

**City of Falls Church
STANDARD TERMS AND CONDITIONS**

Contents

1.	Section Headings	3
2.	Authority to Transact Business in Virginia	3
3.	Choice of Law and Courts	3
4.	Compliance with Laws	3
5.	Provisions Required By Law Deemed Inserted.....	3
6.	Ambiguities.....	3
7.	Procedures.....	3
8.	Key Personnel/ Project Staff.....	4
9.	BPOL License Requirement	4
10.	Purchase Orders	4
11.	Payment Terms	4
12.	Invoicing	5
13.	Most Favored Customer/Pricing.....	5
14.	Task Order Cost Proposals	5
15.	Changes.....	6
16.	Proprietary and Confidential Records	6
17.	Confidential Information	7
18.	Copyright	7
19.	Indemnification.....	7
20.	Insurance.....	8
21.	Workmanship, Inspection and Acceptance.....	10
22.	Audit	11
23.	Work Site Damages	11
24.	Safety	11
25.	Communications.....	12
26.	Default	12
27.	Termination.....	12
28.	Delays/Service Failure.....	13
29.	Contract Disputes.....	13
30.	Correspondence	14
31.	Quality	14
32.	News Release/Publicity by Contractors.....	14

33.	Emergency Purchases	14
34.	Americans With Disabilities Act Requirements.....	14
35.	Immigration Reform And Control Act	14
36.	Virginia Freedom Of Information Act.....	14
37.	Continuity of Services	15
38.	Assignment	15
39.	Force Majeure.....	15
40.	Payments To Subcontractors	15
41.	Time of The Essence	16
42.	Antitrust	16
43.	Relationship of the Parties	16
44.	Severability	16
45.	Non-Waiver	16
46.	Non-Exclusive Market Rights	16
47.	HIPAA Compliance.....	17
48.	Conflict Of Interest.....	17
49.	Warranties and Guarantees	17
50.	Faith-Based Organizations.....	17
51.	Prohibited Terms and Conditions.....	18

NOTE: If there are provisions in this Attachment that clearly do not apply to the goods to be provided or services to be performed hereunder, those sections will be interpreted as not applicable. If there are questions about the applicability of a specific section(s), please contact the City's Purchasing Agent.

1. Section Headings

Section headings herein are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scopes.

2. Authority to Transact Business in Virginia

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the City.

3. Choice of Law and Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

4. Compliance with Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the then current Code of Virginia including Section 2.2-4300 et seq. (the Virginia Public Procurement Act) as well as the City Code, Ordinances, Laws, Policies, and Purchasing Resolution, which are all incorporated herein by reference.

5. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the mutual agreement of the parties (not to be unreasonably withheld, conditioned, or delayed) the contract may be amended to make such insertion.

6. Ambiguities

The parties have participated fully in the drafting of the Contract Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in the Contract Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

7. Procedures

The extent and character of the services to be performed by the Contractor(s) shall be subject to the general control and approval of the City's Project/Contract Manger assigned under the contract, the Purchasing Agent or his/her authorized designee(s). The Contractor shall only

comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

8. Key Personnel/ Project Staff

The City will, throughout the life of the contract, have the right of reasonable rejection of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

9. BPOL License Requirement

As required by the Office of the Commissioner of the Revenue: Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax applicability for a particular procurement should be referred to the Office of the Commissioner of the Revenue, City Hall, 300 Park Avenue, Suite #202W, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212. Email: commissioner@fallschurchva.gov

10. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this contract shall be deemed to be placed under and incorporate the terms and conditions of this contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Contractors providing goods or services without receipt of a signed City purchase order do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by the City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order and subsequent payment will follow.

Orders for less than \$1,000.00 do not require a Purchase Order.

11. Payment Terms

Payment will be made to Contractor once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Contractor. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are reasonably questioned, in which event payment will be withheld only for the reasonably questioned items pending verification of the amount claimed and the validity of the claim, provided the City shall make payment for undisputed items included in any invoice. The Contractor shall provide complete reasonable cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not

exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1% per month).

The City reserves the right, acting reasonably, to withhold any portions of payments directly related to Contractor's failure to perform in material accordance with the provision of the contract or any material modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

12. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted by the Contractor to the name and address on the Purchase Order unless otherwise directed by the City. Construction Pay Applications shall be submitted in the format required by the City.

The payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) or invoices shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

13. Most Favored Customer/Pricing

If at any time after the effective date of this Contract the Contractor makes a general price reduction of any material or services covered by the Contract to similarly situated customers with like geographies and population densities, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally.

For purpose of this provision, a "general price reduction" shall mean any reduction in the price of an article or service offered (1) to Contractor's similarly situated customers with like geographies and population densities, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit their invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "General Price Reduction" provision of the contract documents. In addition, the Contractor will notify the Purchasing Agent in writing within ten (10) days of any such general price reduction. Failure to do so may lead to termination of the contract.

14. Task Order Cost Proposals

Applicable to Task Order contracts only: The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's estimated hours to perform the work based upon fixed hourly rates contained in the contract. The cost proposal shall contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed; the estimated time for completion; expected deliverables and any other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work. Such proposals shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit detailed time records, documentation for other expenses, and such other evidence as the City may reasonably require to support the Contractor's billing request.

For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Contractor shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.

Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

For architectural or professional engineering services relating to construction projects, the sum of all Task Orders/projects performed in one contract term shall not exceed the then current limits as stipulated in the VPPA.

15. Changes

The City and Contractor may, at any time, by mutually signed written agreement, require changes within the general scope of the services to be performed or the products to be provided under the contract, with such changes added by contract amendment.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representatives of the parties shall then agree to and sign such modification to the purchase order or contract.

The Contractor shall not begin work on any alteration requiring a change order until the agreement setting forth the changes/modifications has been executed by the City and the Contractor. No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted.

16. Proprietary and Confidential Records

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents, whether in interim or final form, furnished or to be furnished by the City, and/or generated by the Contractor or its subcontractors as a result of the City's order for services under this Contract ("Record" or "Records"), are confidential, owned by, proprietary and the exclusive property of the City. The Contractor shall not sell or give to any individual or organization any Records given to, prepared, or assembled by the Contractor under or in anticipation of this contract. The Contractor shall not use, willingly allow, or cause such Records

to be used for any purpose other than performance of all obligations under the Contract without the advance written consent of the City's Purchasing Agent.

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or to disclose the City's Records.

17. Confidential Information

Each party and its employees, agents and subcontractors will hold as confidential all Confidential Information of the other party obtained under this Contract. The Contractor agrees to include and enforce the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work pursuant to this Contract.

The City shall not be bound by any confidentiality provision that is inconsistent with the requirements of the Virginia Code, including the Virginia Freedom of Information Act.

No termination, expiration or cancellation of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

18. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

19. Indemnification

a. General Indemnification. Contractor shall indemnify, keep and save harmless the City from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; goods or services furnished or used in the performance of the contract for which the Contractor has provided the City and is not the patentee, assignee, licensee or owner; and indemnify the City, its agents, officials, employees and volunteers against Claims that may accrue or arise against the City as a result of the granting of this Contract, if the Claim was caused by the negligent acts, errors or omissions of the Contractor, its employees, its Subcontractor(s), or its Subcontractors' employees. As used in this Section, a Claim includes injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the City, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the City or a settlement reached that requires the City to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the

Contractor's responsibility to indemnify, keep and save harmless, and defend the City as provided in this Contract.

b. Intellectual Property Indemnification. In addition to the General Indemnification, Contractor will indemnify the City for and defend the City against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables provided pursuant to this Contract. Contractor must indemnify the City for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph, Contractor shall at its expense and within a reasonable time: (a) obtain a right for the City to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the City and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the City the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in this Paragraph, however, relieves the Contractor of liability to the City for damages sustained by the City by virtue of any breach of contract related to a third-party infringement claim.

c. Right to Participate in Defense. The City may, at its sole expense and option, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the City to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the City's prior written consent before entering into such settlement or resolution.

d. Warranty that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the City the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

e. No Waiver of Sovereign Immunity. Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the City pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the City. The parties intend for this provision to be read as broadly as possible. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the City, that promise or term is stricken from this Contract and of no effect.

20. Insurance

a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.

b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:

- 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 (Bodily Injury, each accident/\$100,000; Bodily Injury Disease each Employee/\$100,000; Bodily Injury Disease, policy limit/\$500,000) to protect the

contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

- 2) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal and Advertising Injury, Completed Operations, Contractual Liability and, where applicable to the project as determined by the City, Products and Independent Contractors. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
 - \$1 million Each Occurrence (Bodily Injury and Property Damage)
 - \$2 million General Aggregate applied on a per project basis
 - \$2 million Products/Completed Operations Aggregate
 - \$1 million Per Person or Organization (Personal and Advertising Injury)
 - \$1 million Each Occurrence for Sexual Abuse and Molestation (for Contracts involving children.
- 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor.
- 4) If so required by the City, maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- 5) If so required by the City, maintain Technology Errors & Omissions Policy in the amount of \$2,000,000 per occurrence.
- 6) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 7) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - a. Agree to provide certificates of insurance evidencing the above coverage for a period of three years after completion of the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
 - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and two (2) years thereafter, and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 8) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII.
- 9) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In

addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.

- 10) No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 11) Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of the liabilities provisions of the contract.
- 12) Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- 13) The City, its officers and employees shall be added as an "additional insured" via blanket endorsement in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess." Carriers shall provide copies of the policy endorsements showing that the City, its officers and employees have been added to the contractor(s) policy(s) as an additional insured.
- 14) Insurance coverage required by a solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

21. Workmanship, Inspection and Acceptance

Insofar as possible, the Contractor, in carrying out the work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City reasonably deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any reasonable test and/or make inspections of the work performed, being performed or good delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods

may be returned or non-conforming services may be rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines within thirty (30) days of receipt of the Services that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

22. Audit

The Contractor shall retain all books, records and other documents directly related to this Contract and maintain accurate records during the performance of the contract and for a period of three (3) years from the completion of this agreement. The City or its agent shall have reasonable access upon advanced notice to Contractor, during Contractor's business hours, to examine any records of the Contractor directly involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment and completion of the Contract. In addition, at the City's option, the Contractor shall provide any requested documents to the City for examination within 15 days of the request, at the Contractor's expense. The Contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes all documents and papers regardless of whether they are in written form, electronic form, or any other form.

Should the City's or its funding grantor's (grantor's) examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of City's request, reimburse the City for the overcharges and for the reasonable costs of the City's or grantor's examination, including, but not limited to, the services of an external audit firm and reasonable attorney's fees; or the City may deduct the overcharges and examination costs from any amount that the City owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the City does not have ready access) within five years after the final payment, the Contractor must give the City at least 30 days' notice and must not dispose of the documents if the City objects.

23. Work Site Damages

Any damage to property, whether owned by the City or others, to the extent caused by Contractor's or its subcontractors' work performed under this contract, shall be repaired or replaced to the City's reasonable satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

24. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956 (as revised and updated), as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract to the extent caused by Contractor. The City has sole right to dismiss contractors and/or sub-contractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

25. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English-speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

26. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

27. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for products not delivered and/or services not rendered by said Contractor as of the termination effective date stated in the Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor.

a. Termination for Convenience

The City may cancel and terminate the contract, in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least twenty (20) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all new work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy. In addition, in the event of bankruptcy, the Contractor shall not be entitled to

receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the contract price. In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years**

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

28. Delays/Service Failure

Failure of a Contractor to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designated City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

29. Contract Disputes

Any dispute concerning a question of fact as a result of a contract with the City which is not disposed of by agreement shall be decided by the City Purchasing Agent. Contractor shall give written notice to the City's Purchasing Agent to include the facts of the dispute and Contractor's intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, Rm 204E East, Falls Church, VA 22046 and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

The City Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the City Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action prior to receipt of the City Purchasing Agent's decision on the claim, unless the City Purchasing Agent fails to render such decision within the time specified.

Nothing herein shall preclude the requirement for submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Arbitration

shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising as a result of a contract or Purchase Order. Each party shall bear its own expenses resulting from any litigation, including attorney's fees.

30. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

31. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All goods provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Goods shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices. All products and services shall meet the then current applicable local, state and federal rules and guidelines.

32. News Release/Publicity by Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning this contract will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

33. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "Standard Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

34. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Contractor's acceptance of any City contract acknowledges Contractor's commitment and compliance with ADA.

35. Immigration Reform And Control Act

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.

36. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

37. Continuity of Services

If upon expiration, termination or assignment of this Contract, the City determines to use a third party or internal resources to provide some or all of the Services formerly provided by the Contractor, the Contractor shall fully cooperate with the City and/or new service provider in transition of the work to be performed.

Within thirty (30) days of receiving a written request from the City, the Contractor will provide the City with a transition-out plan. Any given transition-out activity should be done in a rapid manner with minimal impact to City. The Contractor shall provide the resources and cooperate with the new provider to ensure a smooth transition. Any applicable rates shall be the same as provided in the contract or as negotiated and detailed in writing.

No surcharge or termination fees will be allowed.

38. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise offset aside any requirements, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City.

If the Contractor desires to assign the right to payment of the contract, Contractor shall notify the City's Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

Where the assignment of a contract may have an impact upon branding, marketing, trademarks, social media, public notifications, domain names and/or similar contractual responsibilities, the Contractor shall submit a written plan detailing such proposed changes for the City's consideration at least thirty (30) days prior to assignment. Under no circumstances shall changes in these areas adversely impact the provision of goods and/or services to the City. The City reserves the right to require the Contractor to provide continuity of branding and marketing, even though a contract may be assigned. Details of any changes to branding, marketing, etc. shall be based on mutual agreement and included in written contract assignment documentation.

The City reserves the right to recover any costs incurred by City due to Contractor's failure to comply with the provisions of this section.

39. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, pandemic/epidemic, governmental action or order, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

40. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

41. Time of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in the Contract.

42. Antitrust

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

43. Relationship of the Parties

The Contractor will be legally considered and acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in this contract is intended to give rise to a partnership or joint venture between the parties.

44. Severability

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

45. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

Either party's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Contractor of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

46. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the

purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

47. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

48. Conflict Of Interest

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek goods or services elsewhere on the specific job over which the conflict arose.

49. Warranties and Guarantees

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in this contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statues, and ordinances and the applicable rules regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter.

50. Faith-Based Organizations

The City does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against any contractor or potential contractor because of race, religion,

color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment

51. Prohibited Terms and Conditions.

The following terms and conditions are prohibited in any contract or ordering document executed by the City.

Contracts Subject to City Council approval. The City is not bound by any provision in a contract or ordering document that may or will cause the City, its agencies, or employees, to make or otherwise authorize an obligation in excess of the amount appropriated by the City of Falls Church City Council for such purpose. Such provisions include, for example, automatic renewal of the agreement, penalty payments by the City, indemnification by the City, and payment by the City of taxes or charges not specifically included in the prices of the goods or services.

Limitation of Liability. For contracts in excess of \$100,000, there is no limitation on the liability of a contractor for (i) the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a Contractor or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a contractor or any employee of a contractor.