

# **REQUEST FOR PROPOSALS (RFP # VBDA-21-02)**

## **Annual Services Contract for General Civil Engineering**

**City of Virginia Beach Development Authority - Virginia Beach, VA.**

### **I. Purpose:**

This document constitutes a request for a sealed proposal from an experienced and qualified source to provide engineering services for the City of Virginia Beach Development Authority ("VBDA").

### **II. Background:**

The VBDA has control over 500 acres (nearly 300 acres of which are still available) of land and other fixed (buildings) assets such as six municipal garages, two golf courses, warehouse space, and office space.

The VBDA is authorized to contract and be contracted with, acquire, whether by purchase, exchange, gift, lease, or otherwise, to improve, maintain, equip, furnish, and construct one or more VBDA facilities, lease, sell, exchange, donate, and convey any or all of its facilities or other properties (real or personal), issue Industrial Revenue Bonds, and administer the Economic Development Investment Program (EDIP).

### **III. Scope of Work:**

The VBDA is soliciting statements of interest and qualifications from interested firms to provide a variety of engineering, surveying, real estate acquisition, inspection, project management, technical and support services, including but not limited to: studies, design, transportation planning and analysis, incidental land surveys, environmental services, testing and analysis, structural and geotechnical engineering, and landscape design services. These services will be provided on an annual basis and renewable annually for four (4) additional years for a total term of five (5) years. The maximum amount for any work order and the annual maximum shall be in accordance with § 2.2-4303.1 of the Code of Virginia as amended. There is no guarantee of the amount of work that will be authorized.

### **IV. Contract Term:**

The contract period shall consist of a term of one (1) year with four (4) optional one-year renewals at the option of the VBDA.

### **V. Qualification Requirements:**

The successful firm must demonstrate expertise and experience in the planning, design, and construction of a variety of civil engineering related projects including, but not limited to: site improvements, drainage improvements, highway/roadway improvements, street reconstruction, intersection improvements, traffic/pedestrian traffic safety improvements, preliminary alignments, transportation planning, highway/roadway corridor studies,

construction inspections, and related services. Related services will include, but not be limited to: preparation of grant applications, environmental studies, regulatory permitting, water and sanitary sewer design, drainage and storm water management design, traffic signal and signal pole foundation design, streetlight design, pavement design, geotechnical analysis, development of aesthetic elements such as streetscapes and landscaping, coordination experience with private utility companies for relocation of existing facilities, assistance with real estate acquisition, public relations/hearings involvement, and preparation of supplemental specifications and standards. A demonstrated knowledge of applicable federal, state, VDOT, HRPDC, and City of Virginia Beach Specifications, Standards, and design criteria is required, as well as the ability to prepare a Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges from construction activities. The firm must have a demonstrated history and ability to provide quick response to projects of immediate need which will be a significant factor by the selection committee.

**VI. Evaluation Criteria:**

**Respondent Qualifications:**

*(The percentage listed in parenthesis is the weight that each selection criteria will have in the evaluation of the proposals.)*

The selection criteria require:

- a. Professional qualifications of staff assigned and specialized experience in the type of work required (20%)
- b. Familiarity with project and conceptual approach proposed to address those requirements (10%)
- c. A working knowledge of the new Virginia Beach Public Works Design Standard Manual, in particular the stormwater requirements. Engineer must be able to demonstrate SWMM experience using the Master Models from Virginia Beach Public Works (10%)
- d. Quality of past performance on similar projects (10%)
- e. Experience and qualifications of any consultants (10%)
- f. Current volume of work that could affect ability to complete the work on time (10%)
- g. Capability to provide aesthetic design features in keeping with the City of Virginia Beach and community goals for a quality outcome (10%)
- h. Demonstrated ability for a high degree of public participation and related coordination for input and resolution of project issues (10%)
- i. Evidence of cost control effectiveness (10%)
- j. Insurability (Pass/Fail) – Qualified responders shall have the minimum insurance requirements listed below:

<u>Form</u>	<u>Limits</u>
(i) Workers' Compensation	Statutory
(ii) Automobile Liability	\$1,000,000 Combined Single Limit
(iii) Commercial General Liability	\$1,000,000 Combined Single Limit

- k. Responder can have no outstanding debts or claims against the City of Virginia

Beach at the time of execution. (Pass/Fail)

## **VII. Submittal of Proposals:**

Each respondent must submit with its proposal the items listed below:

- a. Five copies of each proposal in a sealed envelope marked “**RFP # VBDA-21-02, Annual Services Contract for General Civil Engineering**” on the outside.
- b. All proposals shall be received and date-stamped in the location described below no later than **Monday, October 5, 2020 at 3 p.m.** **All proposals received after that time will not be considered and will be returned unopened to the respondent.**
- c. **A non-mandatory pre-proposal conference will be held on Thursday September 24, 2020 at 10 a.m.** Details of meeting will be posted at [www.yesvirginiabeach.com/rfp](http://www.yesvirginiabeach.com/rfp).
- d. Location for submissions: City of Virginia Beach Development Authority  
Attention: Taylor V. Adams, Director  
City of Virginia Beach Economic Development  
4525 Main Street, Suite 700  
Virginia Beach, Virginia 23462
- e. Proposals submitted by telephone, facsimile, or e-mail will not be considered.
- f. The complete RFP and all relevant documents to this RFP can be found online: [www.yesvirginiabeach.com/rfp](http://www.yesvirginiabeach.com/rfp)
- g. All technical questions should be directed to [ecdev@vbgov.com](mailto:ecdev@vbgov.com).

## **VIII. Contents of Proposal:**

Respondents must include in their proposal the following documents and information which will be used as evaluation criteria:

- a) Specialized experience in work required and professional qualifications of staff assigned
- b) Familiarity with work similar to past VBDA projects
- c) Demonstration of SWMM experience using the Master Models from Virginia Beach Public Works
- d) Past performance
- e) Experience and qualifications of any consultants
- f) Current volume of work and capacity to accomplish work in required time
- g) Cost control effectiveness
- h) Public participation and related coordination for input and resolution of project issues
- i) Aesthetic design features in keeping with the City of Virginia Beach and community goals for a quality outcome
- j) Evidence of insurability at limits described above and a copy of your current insurance coverage
- k) Anti-collision / Nondiscrimination / Drug Free Workplace Form as

referenced below.

- l) Any exceptions to the form Service Agreement (Attachment 2).

### **IX. Review and Selection:**

The VBDA will evaluate the proposals based on the above criteria and the amount of experience with similar management contracts. The participants will be notified by mail of the VBDA's selection. The VBDA reserves the right to reject any and all proposals and to select the proposal(s) that it deems is in the best interests of the VBDA as defined by the above evaluation criteria.

Only responsive and responsible proposals will be considered. Proposals that attempt to change or do not meet the requirements in this Request for Proposals may be rejected as being non-responsive. Each proposal shall be considered a valid offer until the VBDA notifies participants that it has selected a proposal.

If a proposal is selected, the VBDA will notify the selected participant and will prepare an annual service contract setting forth the terms consistent with the terms in this Request for Proposals and the participant's proposal. The engineering firm will sign the contract, and then the matter will be put on the VBDA's Agenda for a public hearing and formal approval pursuant to applicable laws and procedures.

The VBDA reserves the right to select multiple proposals for negotiation and award of a contract.

NOTE: It is the policy of the City of Virginia Beach to encourage the participation of minority-businesses in City procurement activities. In furtherance of this policy the City adopted Sections 2-224.1 through 2-224.8 of the City code on February 28, 1995 (commonly referred to as the Minority Procurement Ordinance 95-2309).

Pursuant to Section 2-224.5, in order for an RFP to be given further consideration, the submittal must contain a statement setting forth: a) The good faith minority-business participation efforts which the A/E has undertaken in the past; and b) The good faith minority-business participation efforts which the A/E intends to undertake in connection with the services to be provided for this project. c) If, in the statement submitted in response to subsections (a) and (b), the Bidder indicates that it has not undertaken any good faith minority-owned business participation efforts in the past and/or does not intend to undertake any such efforts in connection with the performance of this contract, Bidder must also submit a statement setting forth the reasons why it has not undertaken such efforts in the past and/or does not intend to undertake them in connection with the performance of this contract.

### **X. Anticollusions / Nondiscrimination / Drug-free Workplace Form**

The attached Anticollusion/Nondiscrimination/Drug-Free Workplace form incorporated herein (Attachment 1) should be executed and returned with the proposal documents.

**ATTACHMENT 1**  
**(RFP # VBDA-21-02)**

**Anticollusion / Nondiscrimination / Drug-Free Workplace Form**

**ANTICOLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSE**

**ANTICOLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID BIDDER 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 59.1-68.8 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THERE FROM, 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 BID; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS BID.

**DRUG-FREE WORKPLACE**

DURING THE PERFORMANCE OF THIS AGREEMENT, THE BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE BIDDER'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 BIDDER'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 BIDDER THAT THE BIDDER MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS I, II, AND III IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR 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 CONTRACT AWARDED TO BIDDER 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 CONTRACT.

### **NONDISCRIMINATION CLAUSE**

1. EMPLOYMENT DISCRIMINATION BY BIDDER SHALL BE PROHIBITED.
2. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER SHALL AGREE AS FOLLOWS:
  - a) THE BIDDER, WILL 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/CONSIDERATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE BIDDER. THE BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b) THE BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED ON BEHALF OF THE BIDDER, WILL STATE THAT SUCH BIDDER 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) BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS 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.

*[ SIGNATURE(S) ON FOLLOWING PAGE ]*

**Bidder Information:**

By: \_\_\_\_\_  
(signature)

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

-mail: \_\_\_\_\_

Phone No. (\_\_\_\_) \_\_\_\_\_

Fax No. (\_\_\_\_) \_\_\_\_\_

TIN \_\_\_\_\_

**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:* \_\_\_\_\_

**Is your firm Woman Owned?**  Yes  No

**Is your firm a Small Business?**  Yes  No

**ATTACHMENT 2**  
**(RFP # VBDA-21-02)**

**SERVICE AGREEMENT (FORM)**

GENERAL TERMS AND CONDITIONS:

**A. *Term of Agreement***

This Agreement shall commence on \_\_\_\_\_, 20\_\_ and continue thereafter until \_\_\_\_\_, 20\_\_.

**B. *Contract Extension (Delete If Not Needed)***

Upon mutual agreement of all parties and based on the original contract terms and conditions, this contract may be extended \_\_\_\_\_ ( ) additional \_\_\_\_\_ ( ) month/year periods. Extensions shall not be automatic and any and all extensions shall be by written agreement and signed by both parties in the same manner as the Agreement was executed.

**C. *Escalation/De-Escalation***

The VBDA may consider price adjustments, after initial contract term, once in a 12-month period, based solely upon manufacturer price increases/decreases. Successful Offeror shall provide to the VBDA a written request for any such manufacturer increases/decreases.

Such requests shall be addressed to the Issuing Office and shall be accompanied by written verifications of said price increases issued by the manufacturer. A minimum thirty-(30)-day advance notice period is required for such requests. Requests for price increases adjustments are subject to the review and approval of the VBDA Purchasing Agent. Successful Offeror shall apply and implement immediately upon notification from manufacturer any and all price decreases for items included under any contract resulting from this Request for Proposal.

Any increase in cost shall not increase by a greater percentage than the percentage change in the Consumer Price Index of the U.S. Consumer Price Index for Urban Consumers published by the United States Department of Labor during the previous twelve months or 5% whichever is lower.

**D. *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 Agreement, the VBDA may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in association contract or in Vendor's RFP response.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the VBDA may immediately cancel and terminate this Agreement 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 Agreement, and turn over to the VBDA any work in process for which payment has been made.

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

**E. *Nondiscrimination***

Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will 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/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**F. *Drug Free Workplace***

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor's employees.
2. Contractor will post in conspicuous places, available to employees and applicants for employment, a notice notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will include in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**G. *Faith Based Organizations***

The VBDA does not discriminate against Faith-Based Organization.

H. ***Compliance with Immigration Laws***

Contractor 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.

I. ***Business Entity Registration***

Foreign and domestic businesses authorize to transact business in the Commonwealth. The Contractor 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 Contractor shall submit proof of such registration to the VBDA. Additionally, the Contractor shall not allow its existence to lapse or its certificate of authority or registration 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 contract.

J. ***Exclusivity***

The VBDA reserves the right to procure goods or services covered under this contract from a third party when, in the VBDA's sole discretion, it is deemed to be in the VBDA's best interest.

K. ***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 Agreement prior to the initiation of work.

L. ***Venue***

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach, or the U.S. Court for the Eastern District of Virginia, Norfolk.

M. ***Agreement interpreted under laws of Virginia***

This Agreement 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 Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

N. ***Business License Requirement***

If the Contractor is a business, located in the City of Virginia Beach or at any time during the performance of this Agreement 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 the Revenue of the City, and the Contractor covenants that it has a business license where one is required to perform this Agreement.

O. ***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 VBDA. 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 Agreement.

**P. *Representation Regarding VBDA or City of Virginia Beach Employment; Conflict of Interest:***

Contractor represents at the time of contracting and through the pendency of this Agreement that no one with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee of the Contractor is also an employee of the VBDA or City, specifically in the department initiating or overseeing this Agreement. Contractor further represents that no individual with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee has a spouse, other relative or person who resides with the individual that is currently an employee of the VBDA or the City of Virginia Beach, specifically in the department initiating or overseeing this Agreement. Should the Contractor have reasonable belief of a possible conflict of interest, that issue should immediately be brought to the attention of the VBDA for review.

**Q. *Integration/Merger***

This Agreement and any appendices attached hereto constitute the entire agreement of the parties and supersedes all prior agreements, understandings and negotiations, whether written or oral, between the parties. This Agreement may not be modified, except in a writing signed by both parties that is expressly stated to be an amendment hereto.

**R. *Severability***

The provisions of this Agreement shall be deemed to be severable, and should any one 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.

**S. *Environmental Liability***

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any clean up activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the VBDA, 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 Contractor (or by its agents, officers, employees, subcontractors, consultants, subconsultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

**T. *Waiver***

No failure of the VBDA to exercise any right or power given to it by law or by this Agreement, 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 VBDA's right to demand strict compliance with the terms of this Agreement.

**U. *Interpretation***

Whenever the context hereof shall require, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

V. ***Descriptive Headings***

The descriptive headings appearing in this Agreement are for convenience only and shall not be construed either as a part of the terms, covenants, and conditions hereof or as an interpretation of such terms, covenants, and conditions.

W. ***Non-appropriation***

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

X. ***Assignment of Agreement***

The Contractor shall not, without the prior written consent of the VBDA, assign, delegate, or otherwise transfer, in whole or in part, the Agreement or any of the Contractor's rights or obligations arising hereunder. The VBDA may, in its sole discretion, consent or decline to consent to any such assignment, delegation, or transfer, or may give its conditional consent thereto. In the event the VBDA conditionally consents to such an assignment, delegation, or transfer, such consent may, without limitation, be conditional upon Contractor's remaining fully and unconditionally liable to the VBDA for any breach of the terms of this Agreement by Contractor's transferee and for any damage or injury sustained by a third party or parties as a result of the intentional act or omission, negligence, or breach of warranty by Contractor's transferee.

Y. ***Termination without Cause***

The VBDA may at any time, and for any reason, terminate this Agreement by written notice to 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 Contractor by certified mail/return receipt requested at the address set forth in this Agreement. **[OR, IF CONTRACTOR REQUIRES NOTICE SENT TO ANOTHER ADDRESS, NOTICE WILL BE SENT TO THAT PERSON/LOCATION]**

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

If the VBDA terminates this Agreement without cause, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Agreement, and turn over to the VBDA any work completed or in process for which payment has been made.

Z. ***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 Agreement or the performance or failure to perform any work required by this Agreement. Contractor agrees to indemnify and hold harmless the VBDA 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 the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the VBDA, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the VBDA, its agents, volunteers, servants, employees or officials.

**AA. Insurance**

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

1. Workers' Compensation Insurance of not less than \$500,000, as required under Virginia 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 VBDA 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 VBDA, and shall carry the provision, that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the VBDA. In certain cases, where coverage is unavailable through licensed carriers, certificates of insurance written by a Surplus Lines Carrier authorized to transact the business of insurance in Virginia and acceptable to the VBDA may be approved. Contractor shall list the VBDA as an additional insured and furnish the VBDA with certificate of insurance showing Contractor's compliance with the foregoing requirements.

**BB. Notice**

All notices and requests required or permitted hereunder shall be sent by USPS certified mail, return receipt requested and to be effective, shall be postmarked not later than the final date for giving of such notice; or such notices may be sent by commercial messenger service, in which event, to be effective, such notices shall be delivered to a commercial messenger service not later than the final date for giving such notice.

Notices for the VBDA shall be addressed as follows:

City of Virginia Beach Development Authority  
Attn: Taylor V. Adams, Director  
Virginia Beach Department of Economic Development  
4525 Main Street, Suite 700  
Virginia Beach, Virginia 23462

Notices for Contractor shall be addressed in accordance with address provided in signed contract, or address shown in the Contractor's RFP submittal.

Such addresses may be changed at any time and from time to time by like written notice given by either party to the other.

**CC. *Offset/Setoff***

The VBDA may withhold the payment of any claim or demand by any person, firm or corporation against the VBDA until any delinquent indebtedness or other liability, including taxes, due to the state from such person, firm or corporation shall first have been settled and adjusted.

**DD. *Audits***

The VBDA 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 Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor 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 VBDA, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor'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 VBDA.

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

**EE. *Submission and Disposition of Contractual Claims***

Prompt knowledge by the VBDA of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the VBDA and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the VBDA with notice of the Contractor's intention to file a claim which (i) describes the act or omission by the VBDA 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 VBDA within 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 VBDA, 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 VBDA 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.

**FF. *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 VBDA; or, shall notify the VBDA and the subcontractor in writing of the intention to withhold all or part of the amount due with the reason

for nonpayment. In the event payment is not made as noted, the Contractor shall pay interest at the rate of one percent (1%) 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 the VBDA with its social security number or federal taxpayer identification number prior to any payment being made under this Agreement.

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 VBDA. 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.

**GG. *Subcontractors***

The use of subcontractors and the work they are to perform shall receive prior written approval of the contract administrator. The Contractor shall be solely responsible for all work performed and materials provided by subcontractors. The Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.