

REQUEST FOR PROPOSAL

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

City of Virginia Beach
ISSUING OFFICE:

PURCHASING DIVISION
2388 COURT PLAZA DR.
VIRGINIA BEACH, VIRGINIA 23456
(757) 385-4438 FAX: (757)385-5601

PLEASE FILL IN COMPANY NAME & ADDRESS IN THE SPACES PROVIDED:

DATE: April 16, 2015

Attention Of Offeror is Directed To Section
2.2-4367 Thru 2.2-4377 of the Code Of Virginia
[Ethics In Public Contracting]

RETURN THIS COPY

THIS IS NOT AN ORDER

RFP ITEM NO. CVDR-15-0025
CLOSING DATE June 3, 2015
CLOSING TIME 3:00 PM
PROCUREMENT OFFICER JOHN MCCONNELL

THE CITY OF VIRGINIA BEACH RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATION PROCESS. FURTHER, THE CITY RESERVES THE RIGHT TO ENTER INTO ANY AGREEMENT DEEMED TO BE IN THE BEST INTEREST OF THE CITY.

DESCRIPTION OF REQUEST FOR PROPOSAL

THIS DOCUMENT CONSTITUTES A REQUEST FOR SEALED PROPOSALS FROM QUALIFIED SOURCES TO PROVIDE FULL-SERVICE ADVERTISING AND PUBLIC RELATIONS SERVICES FOR THE VIRGINIA BEACH CONVENTION AND VISITORS BUREAU.

**CC: ADVERTISING AGENCY SLECTION COMMITTEE
RFP FILE CVDR-15-0025**

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1_____ #2_____ #3_____ #4_____ (Please Initial)

IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO EXECUTE THE AGREEMENT AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

AUTHORIZED AGENT/SIGNATURE: _____ TELEPHONE#: _____

TYPE OR PRINT NAME: _____ DATE: _____

ENCLOSURES

ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSES

ANTI-COLLUSION CLAUSE:

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN THE RESTRAINT OF FREE, COMPETITIVE BIDDING IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, THE CITY OF VIRGINIA BEACH HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS AGREEMENT, THE AGENCY AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE AGENCY'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE AGENCY'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE AGENCY THAT THE AGENCY MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBAGENCY OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC AGREEMENT AWARDED TO A AGENCY IN ACCORDANCE WITH THIS CHAPTER, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE AGREEMENT.

EMPLOYMENT DISCRIMINATION BY THE AGENCY SHALL BE PROHIBITED:

1. DURING THE PERFORMANCE OF THIS AGREEMENT, THE SUCCESSFUL AGENCY AGREES AS FOLLOWS:
 - a. THE AGENCY, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE AGENCY. THE AGENCY AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - b. THE AGENCY, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE AGENCY, SHALL STATE THAT SUCH AGENCY IS AN EQUAL OPPORTUNITY EMPLOYER.
 - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE AGENCY WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

Name and Address of Offeror:

_____ Date: _____ By: _____

_____ Printed Name: _____ Title: _____

_____ Phone Number _____ Fax Number: _____

FIN # _____

- Is your firm a "minority" business? Yes No If yes, please indicate the "minority" classification below:
- African American Hispanic American American Indian Eskimo Asian American Aleut Other; Please Explain:
- (1) Is your firm Woman Owned? Yes No (2) Is your firm a Small Business? Yes No (3) Is your firm a Service Disabled Veteran Business? Yes No

I. Purpose:

This document constitutes a request for sealed proposals from qualified sources to provide full-service advertising and public relations services for the Virginia Beach Convention and Visitors Bureau.

II. Background:

A. Mission:

Virginia Beach Convention and Visitors Bureau:

The mission of the Virginia Beach Convention and Visitors Bureau is to promote and preserve the image of Virginia Beach as a superior quality, year-round, family resort destination and to serve the broader interest of Virginia Beach by supporting, maintaining and expanding the City's domestic and international travel, convention and participatory sports events markets, thereby generating increased visitor expenditures, tax revenues and employment.

B. Goals:

The City's advertising and public relations goals as they relate to the services described herein are to position Virginia Beach as a leading beach resort in the United States by promoting the major attributes of the City; to expand the tourist, participatory sports events and convention industry; and to generate increased revenues for the City and create quality employment opportunities for its residents.

C. Budget:

Advertising and public relations activities are currently budgeted at approximately \$10 million per year through the agency and directly from the CVB.

III. Scope of Work:

A. General Requirements:

1. Overview:

Agency shall provide full-service advertising and public relations services to the Virginia Beach Convention and Visitors Bureau. Agency shall perform such advertising and public relations services as may be authorized and required by the City to promote the goals of the Virginia Beach Convention and Visitors Bureau. Any resulting Agreement from this solicitation may also be utilized by other City agencies as required or "on an as-needed basis."

2. Public Relations:

Full-service public relations services shall provide for, but not be limited to, an integrated program for supporting and maintaining brand development and interactive strategies including, but not limited to, maintaining an online pressroom, production and appropriate distribution of news releases and articles, organization of familiarization trips and press visits, publicity programs, creation of promotional materials and activities, formulation of public relations strategies, coordinating market research, and providing other public relations/marketing activities related to promoting convention, sports marketing and tourism development and positive image of Virginia Beach.

3. Advertising Services:

Full-service advertising services shall include, but not be limited to, production and placement of media advertisements, creation of promotional materials and activities, formulation of marketing strategies, coordinating market research, brand development, brand management, integrated interactive website development and hosting, development of customer relationship management tools, research for developing the best media-mix (print, Web, broadcast, mobile, etc.), formulation of media strategies and development of promotional materials supporting the brand and brand development strategy, and providing other marketing/advertising activities related to promoting convention, sports marketing and tourism development.

B. Specific Requirements:

1. Tentative Agreement:

All work shall be performed in accordance with the tentative agreement incorporated herein as Exhibit A.

2. Approval:

All services provided by the Agency shall be authorized by the City.

3. Location of Service Facility:

Agency shall establish an office in Virginia Beach, Va., if it does not presently operate an office in the immediate Hampton Roads area.

IV. Special Instructions to the Offeror:

A. Pre-proposal Conference:

A pre-proposal conference will be held in the Virginia Beach Convention Center located at 1000 19th Street, Virginia Beach, Virginia on May 13, 2015 at 11:00 a.m. The purpose of the conference is to clarify the RFP and answer any questions. Any changes determined necessary as a result of this conference or any other source which may affect the responses to the solicitation will be formally addressed by the issuing office via addenda. Attending this conference is not mandatory, but is advisable. After the pre-proposal conference, please direct all questions by telephone to the appropriate City Representative indicated below:

1. Convention & Visitors Bureau Representative: Mr. Chuck Applebach, (757) 385-6620, cappleba@VisitVirginiaBeach.com.
2. Purchasing Division: Mr. John McConnell, (757) 385-8272, jmcconne@vbgov.com.

B. General Submittal Terms and Conditions:

1. Definitions of Terms:

The following definitions of terms are used herein:

- a. The term "City" refers to the City of Virginia Beach.
- b. The term "Offeror" refers to the person, firm, or company that provides a proposal in response to this request for proposal (RFP) and who may or may not be successful in achieving an opportunity to negotiate for the final award of an Agreement.
- c. The term "Agency" means the Offeror to which the Agreement will be awarded. References to the Agency in this RFP shall

also apply in full to any subcontractor for the named Agency.

2. Submittal of Proposals:

- a. The proposal and required copies shall be placed in a sealed envelope or package that shall be identified with the request for proposal's item number and the name and address of the Offeror.
- b. An original and ten copies of each proposal shall be submitted (Total of 11). The original proposal should be clearly marked "Original" on its outside cover.
- c. All proposals shall be received and time-stamped in the office location described below no later than the Closing Date and Time shown on the cover of this Request for Proposal. Proposals received after the specified date and time (time-stamped 3:01 p.m. or later) shall not be considered and shall be returned unopened to the Offeror.
- d. Issuing Office:
City of Virginia Beach
John McConnell, Procurement Services Coordinator
Kempsville Building
2388 Court Plaza Drive
Virginia Beach, Virginia 23456
(757) 385-4438
- e. Proposals received by telephone, e-mail, or facsimile shall not be accepted.
- f. An Offeror receiving a request for proposal from a source other than the issuing office should contact the issuing office to become an Offeror of Record before submitting its proposal.

3. Examination:

The Offeror shall carefully examine the specifications.

4. Questions:

- a. Questions concerning this solicitation may be made by telephone, e-mail, or in writing. Questions should be addressed to the issuing office by May 15, 2015. Telephonic

question should be directed to the appropriate person listed in section IV. A. of this RFP.

- b. Any material changes to the solicitation document will be addressed by issuance of a written addendum to all Offerors of Record that will become part of the proposal documents.
- c. Oral instructions do not form a part of the proposal documents.
- d. The Offeror shall check with the issuing office within 48 hours prior to proposal closing to secure any addenda affecting bidding.

5. Conditions of Work:

Each Offeror shall inform himself/herself fully of the conditions relating to the project and the employment of labor therein. Failure to do so will not relieve a successful Offeror of his/her obligation to furnish all materials and labor necessary to carry out the provisions of this Agreement.

6. Anticollusion/NonDiscrimination/Drug-Free workplace Form:

The attached Anticollusion/Nondiscrimination/Drug-Free Workplace form incorporated herein (page 2) should be executed and returned with the proposal documents.

7. Proposal Binding for One Hundred Twenty (120) Days:

The Offeror agrees that this proposal shall be good and may not be withdrawn for a period of one hundred and twenty (120) calendar days after the scheduled closing time for the request for proposal.

8. Proprietary Information:

- a. Offerors are advised that Section 2.2-4342 of the Code of Virginia, i.e., the Virginia Public Procurement Act, shall govern public inspection of all records submitted by the Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, **Offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is needed.** Furthermore, the Offeror

shall submit proprietary information under separate cover, and the City reserves the right to submit such information to the City Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to proprietary information; however, all information contained within the body of the proposal not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes.

- b. The proprietary or trade secret material submitted must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the Offeror refuses to withdraw an entire classification designation, the proposal will be rejected.

9. Price Quotations:

All prices shall be quoted in U.S. dollars. Prices quoted will be considered firm, unless subsequently negotiated as different and agreed to by both parties to the final Agreement.

10. Proposal Costs:

Offerors shall be responsible for all costs incurred in the development and submission of a proposal. The City assumes no contractual obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by an Offeror, any cost associated with interviews and travel, or any other Offeror cost involved in a response.

11. Exceptions:

Proposals should be as responsive as possible to the provisions stated herein, however, an Offeror may make exceptions to the provisions without their proposal being disqualified. During the evaluation process, the City will consider whether the impacts of any such exceptions are positive or negative. The Offeror should clearly indicate when exceptions or deviations are being taken and state the reason why. Notwithstanding the above, proposals received late shall be rejected.

12. Award:

The award of an Agreement shall be the sole discretion of the City. The award shall be based upon the evaluation of all information as the City may request. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informalities in the bidding. Further, the City reserves the right to enter into any Agreement deemed to be in the best interest of the City.

13. Public Notice of Award or Decision to Award:

Public notice of the award or the announcement of the decision to award shall be provided by posting the appropriate notice on the "bid board" located in the issuing office and posting it on the City's website.

C. Preparation Guidelines:

For consideration, all proposals should be as responsive as possible to the solicitation. In order to adequately evaluate the proposals, all Offerors should use the following format:

1. Experience:

The Offeror shall provide a concise description of the Offeror's work experience as it relates to the scope of work outlined herein. Said description should include a matrix that outlines the Offeror's experience. The matrix should show the names of at least five clients where similar services were provided along with a description of the services provided, total value of the contract, date service was provided, and name and telephone number of a contact person for that client.

2. Capability and Skill:

Offeror shall provide a description of the qualifications and skills of the organization and personnel that shall be responsible for performance of the service. Such description shall, at a minimum, include:

a. A company profile providing the following information:

- (1) Firm's name and business address, including telephone and facsimile numbers and Web site URL;

- (2) Year established (include former firm names and year established, if applicable);
 - (3) Organizational Chart of the firm;
 - (4) The name, title, address, and telephone number of the Offeror's authorized negotiator. The person cited shall be empowered to make binding commitments for the firm and its subcontractors, if applicable.
- b. Quantitative data regarding Offeror's qualifications to perform the service, e.g., total billings for the last three years; percentage of billings in each medium; billing of largest account; billing of smallest account; total number of employees broken down in the following categories:
- (1) Advertising Account Service
 - (2) Media
 - (3) Public Relations
 - (4) Creative Services
 - (5) Estimating/Traffic/Production
 - (6) Research
 - (7) Accounting Administration
 - (8) Web Interactive
 - (9) Other
- c. Resumes of key employees who will be associated with performing the services and their office location.
- d. Examples of Offeror's capability to increase specific client's growth, market-share and share-of-awareness.
- e. A synopsis of Offeror's ability to integrate Internet Technologies into clients' overall marketing programs augmented with examples of projects completed.

- f. A list of Offeror's present clients identifying any accounts that could be considered as "competing" accounts.
- g. Resources available to Offeror for the performance of the Agreement.
- h. Documentation that if the Offeror is awarded the Agreement, they will be able to obtain the required insurance and surety stipulated in the Agreement.
- i. Documentation to show that Offeror is properly registered with the Commonwealth of Virginia State Corporation Commission.
- j. Description of financial stability and other resources that most adequately ensure the delivery of acceptable services to the City. Offeror shall indicate the type of organization they represent, i.e., individual, partnership, or corporation. If Offeror represents a corporation or partnership, the names of the President, Vice-President, Secretary, Treasurer, and all principals or partners shall be listed. Offeror should provide financial statements, i.e., audited annual financial reports for the previous three years.

3. Services to be Performed:

Offeror shall provide a description outlining the services to be performed. Such description should, at a minimum, provide:

- a. Offeror's understanding of the project.
- b. Objectives of the project.
- c. Scope of the project, e.g., parameters of services to be provided by Offeror.
- d. Proposed approach to providing the services.
- e. A list of any exceptions taken to the tentative agreement (Exhibit A).

4. Price:

Offeror shall provide a detailed description of the cost or fee structure under which the Offeror proposes to be paid under the Agreement.

Such description, at a minimum, shall provide the hourly billing rates of its personnel, commission to be applied to commissionable and non-commissionable media, and any add-on fee that will be applied for work subcontracted out.

Offeror should address each of the above areas fully and should not necessarily limit responses only to the points stated.

D. Proposal Opening:

Directly after the closing date and time, proposals received timely shall be opened. Only the names of Offerors submitting proposals shall be read aloud. No other information will be provided at that time.

E. Evaluation:

Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the factors listed below:

1. Offeror's experience in providing the services requested.
2. Offeror's capability and skill to perform the services.
3. Responsiveness of the written proposal to the purpose and scope of services.
4. Price.

Negotiations shall then be conducted with each of the Offerors so selected. As part of negotiations, creative presentations shall be required of the selected Offerors. After negotiations have been conducted with each Offeror so selected, the public body shall select the Offeror which, in its opinion, has made the best proposal, and shall award the Agreement to that Offeror. Should the public body determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, an Agreement may be negotiated and awarded to that Offeror.

The City of Virginia Beach is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

F. Submittal:

Offeror shall submit the following documents/information:

1. Cover page of Request for Proposal with signature, title, and date.
2. Completed anticollusion/nondiscrimination/drug-free workplace form (page 2).
3. Proposal as requested herein under Section IV, Subsection C, entitled "Preparation Guidelines."

odwyerpr.com

CITY OF VIRGINIA BEACH
ADVERTISING AND PUBLIC RELATIONS
SERVICES AGREEMENT
TOURISM

THIS AGREEMENT, is made this _____ day of _____, 2015, by and between _____, hereinafter referred to as Agency, and the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia (the "City"), acting by and through the Director of the Virginia Beach Convention and Visitors Bureau, and by the directors of other City agencies on an as-needed basis.

WITNESSETH

That for and in consideration of the mutual promises hereinafter set forth, the Agency and the City covenant and agree each with the other as follows:

1. That beginning January 1, 2016, and continuing for a term of three (3) years, or until December 31, 2018, the Agency shall perform such advertising and public relations services as may be authorized and required by the Director to advertise and promote tourism, conventions, and sports marketing, and to analyze, at the request of the Director, the effectiveness of the advertising and public relations programs implemented pursuant to this Agreement. Further, in an effort to standardize the quality of production material used to promote the City, the Agency agrees to endeavor to contract with other business entities that are involved with the Marketing/Promotion of the City,

such as Beach Events, for the production of their material. The City may at its option extend the term on a year-to-year basis, but in no event can this Agreement be extended past December 31, 2020. Any and all contracts entered into by the Agency in furtherance of this Agreement shall be entered into in the name of the Agency, and not the name of the City of Virginia Beach.

2. Notwithstanding anything herein to the contrary, combined total expenditures to and through the Agency for advertising and public relations and including all related charges, shall not exceed those annual advertising budgets established by the Director with the City and any additional amounts that may be duly authorized for any year during the period of this Agreement.
3. Advertising, Promotion and Public Relations.
 - A. With respect to commissionable media, the Agency will be compensated by the City for media space and time costs, less any cash discount allowed by media. In lieu of the standard fifteen percent (15%) commission paid the Agency by media, Agency shall accept a reduced commission of _____ percent with the difference being rebated back to the City. The reduced commission shall compensate the Agency for its costs in connection with media placements which include but are not limited to the following:
 - (1) Office overhead;
 - (2) Customary analysis and research;

- (3) Time as required by the Director in order to provide for a close working relationship between the Agency and the Director, or representatives, in programming and planning effective advertising and promotion programs;
 - (4) Travel and communication between the offices of the Agency and the Director as may be required of the Agency by the Director from time to time; and
 - (5) Other out-of-pocket and incidental expenses not directly involved in production or media scheduling.
- B. With respect to non-commissionable media, the Agency will be compensated by the City for media space and time costs, less any cash discount allowed by media. The Agency shall be entitled to a commission of _____ percent (_____ percent of gross billing) on such space and time costs to compensate it for its costs in connection therewith which include but are not limited to items (1) through (5) set forth in paragraph 3A above. Any non-commissionable material or work for which the Agency will be compensated shall be discussed and agreed to by the Director prior to Agency's preparation of such work or material.
- C. With respect to public relations services, the Agency will be compensated in an amount to be agreed upon in advance for each such project.

4. Upon request by the City, the Agency shall provide to the City copies of all duly executed contracts and/or insertion orders or contracts previously authorized by the Director covering advertising purchases in selected media. Contracts shall state the name of media, insertion date(s), and rate(s) and cash discount(s) if allowed.
5. Upon request by the City, the Agency shall provide the Director with tearsheets or other proof of performance of all advertising as soon as practical.
6. The City will compensate the Agency for production costs, including creative direction, art work, composition, photographs, typography, engravings and printing with respect to projects finally accepted for use by the City, provided that the Agency shall have first presented to the City an estimate of said production costs and provided further that the final production costs shall not exceed the estimate without prior approval. Personal service costs shall be itemized to show actual rate routinely charged by the Agency for the employees' services and the number of hours devoted to the production unit. Any request for payment of production services performed by Agency subcontractors shall be supported by itemized invoices from the subcontractor. The Agency shall be entitled to an add-on fee of _____ percent of the subcontractor's bill for work produced by such subcontractors with respect to projects authorized by the City. Any travel costs in connection with production services will be considered billable if authorized in advance

by the Director. Such travel will be reimbursed in accordance with the then-current City travel regulations. Production charges will be billed at the end of the month in which the production unit is completed, except in the case of unusually large projects that may span an excessive period of time. In such cases, partial billing by the Agency may be rendered at the end of various phases of the project for costs actually incurred by the Agency.

7. Reimbursement to the Agency for authorized research and other projects not considered as customary services in the execution of advertising, promotion and/or public relations assignments will be subject to advance negotiation and agreement for each such project.
8. All job control and time records with respect to production costs shall be open to inspection by the Directors or their authorized agent(s) during regular business hours.
9. The Agency will not accept or participate in any proposition to promote or otherwise conduct campaigns for political candidates running for City offices and/or for City constitutional offices, so long as this Agreement remains in effect.
10. This Agreement may be terminated by the City, with or without cause, by giving sixty (60) days written notice, by registered or certified mail, to that effect to the other party.
11. Upon termination of this Agreement, the Agency shall:
 - (1) Transfer and make available to the Director or authorized

representatives all property and materials under its control which belong to the City's advertising and promotion and public relations services and programs in its possession; and

- (2) Assign, subject to approval of third parties in interest, if necessary, all reservations, contracts and arrangements with advertising media or others for advertising space, time, materials, or services yet to be used with all rights and claims thereto and therein, and no extra compensation shall be paid to the Agency for its services in making such assignment. The City shall assume, upon said assignment, all obligations of the Agency which the City authorized it to incur with third parties and for which the Agency has not been paid, and the City shall release the Agency therefrom. If any third party in interest fails to approve the assignment to the City by the Agency of any reservation, contract, or other arrangement with such third parties, then the Agency shall fulfill its obligation to the City pertaining to such reservation, contract, or arrangement as if this Agreement had not been terminated.

12. At the end of the term of this Agreement or upon termination thereof, all plans for advertising, preliminary sketches, collateral materials, layouts, copy materials, films, slides, electronic files, and other materials used in the City's advertising and promotion programs and/or public relations services and paid for the City shall be the exclusive property of the City and returned to the

Director.

13. Upon termination of this Agreement, the Agency shall bill the City for, and the City shall then pay, all amounts not previously billed or paid for which the Agency is entitled to claim reimbursement from the City under the terms of this Agreement. The Agency is to receive no further compensation or commissions in connection with space, time, materials, or services, the payment for which shall become due to an advertising medium or others after the termination of this Agreement, except to the extent that the Director shall have already approved material prepared by the Agency and has authorized the Agency to place the same in the media for specific dates that are past the dates of termination of this Agreement.
14. Agency shall submit to the City a certificate of insurance written by a company or companies acceptable to the City and licensed to conduct the business of insurance in the Commonwealth of Virginia. Such certificate of insurance shall be submitted to the City prior to beginning work under the Agreement and no later than ten (10) days after execution of the Agreement. Such insurance shall be maintained during the entire term of the Agreement and shall be in the forms and limits as shown below:
 - A. Commercial General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000). Such insurance shall name the City of Virginia Beach as an additional insured.
 - B. Workers' Compensation at levels in accordance with Virginia statutory

requirements.

- C. Advertising liability or its equivalent in an amount not less than Five Million Dollars (\$5,000,000).
- D. Commercial crime insurance including employee dishonesty coverage and endorsements naming the City as joint loss payee at limits not less than Five Hundred Thousand Dollars (\$500,000).

The City of Virginia Beach shall be named as an additional insured under any and all such policies.

15. Contract (Performance) Bond:

A contract bond in the amount of \$750,000 shall be required from the Agency within ten (10) days after the execution of the Agreement. The bond shall ensure the Agency's faithful performance in strict conformity with the Agreement. Said bond shall be issued by a surety company authorized to write surety in the Commonwealth of Virginia and meet the approval of the City.

16. It is understood and agreed that the Agency 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 the Agency, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. The Agency 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 attorney's 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 Agreement, and (c) the performance of work by the Agency or those for whom the Agency is legally liable. Upon written demand by the City, the Agency shall assume and defend at the Agency's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

The Agency agrees that it shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement and shall save harmless and indemnify the City and its officers and employees from and against all claims of whatever nature asserted by third parties against the City and its officers and employees based upon "contracts" made between the Agency and such third parties in carrying out the terms of this Agreement, provided, however, that the City shall pay to the Agency any charges made by any such third party where such a contract had been previously presented to and approved by the City and such contract has been satisfactorily performed. The term "contract" as used in this paragraph shall mean an agreement between the Agency and any third party for the purchase of advertising time or space in any medium or the purchase of advertising materials or services, including, but not limited to, engravings, films, slides,

and production costs.

17. Employment discrimination by the Agency shall be prohibited. During the performance of this Agreement, the Agency agrees as follows:
 - A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, sex, age, national origin, or handicap, except where religion, sex, age, national origin or handicap is a bona fide occupational qualification reasonably necessary to the normal operation of the Agency. The Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - B. The Agency, in all solicitations or advertisements, for employees placed by or on behalf of the Agency, shall state that such Agency is an equal opportunity employer.
 - C. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - D. The Agency will include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
18. THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

19. Notwithstanding anything in this Agreement to the contrary in the event that this Agreement is terminated by the City as a result of a breach thereof by the Agency, then the City shall have the right to retain any sums due or to become due to the Agency to be applied to the payments of any damages as costs to the City which result from or arise out of the breach of this Agreement by the Agency.
20. This Agreement is not assignable without the written consent of the City and the Agency.
21. This Agreement is entered into and is intended to be performed in Virginia, and the validity, enforceability, interpretation, and construction hereof shall be determined and be governed by the laws of the Commonwealth of Virginia, and the parties designate the Circuit Court of the City of Virginia Beach or the U.S. District Court for the Eastern District of Virginia, Norfolk Division for purposes of all litigation and venue.
22. The City's RFP Item #CVDR-15-0025 and the Agency's proposal submitted in response to the solicitation and subsequent modifications made to the proposal through the RFP process are hereby incorporated by reference; provided, however, that in the event there is a conflict between the provisions of the RFP or the proposal, and the provisions of this Agreement, the provisions of this Agreement shall be controlling.
23. In the event any provision or provisions of this Agreement are determined to be void, ultra vires, or otherwise unenforceable by a court of competent

jurisdiction, as designated herein, the remaining portions of this Agreement shall continue in full force and effect.

24. It is understood and agreed between the parties herein that the City will be bound hereunder only to the extent that funds shall have been appropriated and budgeted or are otherwise available for the purpose of this Agreement. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments due under this Agreement, the City shall immediately notify the Agency of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever.
25. Agency 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. Agency 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 Agreement prior to the initiation of work. Agency further represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Agreement.
26. During the performance of this Agreement, the Agency agrees to (i) provide a drug-free workplace for the Agency's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution,

dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Agency's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Agency that the Agency maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Agreement awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

27. This Agreement shall not be modified without the prior written consent of both parties.
28. Agency acknowledges that all services it provides under this Agreement are provided as an independent contractor on a work-for-hire basis. All intellectual property rights and other proprietary rights in any work resulting from the performance of services under this Agreement shall vest and be held in the name of the City.
29. Agency does not currently, and shall not during the performance of this

Agreement, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986.

30. 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 Agency's intention to file a claim which (i) describes the act or omission by the City or its agents that the Agency 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, learning of the existence of the claim, or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of the Agency 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 Agreement price or time and any request for equitable adjustment. In no event shall a delay in providing such notice preclude recovery for an existing or pending claim unless such delay has prejudiced the City and then only to the extent of such prejudice. Neither an oral 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 Agency's written request for a final decision. Agency

reserves all rights to challenge the final decision in a court of competent jurisdiction

31. Foreign and Domestic Businesses Authorized To Transact Business In The Commonwealth:

The Agency shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. The Agency shall submit proof of such registration to the City. Additionally, the Agency shall not allow its certificate of registration or authority to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the Agreement.

32. Business License Requirement:

If Agency is a business, located in the City of Virginia Beach or at any time during the performance of this Contract obtains situs for purposes of business license taxes, it shall be unlawful for such business to conduct or engage in such business, trade or occupation without having first obtained the proper license from the Commissioner of Revenue of the City, and Agency covenants that it has a business license where one is required to perform this Contract.

33. Audits:

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in

whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Agency, including, but not limited to those kept by Agency, its employees, agents, assigns, successors and subcontractors. Agency shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Agency's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

IN WITNESS WHEREOF, the Agency and the City have caused this Agreement to be signed and sealed by their duly authorized officers.

CITY OF VIRGINIA BEACH, VIRGINIA

By _____
Bill Davis
Purchasing Agent

AGENCY

By _____
Name:
Title:

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

I, _____, a Notary Public in and for the City and State aforesaid,
do hereby certify that Bill Davis, Purchasing Agent for the CITY OF VIRGINIA BEACH, whose name as
such is signed to the foregoing Agreement, has acknowledged the same before me in my City and State
aforesaid.

GIVEN under my hand this _____ day of _____, 2015.

Notary Public

My Commission Expires: _____

STATE OF _____
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and State aforesaid,
do hereby certify that _____, whose name as such is signed to the foregoing
Agreement, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this _____ day of _____, 2015.

Notary Public

My Commission Expires: _____