

THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS

COMMONWEALTH OF VIRGINIA

CONTRACT NO.: PRAP-11-0039

CITY OF VIRGINIA BEACH

AGREEMENT BETWEEN

THE CITY OF VIRGINIA BEACH, VIRGINIA

AND

CONTRACTOR

I. IDENTIFICATION OF PARTIES

This Contract, made and entered into as of this _____ day of April, 2011, by and between the City of Virginia Beach, Virginia, a municipal Corporation of the Commonwealth of Virginia, hereinafter referred to as the "City," and having a principal place of business (or residing at) _____, VA, hereinafter referred to as "Contractor".

The parties to this Contract, in consideration of the mutual covenants and its stipulations set forth below, agree as follows:

II. SCOPE OF WORK

Contractor shall perform services as specified in a certain bid of Contractor IFB# PRAP-11-0039 dated _____ 2011, which is attached hereto and made a part of this Contract by reference as if repeated verbatim herein. In the event that a conflict exists between the referenced bid of Contractor and the terms of this Contract, the terms of this Contract shall govern and supersede any such conflicting terms of the bid.

III. CONSIDERATION AND SCHEDULE OF PAYMENT

In consideration of the work to be performed by Contractor, as set forth under paragraph II entitled Scope of Work, the City agrees to pay Contractor the total sum of \$_____.

IV. TERM OF CONTRACT

This Contract shall commence on the date set forth in Paragraph I herein, and shall continue in force for the term of six (6) months.

V. NON-ASSIGNMENT

Contractor shall not assign its rights and duties under this Contract without the prior written consent of the City.

VI. APPLICABLE LAW:

This Contract shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

VII. COMPLIANCE WITH ALL LAWS

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Contract prior to the initiation of work. Contractor further expressly represents that it is a corporation, partnership, or limited liability company in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Contract.

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the City and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or subcontractors. If the Contractor observes that the contract documents are at variance therewith, he shall promptly notify the City in writing. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his bid or Contract or prosecution of the work thereunder. The Contractor shall permit examination of any records made subject to such examination by any state or federal agency charged with enforcement of such law.

VIII. PAYMENTS TO SUBCONTRACTORS

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), the Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City; or, shall notify the City and subcontractor in writing of the intention to withhold all or part of the amount due along with the reason for nonpayment. In the

event payment is not made as noted, the Contractor shall pay interest at the rate of one (1%) percent per month, unless otherwise provided in the contract, to the subcontractor on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor. The Contractor shall provide City with its social security number or federal taxpayer identification number prior to any payments being made under this Contract.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

IX. VENUE

Any and all suits for any claims or for any and every breach or dispute arising out of this Contract shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach.

X. TERMINATION WITHOUT CAUSE

The City may at any time, and for any reason, terminate this Contract by written notice to the Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to the Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or Paragraph I of this Contract.

In the event of such termination, the Contractor shall be paid such amount as shall compensate him for the work satisfactorily completed, and accepted by the City, at the time of termination.

If the City terminates this Contract, the Contractor shall withdraw its personnel and equipment, and shall cease performance of any further work under this Contract, and turn over to the City any work completed or in process for which payment has been made

XI. TERMINATION WITH CAUSE/DEFAULT/CANCELLATION

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract.

Unless otherwise provided, Contractor shall have ten (10) days from the date of such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

XII. HOLD HARMLESS-INDEMNIFICATION

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorneys' fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

XIII. MODIFICATION

Any and all modifications to this Contract shall be mutually agreed to by the City and the Contractor in writing and authorized by the City's Purchasing Agent or his designee. The City's standard method to modify contracts is issuance of a change order (purchase order).

XIV. NON-APPROPRIATION – AVAILABILITY OF FUNDS

It is understood and agreed between the parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the City shall immediately notify Contractor of such occurrence and this Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

XV. SUBMISSION AND DISPOSITION OF CONTRACTUAL CLAIMS:

Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the City and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the City with notice of Contractor's intention to file a claim which (i) describes the act or omission by the City or its agents that the Contractor contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the claim. Such written statement shall be submitted to the City within twenty (20) days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of the Contractor to result from its acting on an order from the City, it shall immediately take written exception to the order. For purposes of this provision, "claim" shall include, without limitation, any request for an increase in the Contract price or time and any request for equitable adjustment. Submission of a notice of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for damages or other relief by the Contractor. Neither an oral notice or statement, nor an untimely notice or statement will be sufficient to satisfy the requirements herein.

The City will review the claim and render a final decision in writing within thirty (30) days of receipt of Contractor's written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

XVI. ENVIRONMENTAL CONSIDERATIONS

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substance, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the City whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any Federal, State or Local standards, requirements, laws, statutes, regulations or the law of nuisance by the Contractor (or its agents, officers, employees, subcontractors, consultants, subconsultants, or any other persons, corporations or legal entities employed, utilized, or retained by the Contractor) in the performance of this contract or related activities, shall be paid by the Contractor. This paragraph shall survive termination, cancellation, or expiration of this contract.

XVII. INSURANCE

Contractor agrees to secure and maintain in full force and effect at all times during the term of this Contract, the following policies of insurance:

1. Workers' Compensation Insurance as required under Va. Code Title 65.2.

2. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the City of Virginia Beach as an additional insured.
3. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision, that the insurance will not be cancelled or materially modified without thirty (30) days prior written notice to the City.

XVIII. PAYMENT AND PERFORMANCE BONDS

Contractor shall furnish to the City a payment bond and a performance bond in conformity with Va. Code § 2.2-4337 and/or 2.2-4339 each payable to the City and each in the sum of the contract amount. The performance bond shall be conditioned upon the faithful performance of the Contract in strict conformity with the terms and conditions of the Contract, and the payment bond shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. Each of the bonds shall be executed by one or more surety companies selected by Contractor which are licensed and legally authorized to conduct the business of insurance, including surety, within the Commonwealth of Virginia.

XIX. INDEPENDENT CONTRACTOR

The Contractor shall agree and covenant that it is and shall be at all times, an independent contractor, and as such, shall have and maintain complete control over all of its employees and operations. Neither the Contractor nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee or servant of the City. Nothing in this section shall be deemed to absolve or otherwise limit the Contractor's liability and responsibility to safely and correctly perform its duties under this contract.

XX. COMPLIANCE WITH IMMIGRATION LAWS

Contractor does not currently, and shall not during the performance of this contract, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986. **[See Section 2.2-4311.1 of Code of Virginia.]**

XXI. SEVERABILITY

The provisions of this contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or

unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

XXII. WAIVER

No failure of the City to exercise any right or power given to it by law or by this contract, or to insist upon strict compliance by contractor with any of the provisions of this contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the City's right to demand strict compliance with the terms of this contract.

XXIII. INTEGRATION

This contract and any exhibits incorporated by reference in this contract constitute the final, complete, and exclusive written expression of the intentions of the parties, and shall supersede all previous communications, representations, agreements, promises or statements, whether oral or written, by any party or between the parties.

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CONTRACTOR

CITY OF VIRGINIA BEACH, VIRGINIA

By: _____
Signature

By: _____
Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NOTARY CERTIFICATE FOR CONTRACTOR

STATE OF _____
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, of _____, a _____ corporation, on behalf of the corporation. He/She is personally known to be or has produced _____ as proper identification.

Notary Public

My Commission expires: _____
My Registration Number: _____

NOTARY CERTIFICATE FOR CITY

STATE OF VIRGINIA
CITY/COUNTY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, on behalf of the City of Virginia Beach, Virginia. He/She is personally known to be or has produced _____ as proper identification.

Notary Public

My Commission expires: _____
My Registration Number: _____

Approved as to Content:

(Using Agency) Date

Approved as to Risk Management

Finance/Risk Management Date

Approved as to Legal Sufficiency
Bonds and Insurance:

City Attorney Date