications. For proposals and statements of qualification, the request will outline the award mechanism.

The City of Pikeville reserves the right in its sole discretion to reject any and all proposals or bids, to award any proposal or bid in whole or in part, and/or to waive any irregularities or minor immaterial defects the bidding process or in any and all proposals or bids. The right is also reserved to award proposals or bids based on the best interest and/or a determination as to which is most advantageous to the City. The City of Pikeville may also consider any alternative proposal or bid that meets its basic needs.

PRE-AWARD INTERVIEW: An interview with all or some subset of proposers or bidders may be required. This will be specified in the request or bid documents.

PRICING: All prices shall be quoted exclusive of any taxes. The City of Pikeville is exempt from Federal excise, transportation, and/or Kentucky sales tax. Any items supplied directly to the City from a supplier/manufacturer are exempt from sales tax. Any items purchased by a contractor that will be used in the fulfillment of a contract are not exempt from sales tax.

VALID PROPOSAL OR BID PERIOD: Proposals and Bids shall remain firm and open to acceptance by the City of Pikeville for a minimum period of sixty (60) days after the proposal or bid opening. If the time period has expired, the City of Pikeville could request a letter from proposers or bidders asking to extend the time period.

DELIVERY SCHEDULE: The proposer or bidder is expected to fulfill the delivery as specified in the Construction Agreement.

DEFAULT; TERMINATION OF CONTRACT: In the event that any of the provisions of this Contract are violated by the proposer or bidder such breach shall constitute a default. In the event of a default, the Owner may serve written notice upon the proposer or bidder of its intention to terminate the Contract, such notice is to contain the reasons for such intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the bidder, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate.

LIMITATIONS ON CIVIL JURISDICTION AND LIABILITY. The City of Pikeville does not agree to waive civil litigation jurisdiction and venue outside of Pike County or concede to jurisdiction outside of Pike County, waive its right to a jury trial, accept limitations on liability for professional services, products, or any other items or services procured.”

CONSTRUCTION SPECIFIC INSTRUCTIONS

The following instruction are intended primarily for construction projects. However, where applicable, they will apply unless otherwise excepted or modified in the Scope of Work or Specifications.

SAFETY: The successful bidder must perform work in a safe and timely fashion, maintain a clean and safe work environment, follow safety requirements established by OSHA and the City of Pikeville, and may be required to provide safety equipment. If, in the opinion of the City, safety precautions are not in existence, work will cease immediately until corrective action is taken. Work will begin again only when vendor demonstrates to the satisfaction of the City that conditions are without risk.

INSURANCE REQUIREMENTS: The successful bidder covenants and agrees to the insurance requirements documented in the City of Pikeville's Construction Agreement included within the contract documents.

BONDING REQUIREMENTS: Unless otherwise stated in the Contract Documents, bid, performance, and payment bonds are not required for this project. However, the final payment will not be released without assurance that all sub-contractors and material suppliers providing labor or materials to perform the contract are paid and submittal, to the City Engineer, of a Contractor's Release of Liens and an Affidavit of Release of Liens obtained by the Contractor from all subcontractors and material suppliers providing labor or materials to perform the contract unless the Contractor has posted a Payment bond and Performance bond. In-lieu of an executed Affidavit of Release of Liens, the Contractor may submit paid receipts as proof of payment if the receipt is sufficient to verify that all labor and/or materials used to complete the contract have been paid.

In the event that the Contractor has posted a Payment bond and Performance bond, the contractor only needs to submit a Contractor's Release of Liens verifying that all of the sub-contractors and material suppliers providing labor or material to perform the contract and certifying that each have been paid in full.

HOLD HARMLESS AGREEMENT: The bidder covenants to save, defend, keep harmless, and indemnify the City of Pikeville and all of its officers, department, agencies, agents, and employees from and against all claims, loss, damage, injury, fine, penalties, and costs including court costs and attorney's fees, charges, liability, and exposure however caused resulting from, arising out of, or in any way connected with the bidder's negligent performance or non-performance of the terms of the contract.

CONTRACTOR STATUS: Bidder understands and agrees that its employees, agents, and/or sub-bidders are not employees of City of Pikeville for any purpose whatsoever.

BIDDER'S QUALIFICATIONS: Contractor must demonstrate to the satisfaction of the City of Pikeville that he/she has adequate equipment, personnel, experience and understanding of the specifications to perform service under the contract.

No contract will be awarded to any bidder who, in the opinion of the City, is not qualified to perform satisfactorily due to a previously unfavorable performance, reputation or lack of experience, capital, organization, equipment, and/or personnel to conduct and complete the services in accordance with the terms and conditions of the contract.

Successful bidder must comply with all City of Pikeville ordinances including those relating to Occupational License Fees, Business Licenses, payroll and net profits and any other ordinances which may apply to any particular bid package.

“OR EQUAL” CLAUSE: Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturer’s or vendors’ names, trade names, catalog numbers, etc., it is intended merely to establish a standard; and, any materials, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed, is, in the opinion of the Owner of equal substance and function.

**INVITATION TO BID
FOR
FIRE TRAINING FACILITY (BURN ROOM)**

The City of Pikeville is accepting bids for the purchase and installation of a Fire Training Facility.

Sealed bids will be received at Pikeville City Hall (243 Main Street, Pikeville, KY) until
Wednesday, March 27, 2024 at 2:00 p.m.

The sealed bids should be addressed to: City of Pikeville, Attn: City Clerk, 243 Main Street,
Pikeville, Kentucky 41501. For more information or complete specifications, please visit
<http://pikevilleky.gov/bids>.

The City of Pikeville holds the right to reject any and all bids and proposals or to re-advertise for
additional bids or proposals.

**CITY OF PIKEVILLE
FIRE TRAINING FACILITY (BURN ROOM)**

BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

*Robbi Bentley
City Clerk
City of Pikeville
243 Main St.
Pikeville, KY 41501*

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
---------------------	----------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. If applicable, Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to

existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), and (2) reports and drawings of Hazardous Environmental Conditions.

- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

- 5.01** Bidder will complete the Work in accordance with the Contract Documents for the following lump sum price(s): _____
(\$_____).

ARTICLE 6 – TIME OF COMPLETION

- 6.01** Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02** Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01** The following documents are attached to and made a condition of this Bid:
- A. None

ARTICLE 8 – DEFINED TERMS

- 8.01** The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

- 9.01** This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (Gen. Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____ (CORPORATE SEAL)

Attest _____

Date of Authorization to do business in Kentucky is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

SUBMITTED on _____, 20____.

State Contractor License No. _____. (If applicable)

SCOPE OF WORK

The City of Pikeville is requesting bids for the purchase and installation of a fire training facility to be located adjacent to Fire Station #1 (104 Chloe Road). See attached exhibit for approximate placement.

The successful bidder agrees to purchase and install the fire training facility as specified below.

Bidders are required to submit specifications, floor plans, renderings, and/or other similar documents defining the proposed training facility as part of the bid documents.

If Bidder wishes, they may submit an alternative that they believe to be more cost effective than the specifications below as long as it would be functionally comparable. However, any deviations from the specifications must be clearly noted along with an explanation as to how the performance would be impacted by the change. Evaluations will be based on the specifications below unless no suitable bid with those specifications is submitted.

SPECIFICATIONS

The information included below represents the reference products. Functionally equivalent products built to the same or higher standards or workmanship and durability will be considered.

The reference fire training facility should consist of two (2) "shipping" containers. The containers are to measure, Container (1): 40' x 8', Container (2): 20' x 8'. The two containers are to be located on a suitable concrete foundation for the facility.

Container (1) should be located West to East. The Westerly portion of the container should include a door opening which connects container (1) to the existing burn facility (door already installed). There should be a door located at the midway point of the on the Northside of the container. On the Easterly portion of the container there should be a 8' x 8' insulated burn apron made of high temperature panels and floor and a thermal door combining containers (1) & (2) (see below).

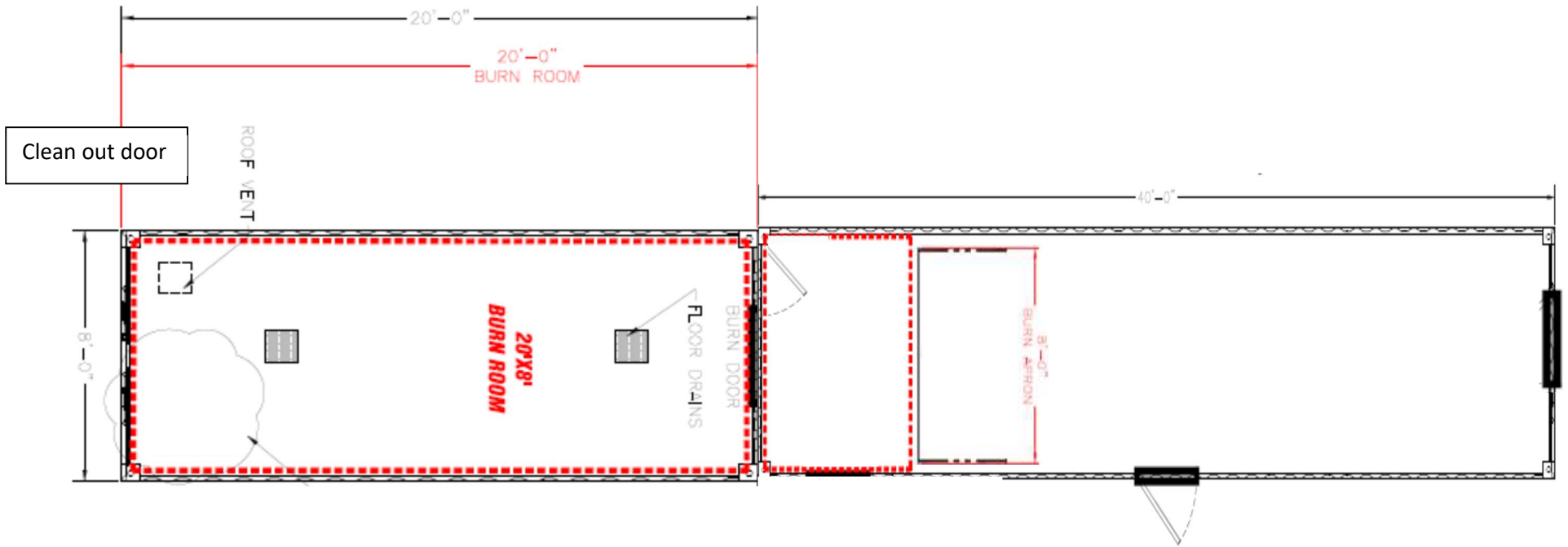
Container (2) should be located West to East. Container (2) should include a 20' x 8' insulated burn room made of high temperature panels and floor, as well as a thermal burn door, located on the West wall. There should be 3 floor drains located in this container with clean out chutes. Located near the Southeast wall should be a clean out hatch for the removal of products within the container.

The interior and exterior of each container should be painted. Color to be determined prior to painting.

Additional specifications include:

Quantity	Item	Meets	Does Not Meet	Exception
1	Door- with locking latch (36" x 80") (Container (1))			
1	Door cut out with flashing combining containers (Container (1)) (existing door 36" x 80")			
1	Roof vent hatch (Container (2))			
1	Thermal burn door (Container (2))			
3	Floor drains with clean out chutes (Container (2))			
1	Cleanout hatch (Container (2))			

**The base bid should assume the foundation will be installed by the City of Pikeville based off of specifications provided by the successful bidder prior to delivery and installation.



CONSTRUCTION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2024 by and between the CITY OF PIKEVILLE (“Owner”) of 243 Main Street, Pikeville KY 41501 and _____ (“Contractor”) of _____, Owner and Contractor, in consideration of the fulfillment of the terms and conditions contained herein to be observed and followed by the parties do hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Bid Documents and other documents described in Article 9 below and are hereafter collectively referred to as contract documents. The Work is generally described as follows:

Fire Training Facility (Burn Room)

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the contract documents may be the whole or only a part is generally described as follows:

Fire Training Facility (Burn Room)

ARTICLE 3 – ENGINEER

3.01 The City Engineer, Bradley K. Slone, P.E., assume all duties and responsibilities, and has the rights and authority as Engineer in connection with the completion of the Work in accordance with the Contract.

ARTICLE 4 – CONTRACT TIME

4.01 Time of the Essence

- A. All time limits completion and readiness as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within **90 days** after the date when the Contract Time commences. The contract time may only be changed by a change order. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is timely made. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by fires, floods, epidemics, abnormal weather conditions, or acts of God.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$200.00** for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$200.00** for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 6.01.A below.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Owner will pay contractor for the work performed here under the total sum of _____ dollars (\$_____).

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the 4th Monday of each month during performance of the Work. All such payments will be measured as follows:
- a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages:
 - i. 90 percent of Work completed (with the balance being retainage); and
 - ii. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- b. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

6.03 Final Payment

Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Owner shall pay Contractor the remainder of the Contract Price as recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

ARTICLE 7 –INTEREST

NOT USED

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
4. If applicable, Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.
5. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and

procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

6. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement (pages 1 to 10, inclusive).
 2. Performance bond (if applicable)
 3. Payment bond (if applicable)
 4. Instruction to Bidders
 5. Bid Form
 6. Scope of Work & Technical Specifications
 7. The following which may be issued after the date of this agreement:
 - a. Notice to Proceed
 - b. Work Change Directives
 - c. Change Orders

The Contract Documents may only be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by either a Field Order, Engineer's approval of a Shop Drawing or Sample, or Engineer's written interpretation or clarification.

ARTICLE 10

10.01 Miscellaneous Terms

1. To the fullest extent permitted by Laws, Contractor shall indemnify, hold harmless and defend (regardless of whether contractor has complied with the insurance provisions herein) Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 performance of the Work, provided that any such 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 the Work itself), including the loss of use resulting therefrom but only to the extent caused by in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them maybe liable.
2. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the work being performed pursuant to this agreement and in the amount set forth in Exhibit A which will provide protection from claims set forth below which may arise out a result from the work being performed under the contract document, whether is to be performed by the contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone whose acts any of them may be liable:
 - a. claims under workers compensation, disability benefits and other similar employee benefit acts and the statutory amount required by the Commonwealth of Kentucky;
 - b. claims for damages because of bodily injury, occupational sickness or disease, or death of contractor's employees and the statutory amount required by the Commonwealth of Kentucky;
 - c. claims for damages because of bodily injury, sickness or disease, or death of any person;

- d. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - e. claims for damages because of bodily injury or death of persons or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- 3. The policies of insurance required by this Paragraph shall:
 - a. With respect to insurance required by Paragraphs 10.01 A. inclusive, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner who shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 - b. Include at least the specific coverages and be written for not less than the limits of liability provided in Exhibit A or required by Laws or Regulations, whichever is greater;
 - c. include completed operations insurance;
 - d. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor.
 - e. Remain in effect at least until final payment and at all times thereafter when contractor may be correcting or removing defective work.
 - f. Contractor shall purchase and maintain property insurance upon the work at the site in an amount of the full replacement cost thereof (contractor shall be responsible for any deductible or self-insured retention). This insurance shall include the interests of owner, contractor and subcontractors.
- 4. Supervision and Superintendence
 - a. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the

means, methods, techniques, sequences, and procedures of construction.

Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

- b. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

5. Services, Materials, and Equipment

- a. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- b. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- c. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- 6. Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by contractor in accordance with the laws and regulations of the place of the project which are applicable during the performance of the work.

7. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
8. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
9. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
10. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer.

10.02 Assignment of Contract

1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

1. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in four copies. One counterpart each has been delivered to Owner, Contractor, Engineer, and Agency. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor.

OWNER:

City of Pikeville

By: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

243 Main Street

Pikeville, KY 41501

CONTRACTOR

By: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

EXHIBIT A

The limits of liability for insurance required by Article 10 shall provide coverage for not less than the following amount or greater where required by Laws and Regulations.

1. Workers' Compensation and related coverages:
 - a. State: Statutory
 - b. Applicable Federal Statutory
 - c. Employer's Liability \$500,000
2. Contractor's General Liability shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the Contractor:
 - a. General Aggregate \$2,000,000
 - b. Products – Complete Operations Aggregate \$1,000,000
 - c. Each Occurrence (Bodily injury and property damage) \$1,000,000
 - d. Excess or Umbrella Liability
 - i. General Aggregate \$2,000,000
 - ii. Each Occurrence \$2,000,000
3. Automobile Liability
 - a. Bodily Injury
 - i. Each person \$1,000,000
 - ii. Each Accident \$2,000,000
 - b. Property Damage
 - i. Each Accident \$1,000,000
 - c. Combined Single Limit of \$1,000,000
4. Owner and Engineer to be endorsed and included on policies as additional insureds with the coverage being primary.