

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 202__, by and between the CITY OF MANASSAS PARK, a Virginia municipal corporation, its successors and assigns (collectively, the “City”), and _____, a Virginia [corporation/limited liability company/partnership], its successors and assigns (collectively, the “Contractor”).

WITNESSETH:

WHEREAS, the City desires to have constructed Roof + Façade + Hardscape Repairs to the Manassas Park Police Headquarters (the “Project”); and

WHEREAS, the City has advertised an invitation for bids, dated June 9, 2023 (the “IFB”), for the Project, which IFB is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

WHEREAS, in response to the IFB, the Contractor has submitted a completed bid form to construct the Project entitled “_____” and dated _____, 202__ (the “Bid”), which Contractor’s Bid is attached to this Agreement as Exhibit B and incorporated herein by this reference, and which Bid includes the City’s bid documents for the Project; and

WHEREAS, the City has determined that the Contractor’s Bid is responsive to the Solicitation/IFB and meets the needs of the City, and that the Contractor is responsible, qualified and possesses sufficient equipment, skills and the necessary capabilities, including technical and professional expertise, where required, to construct the Project in accordance with the terms and conditions set forth in this Agreement, and therefore desires to contract with the Contractor for the construction of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

1. SCOPE OF WORK.

A. The Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Instruction to Bidders as the Basic Bid, as specifically set out in the contract specifications (the “Scope of Work”). The work performed will be bound by the specifications according to this Agreement and the following documents (the “Contract Documents”), all of which are incorporated herein by this reference and which, together with this Agreement, constitute the “Project Manual”:

- 1) Solicitation/IFB (Exhibit A)
- 2) Completed Bid Bond
- 3) Certificate as to Corporate Principal
- 4) Addenda (if any)
- 5) Drawings
- 6) Insurance Certificates

B. Where a conflict exists between this Agreement and any of the Contract Documents, this Agreement shall control. Where a conflict exists between or among any provisions of any of the Contract Documents, the provision most favorable to the City shall control. Notwithstanding the foregoing sentence, where a conflict exists between a material provision of the Bid (*i.e.*, a provision that constitutes a material part of the Contractor's offer) and any other provision of any of the other Contract Documents, the material provision of the Bid shall control. To the extent that this Agreement conflicts in any way with a proposed form agreement that may have been submitted as part of the bid specifications, this Agreement shall control.

C. If any of the work contemplated by this Agreement (the "Work") performed by the Contractor in any phase of the Project does not meet City standards as outlined in the Contract Documents, then the Contractor shall immediately repair or correct the Work at no additional cost to the City.

2. COMMENCEMENT/COMPLETION OF WORK.

A. The Contractor will commence Work as required by the Project Manual within _____ () calendar days after receiving a Notice to Proceed from the City.

B. "Substantial Completion" means that the Project is capable of being used for its intended purpose. Substantial Completion shall occur no later than _____ () calendar days following the Contractor's receipt of a Notice to Proceed from the City.

C. "Final Completion" means that all the Work has been completed in accordance with the Contract Documents and final inspections and equipment testing have been completed. Final Completion shall occur no later than _____, 202__.

D. The Contractor shall be assessed liquidated damages in the amount of _____ dollars (\$_____.00) for each calendar day that Substantial Completion or Final Completion is not met. Time is of the essence.

3. CONTRACT AMOUNT.

A. The City shall pay the Contractor the amount set forth in the Bid (the "Contract Amount") for all Work performed pursuant to this Agreement. The Contract Amount includes payment for all materials expended to complete the Project, insurance required by this Agreement, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed in the Scope of Work.

B. As set out in Subsection A above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

4. TERMS OF PAYMENT.

A. PAYMENT AMOUNT. The City shall pay for Work provided according to this Agreement and in an amount not to exceed that detailed in the Bid, and only upon the Contractor's request on forms approved by and submitted to the Engineer (as defined in section 18 below)).

The City shall make payment within thirty (30) days thereafter. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the Work performed at that point to the total Work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

B. RETAINAGE.

1) The City may, in its sole discretion, retain two percent (2%) of the value of the Work to be done and materials and/or equipment to be supplied as part security for the fulfillment of this Agreement by the Contractor. As Work nears completion, and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the Work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

2) The City may withhold a reasonable amount of the payment sufficient to cover any outstanding indebtedness or monies owed or claimed by subcontractors, materialmen, suppliers, or laborers who supplied work or materials for the Project (the "Withheld Funds"). The City will not release the Withheld Funds until the Contractor has supplied a release satisfactory to the City, signed by or on behalf of all subcontractors, materialmen, suppliers, or laborers who have supplied labor or materials for the Project. If any amount is withheld by the City to ensure payment of the Contractor's subcontractors, materialmen, suppliers, or laborers for such work or materials, the City will charge the Contractor ten percent (10%) of the amount owed as a fee for administering such claims.

C. FINAL PAYMENT.

1) The Contractor shall, within ten (10) days of submitting a request for final payment, deliver an affidavit showing satisfactory evidence that all payrolls, material bills, subcontracts, and all outstanding indebtedness in connection with the Project have been paid in full and that no claims from subcontractors, materialmen, suppliers, or laborers who supplied work or materials for the Project remain unresolved. No final payment shall be made by the City until such affidavit has been received from the Contractor. The Contractor shall submit lien waivers for each pay release.

2) Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands, and liability by and to the Contractor, its officers, agents, employees, and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in a writing delivered by the Contractor and approved in a signed writing by the Engineer.

5. HOURS AND DAYS OF WORK.

All Work performed by the Contractor, its subcontractors, materialmen, agents and employees shall be performed during work hours of 7:00 a.m. to 8:00 p.m. Monday through

Saturday. The City may further reduce the hours or days of Work for special events or as other circumstances may reasonably warrant. When Work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction: _____.

6. ADDITIONAL WORK/CHANGE ORDERS.

A. The City may enlarge or reduce the Work to be performed by the Contractor by written notification to the Contractor, including changes to the plans and specifications. The City shall pay the Contractor for any additional Work so requested and shall reduce the Contract Amount for any reduction in labor, materials, overhead, and profit margin resulting from the reduction in the Work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification of this Agreement is agreed to in a document signed on behalf of both parties.

B. The value of any Work covered by a change order or of any claim for increase or decrease in the Contract Amount shall be determined by one or more of the following methods in order of precedence listed below:

- 1) An agreed lump sum; or in the event the parties cannot agree, then
- 2) The unit rate for the Work bid by the Contractor, if applicable; or in the event there was no such rate bid, then
- 3) The actual cost for (1) labor, (2) materials, (3) supplies, (4) equipment, (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City), and (6) other services necessary and approved by the City to complete the Work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional twenty percent (20%) of the actual cost of the Work, not including direct overhead, to cover the cost of general overhead and profit. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, and invoices, to validate the Contractor's calculations.

7. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. All Work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the Work resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as additional work pursuant to section 6 above or deleted from the Scope of Work.

C. The City shall make provision for access to the Project site and adjacent properties as necessary for performing the Work.

8. MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data, and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of two (2) years after the termination of this Agreement. The Contractor shall at all reasonable times during said 2-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents, data, and other material at all reasonable times during said 2-year period.

9. PROHIBITED INTEREST.

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

10. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of the Work.

B. In the performance of the Work, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the Work; provided, however, that the results of the Work must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

11. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Contractor may, however, employ such individuals(s) on other projects not related to City projects.

12. STANDARDS OF WORKMANSHIP.

The Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where specifications exist, they shall provide the benchmark for determination of acceptability.

13. INSPECTION AND TESTING.

A. All materials and equipment used in the construction of the Project shall be subject to inspection by the Engineer. If laws, ordinances, rules, or regulations of any public authority having jurisdiction over the Project require any Work to be specifically inspected, tested, or approved by someone other than the Engineer, the Contractor shall give the Engineer timely notice of readiness. Inspections, tests, or approvals by the City or other appropriate authorities will not relieve the Contractor from obligations to perform the Work in accordance with the requirements of the Contract Documents and/or provisions. The Engineer and other designated persons will at all times have access to the Work. All Work shall ultimately be inspected for final acceptance by the Engineer within a reasonable time upon receipt of notice from the Contractor that the Work is complete and ready for final inspection.

B. During construction, the Work will be inspected and observed by the Engineer or his designated representative. All Work that is deficient or does not meet the requirements and standards of the Contract Documents shall be removed and replaced with proper material at the Contractor's expense.

14. WARRANTY.

The Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the Engineer. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of one (1) year following the date of substantial completion of the Project.

15. SITE MANAGEMENT.

A. PARKING. Construction vehicle parking shall be restricted to the construction site so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas, and anticipated temporary parking (*e.g.*, delivery vehicles, large equipment parking, and overnight parking) requires prior review and approval by the Director of Community Development.

B. TRASH MANAGEMENT AND RECYCLING. The Contractor shall obtain and maintain at the construction site one or more containers of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such containers shall be maintained in a closed position at all times when not being filled until transferred to a landfill. The container(s) may be placed in setback areas, provided that the placement of the container(s) does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. The Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street, or to accumulate on the site outside of the container(s). The Contractor shall take measures to ensure that no debris, litter or trash in the container(s) exits the container(s) while in transit to a landfill or dump. The Contractor shall service the container(s) as frequently as needed to prevent trash from overflowing. Recycling of appropriate materials will be coordinated with the Engineer and shall in compliance with the City's recycling program.

C. TOILET FACILITIES. The Contractor shall ensure that the Project site has one or more permanent toilets, or one or more approved temporary toilet facilities, positioned in locations approved by the Director of Community Development, at the rate of one toilet per fifteen on-site employees (e.g., one toilet for 1-15 employees, two toilets for 16-30 employees, etc.).

D. NOISE. Construction activity shall not exceed the noise standards specified in Chapter 15 of the Code of the City of Manassas Park, Virginia.

E. GRADING AND EXCAVATION. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted and reported to the Engineer.

16. SAFETY AND PROTECTION OF THE WORK.

A. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work in order to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including but not limited to compliance with the Manual of Uniform Traffic Control Devices. The Contractor shall provide reasonable protection to prevent damage, injury, or loss to employees working on the Project and all other persons who may be affected thereby, and to materials and equipment, whether on or off the site, and other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

B. The Contractor shall erect and maintain, as required by the existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

C. The Contractor shall promptly remedy all damage or loss to any property referred to in this section caused in whole or in part by the Contractor, any subcontractor, sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts the City may be liable, and not attributable to the fault or negligence of the Contractor. The Contractor shall remove from the site all cuttings, debris, equipment and unused material.

17. UTILITIES.

A. The City reserves all rights and privileges over the Project site and City streets; nothing in this Agreement shall be deemed to be a waiver or forfeiture by the City of any such rights and privileges and the City may enter upon any City street or the Project site for any purpose, including the repair of culverts, storm and sanitary sewer systems, and water system and any and all other necessary City work.

B. The right is reserved to the owners of public utilities and franchises to enter upon the Project site or adjacent street(s) for the purpose of making repairs or changes to their facilities and structures that may become necessary by the Work.

C. The Contractor takes the whole risk, responsibility, and expense with respect to the location of utilities in conjunction with its performance of the Work and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on City plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about the location of any such utilities, and the Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Work.

18. ENGINEER.

The Engineer for the Project is Allan Rowley, or such other person designated by the Director of Community Development to the Contractor orally or in writing.

19. ASSIGNMENTS/SUBCONTRACTING.

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation. Notwithstanding the foregoing, claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to the City Manager.

B. Any rights, work or services assigned or delegated hereunder and any subcontract or sub-subcontract shall be subject to procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines as well as each provision of this Agreement, which must be acknowledged and agreed to in writing by each such assignee, delegatee, subcontractor, and sub-subcontractor.

C. No part of this Agreement shall be subcontracted by the Contractor without prior written approval by the City through the Engineer. Every approved subcontractor and sub-subcontractor must provide its federal tax identification number (*i.e.*, Social Security Number for an individual; Employer Identification Number for all others). The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors to the same extent as it is for the acts and omissions of persons directly employed by the Contractor.

20. PAYMENT TO SUBCONTRACTORS.

A. Within seven (7) days following receipt of payments made pursuant to this Agreement, the Contractor shall take one of the following actions with regard to subcontractors:

1) Pay the subcontractor its proportionate share of the total payment received from the City for the work performed by the subcontractor; or

2) Notify the City Manager and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's proportionate share of the payment from the City and the reason(s) for nonpayment.

B. The Contractor shall pay interest to all subcontractors on all amounts owed by the Contractor to subcontractors that remains unpaid after seven (7) days following receipt by the Contractor of a payment made pursuant to this Agreement by the City. The interest required by this Subsection will accrue at the rate of one percent (1%) per month. The interest requirement set forth in this Subparagraph shall not be construed to be an obligation of the City and this Agreement shall not be amended or modified for the purpose of providing reimbursement for such interest charges.

C. The Contractor shall include in each of its subcontracts a requirement that each subcontractor include or otherwise be subject to the payment and interest requirements of this Section with respect to sub-subcontracts.

21. INSURANCE.

A. The Contractor shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage.

2) **AUTOMOBILE LIABILITY.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

3) **PROFESSIONAL LIABILITY.** Professional Liability (Errors and Omissions) insurance written on a Claims Made basis with limits no less than five million dollars (\$5,000,000).

4) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

B. The City shall be listed as an additional insured on all liability insurance policies, including any umbrella insurance policy used to meet the required coverage listed above, with respect to work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate

of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

22. HOLD HARMLESS; INDEMNIFICATION.

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the gross negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, representatives, employees, and subcontractors; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

23. CONTRACTOR CERTIFICATIONS.

A. The Contractor certifies that:

1) The Contractor and all its subcontractors and agents used in conjunction with the performance of this Agreement are and shall remain authorized to transact business in the Commonwealth of Virginia as either a domestic or foreign business entity.

2) Neither the Contractor nor any of its subcontractors or agents used in conjunction with the performance of this Agreement has been debarred from contracting for goods or services by the Commonwealth of Virginia or any Virginia public body.

B. The City may void this Agreement if the Contractor fails to comply with the requirements of this Section.

24. TREATMENT OF ASSETS.

A. Title to all property furnished by the City shall remain in the name of the City. All information furnished by the City is private, confidential, and proprietary, and shall be the exclusive and sole property of the City and shall not be reproduced, disclosed, or used by the Contractor for any reason other than in the performance of this Agreement.

B. The City shall be the sole and exclusive owner of all goods and services produced pursuant to this Agreement, including but not limited to tangible items, information, works, derivative works, results, strategies, taxonomies, writing, drawings, plans, images, intellectual property, and data compilations of any form whatsoever (collectively, “Works”), which Works shall be the exclusive and sole property of the City and shall not be otherwise reproduced, disclosed, or used by the Contractor elsewhere, for any reason unrelated to its performance of this Agreement.

C. To the extent that the services are provided relating to detailed designs not originated and furnished by the City, or by a process or method the use of which is not specifically directed by the City, the Contractor guarantees that the sale or use of such services or the use of such process or method hereunder will not infringe any third-party United States or foreign patents, trademarks, trade names, copyrights, or trade secrets, and shall indemnify and save the city and its customers harmless from any expenses, loss, cost, damage, or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade names, copyrights, or trade secrets with respect to such services. The Contractor shall defend, at its own expense, any action or claim in which such infringement is alleged, provided the Contractor is notified within a reasonable period of time of such action or claim against the City. Indemnification shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use of which the article supplied by the Contractor was designed.

25. COMPLIANCE WITH LAWS.

A. The Contractor and all subcontractors and agents shall, in the performance of this Agreement, comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including certification and operation of facilities, programs, and accreditation, obtaining all necessary permits and licenses, including the licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

26. DEFAULT, REMEDY AND TERMINATION.

A. The City may terminate this Agreement upon the occurrence of one or more of the following events:

- 1) If the Contractor or any subcontractor should substantially violate any of the provisions of this Agreement;
- 2) If the Contractor substantially fails to perform any part of this Agreement;
- 3) If the Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy-two (72) hours;

4) If the Contractor shall (i) become insolvent in a bankruptcy sense; (ii) be generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian, receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (iv) suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (v) suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (vi) be dissolved; (vii) become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (viii) voluntarily suspend substantially all of its business operations; (ix) be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) take action for the purpose of any of the foregoing,

B. Termination shall be effected by providing a written notice of termination (a “Notice”), signed by the City Manager or the Director of Community Development, to the Contractor, which will state the manner in which the Contractor is in default and the cure period, if any, and the extent and effective date of termination if the default is not timely cured. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement

C. If the violation is not corrected to the City’s reasonable satisfaction within the cure period specified in the Notice, the City then may take over the Work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the Work. The Contractor shall make payment promptly upon demand by the City.

D. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

E. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

27. DISPUTES.

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by this Agreement shall be decided by the Director of Community Development. The decision of the Director of Community Development shall be final and conclusive unless the Contractor submits to the City Manager a written and signed request for a hearing on the dispute no later than two (2) weeks following the date of such decision.

B. If the City terminates this Agreement or any work or delivery required hereunder pursuant to the provisions of subsection 24A above, the Contractor may submit to the City Manager a written and signed request for a hearing on the termination no later than two (2) weeks following its receipt of the Notice.

C. The City Manager shall hold a hearing on the dispute or termination within two (2) weeks following receipt of the request for a hearing from the Contractor. The Contractor will be afforded an opportunity to be heard by the City Manager and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of this Agreement and in accordance with the City's decision. The decision of the City Manager shall not be arbitrary or unreasonable and will be made within thirty (30) days following the hearing.

D. The Contractor shall not bring an action against the City, its officers, employees, or agents arising out of or relating to a dispute or termination before the decision has been issued by the City Manager. The City Manager's decision shall be final unless the Contractor brings an action against the City in a court of competent jurisdiction in Prince William County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division, within six (6) months following the City Manager's decision.

28. NONDISCRIMINATION.

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) 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.

B. The Contractor will include the provisions of the foregoing paragraphs 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.

29. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement the Contractor shall (i) provide a drug-free workplace for the Contractor'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 Contractor'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 Contractor that the contractor 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.

B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*), 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.

30. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

The Contractor does not, 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.

31. THIRD PARTY RIGHTS.

Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

32. NOTICE.

Notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail or certified U.S. mail to the City Manager, the Director of Community Development, or the Engineer, as appropriate, at One Park Center Court, Manassas Park, Virginia 20111, via fax at (703) 335-0053, or via email at, c.odell@manassasparkva.gov, or, respectively, and to the Contractor at the address, fax number, or email address designated on the Contractor's signature page of this Agreement. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered or sent via facsimile or email, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

33. ATTORNEYS' FEES AND COSTS.

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees and other costs incurred in such action or proceeding.

34. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.

35. SEVERABILITY; WAIVER.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void or unenforceable.

B. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable with respect to particular circumstances, such part, term, or provision shall nevertheless remain in full force and effect in all other circumstances.

C. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

D. One or more waivers by the City of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of that or any other provision of this Agreement.

36. AMBIGUITY; MEANING OF "CITY".

A. The Contractor acknowledges that it has been afforded the opportunity to have this Agreement reviewed by legal counsel and expressly agrees that any ambiguity herein shall be resolved in favor of the City.

B. The term "City", as used in this Agreement, shall mean the person, board, commission, committee, or other sub-unit or official of the City having the legal obligation or right to act on behalf of the City, as the context may require.

37. MISCELLANEOUS.

A. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification

of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination.

B. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

C. Headings and captions are provided in this Agreement for ease of reference only and shall not be used to construe or interpret any provision of this Agreement.

D. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

E. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Agreement by fax or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

{Signature pages follow}

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CONTRACTOR:

_____,
a Virginia [corporation/limited liability
company/partnership]

Address: _____

Fax No.: _____

Email: _____

Federal Tax ID No.: _____

Virginia SCC ID No.: _____

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

THE CITY OF MANASSAS PARK,
a Virginia municipal corporation

By: _____
Laszlo Palko, City Manager

ATTEST:

Lana Conner, City Clerk

APPROVED AS TO FORM:

Dean H. Crowhurst, City Attorney

EXHIBIT A

THE SOLICITATION/IFB

EXHIBIT B

THE BID