



# Virginia Beach 5/31 Remembrance Memorial Request for Proposals (Qualifications)

## WE REMEMBER

LaQuita C. Brown  
Ryan Keith Cox  
Tara Welch Gallagher  
Mary Louise “Mary Lou” Crutsinger Gayle  
Alexander Mikhail Gusev  
Joshua O. Hardy

Michelle “Missy” Langer  
Richard H. Nettleton  
Katherine A. Lusich Nixon  
Christopher Kelly Rapp  
Herbert “Bert” Snelling  
Robert “Bobby” Williams

### 5/31 Memorial Committee Members

George Alcaraz  
Billy Almond  
Ervin Cox

Sharon Felton  
Kurtis Hooks  
Lawrence “Duff” Kliewer

Cossette Livas  
Jason Nixon  
Tara Reel

Sgt. Brian Ricardo  
Sylvia Strickland  
Charlotte Zito

### City Council Liaisons

Council Member Michael Berlucchi  
Council Member Sabrina Wooten





**City of Virginia Beach, Virginia  
Purchasing Division  
2401 Courthouse Drive, Suite 3097  
Virginia Beach, VA 23456  
(757) 385-4438**

## **May 31, 2019 Memorial**

### **Request for Proposal (Qualifications) Number: COVB-23-100902**

Sealed proposals will be received through the City's Supplier Self-Service Portal or in hand at the Finance Department Purchasing Division office at 2401 Courthouse Drive, 3rd Floor, Suite 3097, Virginia Beach, VA 23456, until October 27, 2022, at 2:00 p.m. Eastern Time. To be considered, Offerors shall ensure proposals are received in this manner. Proposals received after this date and time will not be considered. DO NOT respond on the eVA platform.

#### **Pre-Proposal Conference:**

\*There will be NO Pre-Proposal Conference for this solicitation.

#### **Questions:**

Questions concerning this solicitation may be made to the Issuing Office in writing by email to [eandujar@vbgov.com](mailto:eandujar@vbgov.com). **Questions should be addressed no later than October 14, 2022, 2:00 pm Eastern Time.**

#### **Notice:**

The City of Virginia Beach does not discriminate against faith-based organizations. The Virginia Beach City Council has adopted a 12% goal for minority, 13.3% women, and 11.9% service disabled veteran participation in City contracts. Attention of Offeror is directed to Section 2.2-4367–2.2-4377 Virginia Public Procurement Act (VPPA) (Ethics in Public Contracting). The City of Virginia Beach reserves the right to accept or reject any or all offers in whole or in part and to waive any informalities. The City reserves the right to enter into any contract deemed to be in its best interest.

City of Virginia Beach, Virginia  
Purchasing Division  
Procurement Team:  
John D. Tigert, Contracting Agent  
Ekaterina V. Andujar, Procurement Specialist II

## **I PURPOSE**

The City of Virginia Beach, VA is accepting qualifications from professional design teams, including but not limited to architects, landscape architects, professional engineers, and artists, to create a serene place of quiet reflection, a place of healing for all of those impacted and a remembrance of those lost and injured at the Virginia Beach Municipal Center on May 31, 2019, the stories of their lives, and service to the City.

## **II HISTORY AND BACKGROUND INFORMATION**

On May 31, 2019, the City of Virginia Beach experienced a mass shooting in a city building at the Municipal Center resulting in the tragic loss of 12 of our community members, physically injuring 5, and impacting countless others, leaving our community forever changed. More information on those lost on May 31 can be found here: <https://loveforvb.com/>

Almost immediately following the tragedy of May 31, the City experienced an outpouring of public support through condolence calls, letters, cards, and gifts, as well as through the creation of a temporary memorial. The temporary memorial was filled with tribute items of all kinds.

The Virginia Beach History Museums staff carefully collected temporary memorial items in mid-July 2019. The items were sorted and photographed, and flash drives were given to the families to select any items they wish to keep, at their own pace, in privacy.

Remaining items from the temporary memorial are stored along with sympathy letters, cards, artwork, and other items received by the City. Together with the future permanent memorial, these items document a significant chapter of our City's history.

### **A. Learning From Other Communities**

Through this trauma, we became a part of an informal national network of communities that have experienced mass violence. Many communities have been generous to share their memorial planning processes and lessons learned. From their advice, Virginia Beach took away three key points: 1) Establish a memorial committee to guide the process and seek professional assistance in the facilitation of the Committee's work, 2) Engage a Family and Survivor Liaison to work with the City and Memorial Committee to facilitate family outreach on memorial planning, represent the families and survivors fairly at each committee meeting, and ensure that the memorial has elements that speak to each of them and their loved ones, 3) Keep the process transparent and inclusive. All Memorial Committee meetings are open to the public, streamed online and recorded. Recordings can be found here: <https://loveforvb.com/memorial/committee-meetings>

### **B. Creation of the 5/31 Memorial Committee**

In 2021, the Virginia Beach City Council formally approved the formation of the 5/31 Memorial Committee to guide the permanent memorial process and appointed [13 members](#) including families and community representatives.

The City hired consulting firm Kearns & West to facilitate the memorial planning process. Kearns & West serves as the family and survivor liaison, facilitates the Memorial Committee, and creates multiple opportunities for the families, survivors, and community to provide input in the memorial planning process.

## C. Committee Progress

The Committee began meeting in February 2022 and their work included:

1. Evaluated locations and reached consensus on future memorial location;
2. Considered design elements and reached consensus on desired components for a future memorial;
3. Maintained active, ongoing engagement with families of those whose lives were lost on 5/31;
4. Solicited community input via in-person, telephonic, and online survey, resulting in feedback from over 500 participants;
5. Provided the following recommendations and next steps to City Council in July 2022:
  - a. Recommend memorial site location at the corner of Princess Anne Road and Nimmo Parkway, along the boundary of the Virginia Beach Municipal Center;
  - b. Issue Request for Proposals (RFP) for qualifications from multi-disciplinary design teams; Continue Kearns & West facilitation services to the Committee and Family and Survivor Liaison on the memorial planning process.

## III PROJECT GOALS/DESIGN (ESTABLISHED BY 5/31 MEMORIAL COMMITTEE)

### A. Project Goals

1. Remembers those lost by name, stories of their lives, and service to City;
2. Acknowledges those wounded, both physically and psychologically (*many survivors do not want to be recognized by name*);
3. Creates a serene setting for quiet reflection, contemplation;
4. Engenders empathy, sanctity of life, peace, healing, unity, strength of the community;
5. Provides an ability to touch and opportunities to read and learn.

### B. Design Elements and Criteria

The commemorative space should incorporate functional elements including:

1. Seating options;
2. Walls, pavers, hardscapes, lighting, landscape design and functional elements;
3. Plant materials, flowers, trees;
4. Water feature;
5. Meditative, gentle curving path;
6. Park-like, minimalistic;
7. Incorporate the forget-me-not symbol (*pending family and survivor input*);
8. Possible marker at former Building 2;
9. Tactile, texture.

The design must also:

10. Accommodate people of all ages and abilities;
11. Consider the full experience of the space through an integrated and interactive design;

12. Consider appropriateness for the site, including scale and safety;
13. Ensure low maintenance through use of permanent materials.

The design must be responsive to the scale of the site and the surrounding area and provide a place to hold commemorations and remembrance ceremonies. The selected design team must have a deep understanding of the complexity of this project. The selected design team shall also have the capability and capacity to manage the construction phase of this project.

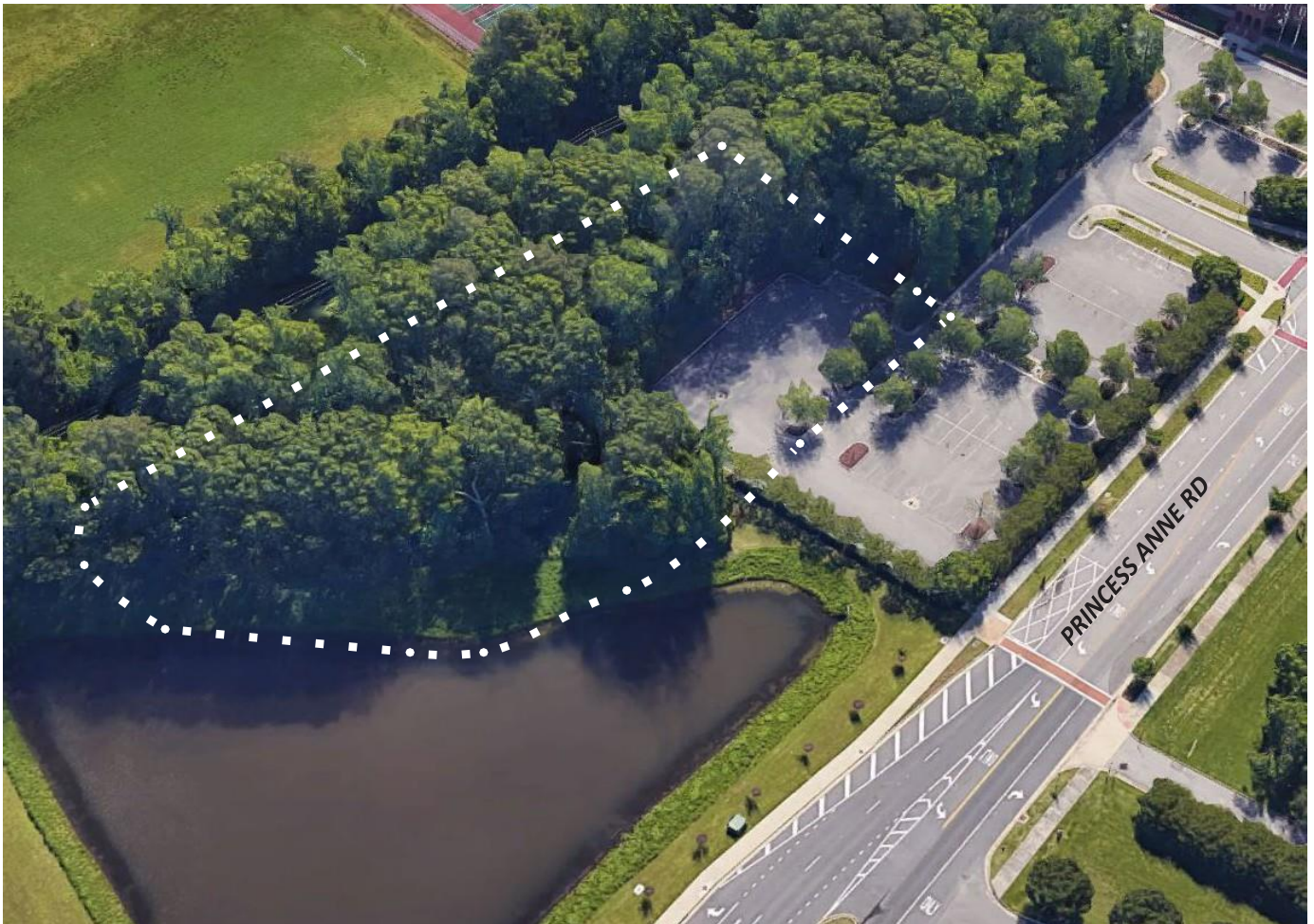
### C. Site Description and Photos

The Virginia Beach Municipal Center is regarded as a showcase of quality site and building design and architecture. The Municipal Center's grid streets interlacing a campus-style arrangement of neo-Georgian buildings, well- landscaped grounds and open space areas are sources of public pride.

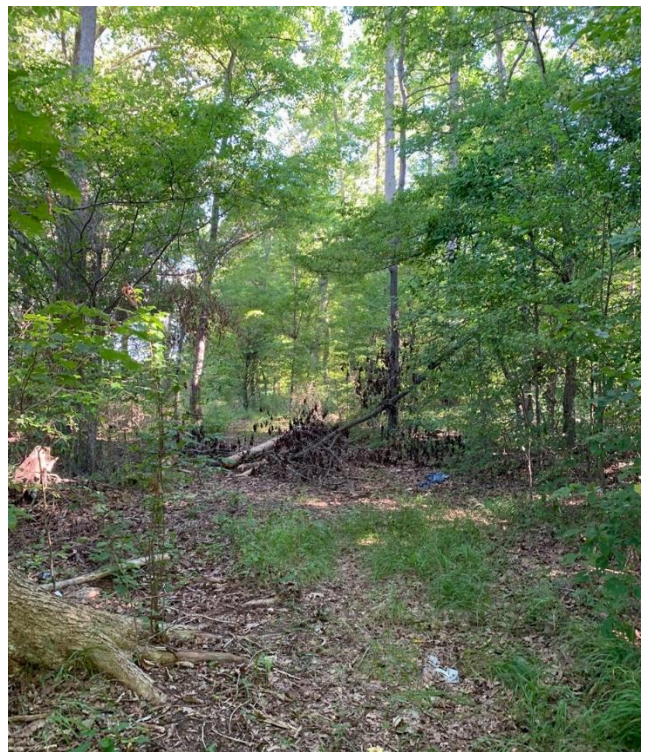
The Municipal Center is located in the Princess Anne Historic and Cultural District. Any development or improvement that may affect the architectural or general character of the area will be reviewed by the Historic Review Board. This board is a City Council appointed body charged with protecting the historic or architectural integrity of Virginia Beach's Historical and Cultural Districts. It reviews exterior improvements to physical structures within such districts to ensure architectural and design quality.

#### City of Virginia Beach Municipal Center – Corner of Princess Anne Road and Nimmo Parkway Memorial Site Location

APPROXIMATELY 1.3 ACRES









#### **IV PREPARATION GUIDELINES**

For consideration, all proposals should be as responsive as possible to the solicitation. The items detailed below must be included in your RFP response in the following order. Submissions that do not strictly follow the format and content requests below may be rejected:

##### **A. Statement of Interest**

Provide a Statement of Interest and materials outlining your interest in consideration and addressing how your team would approach this project. This document should be no longer than three pages.

Explain the qualities and expertise that distinguish your firm and your team for this competition. Outline your team's approach to this particular project. Provide methods your teams will use to understand needs and desires and explain how your design process works to realize such goals. Provide methods to respectfully consider families, survivors, City staff and community feedback. Describe how you will work with City staff who may want to be involved in aspects of the design. Identify your point-of-contact which needs to remain the point-of-contact for the duration of the competition.



**B. Team Composition and Credentials:**

A resume or Curriculum Vitae (CV) demonstrating professional history and skills or experience for each team member.

Provide information on relevant experience for all team members and project managers who will work on the project. Include a detailed description of the proposed role of the lead firm and associated firms for the project.

**C. Relevant Experience: Prior Work**

Provide up to five (5) descriptions and illustrations of relevant, recent projects that your firm has undertaken. This could be preliminary, conceptual and/or built work and should include the total project cost and square footage for each project, as well as the project timeline.

**D. Relevant Experience: Images for Review**

A minimum of ten (10) images of recent work completed. Annotation: Dates, description, media/materials, dimensions, location, budget, client, or commissioning organizations. Video files may also be submitted in addition to the required number of images, but must be submitted in the form of a hyperlink to the video files (on a web server), which the evaluation committee may access.

**E. References**

Three (3) prior references from clients for whom you have conducted and completed similar services.

**V SELECTION PROCESS**

The selection process will be led by the City Council-appointed 5/31 Memorial Committee. The committee will review teams' applications and determine a list for interviews. After interviews, the Committee will proceed to the Design Competition with up to two design teams. At the conclusion of the Design Competition, the Committee with feedback from families, survivors, City staff and the community will select one (1) design team based on their written and visual conceptual design and qualifications for recommendation to the Virginia Beach City Council for award of the contract.

**A. Phase I**

**Qualifications Phase** invites professional design teams to form and lead a visionary, multi- disciplinary team of professionals (Design Team), and respond to this RFP. Upon evaluation of the RFP submissions, the Committee will determine a list for interviews. After interviews, the Committee will select up to two (2) firms and their proposed teams to participate in Phase II.

**B. Phase II**

**Design Competition** - Up to two design teams will be selected as finalists to provide additional materials and proposals including a written and visual conceptual design for the 5/31 Memorial Committee's review.

An honorarium of \$10,000 will be paid to each of the firms selected for the Design Competition. No other payment of any kind will be made in respect of any costs associated with or incurred in the preparation and submission of any proposal as part of the Design Competition, including travel costs for site visits, meetings, interviews, or material costs.

In whatever means is best for the team, the finalist teams will present conceptual plans, 3-dimensional sketches/representations, written description, and other materials to convey the design concept to the 5/31 Memorial Committee and community. The teams can use all means to best present their concept. The finalists will have the opportunity to engage with the stakeholders in order to learn more about the site and scope for the memorial. An opinion of probable construction cost is required.

### **C. Selection of Design Team**

The finalists will have an opportunity to present their conceptual design proposal and qualifications to the Committee during negotiations, which may occur in person or virtually. The Committee, with feedback from families, survivors, City staff and the community, will select one (1) design team based on their written and visual conceptual design and qualifications for recommendation to the Virginia Beach City Council for award of the contract.

## **VI EVALUATION**

### **A. Phase I: Qualifications Phase Evaluation Criteria**

Design team's statement of interest, professional work history and portfolio will be evaluated by the 5/31 Memorial Committee. The committee will review applicants on the basis of:

1. Artistic and design excellence, innovation and originality as evidenced by representations of past work and other supporting material **(30 Points)**.
2. Professional experience, anticipated individual roles of proposed project teams **(20 Points)**.
3. Capability to perform required services and meet the full range of requirements to deliver a project of this complexity on schedule and within budget **(20 Points)**.
4. Demonstrated past experience working with municipal organizations and similar stakeholder groups of a similar nature and cause **(20 Points)**.
5. Results of reference checks for prior commissions **(10 Points)**.

### **B. Phase II: Design Competition Evaluation Criteria**

The committee will review the finalists' submissions on the basis of:

1. Overall design excellence, approach and methodology, and representation of memorial goals, incorporating the consideration of the families, survivors, City staff and community **(40 Points)**.
2. Considers ways to meaningfully engage community during design phase and throughout the construction period. **(20 Points)**.
3. Considers structural/surface soundness, safety, durability, resistance to theft, vandalism, weathering, and low maintenance costs **(20 Points)**.
4. Has a broad appeal, and considers the diverse audiences visiting the memorial **(10 Points)**.
5. Proposed schedule and budget of proposed project **(10 Points)**.

Please note that the work of the Committee will necessarily involve the emotional responses of evaluators to the proposed design. The City and the Committee will attempt to follow the above numerical scoring system to evaluate the designs.

## VII GENERAL SUBMITTAL TERMS AND CONDITIONS

### A. Definitions of Terms

The following definitions of terms are used herein:

1. The term "City" refers to the City of Virginia Beach.
2. The term "Offeror" refers to the person, firm, or company that provides a proposal in response to this Request For Proposal (RFP) and who may or may not be successful in achieving an opportunity to negotiate for the final award of a contract.
3. The term "Contractor" means the Engineer or Architect to which the contract will be awarded. References to the Contractor in this RFP shall also apply in full to any subcontractor or subconsultant for the named Contractor.

### B. Submittal of Proposals

1. An Offeror receiving a Request For Proposal from a source other than the Issuing Office or DemandStar, should visit the City Supplier Portal to view the official repository for RFP documents at the following link:
  - a. [Supplier Services :: VBgov.com - City of Virginia Beach](#) or
  - b. <https://www.vbgov.com/government/departments/finance/Pages/Supplier-Services.aspx>
2. Sealed proposals will be received electronically through ERP System supplier (vendor) portal **or** in hand at the Purchasing Division office;
3. If responding through ERP System, the Offeror should register as a vendor for the City in the City's free online vendor portal at:
  - a. [Application to Register as Supplier :: VBgov.com - City of Virginia Beach](#) or
  - b. <https://www.vbgov.com/government/departments/finance/Pages/Application-to-Register-as-Supplier.aspx>
4. Follow the 'Four Simple Steps to Register as a City Supplier'. A step by step instructional guide is available, if needed, New Supplier Registration. Assistance is also available via email at [SupplierPortal@vbgov.com](mailto:SupplierPortal@vbgov.com) or call at 757-385-4438;
5. If responding in hand at the Purchasing Division Office, the proposal and digital copy shall be placed in a sealed envelope or package that shall be identified with the Request for Proposal's item number, the Date and Time of closing, and the name and address of the Offeror. An original and one (1) digital copy of each proposal shall be submitted. The Offeror shall provide their proposal of electronic/digital read only format on Flash Drive. The original proposal should be clearly marked "ORIGINAL" on its outside cover;
6. In hand proposals shall be received and time-stamped in the office location described below no later than October 27, 2022 at 2:01 PM Eastern Time.
7. All proposals received after the specified date and time (timestamped 2:01 p.m. or later) shall not be considered and shall be returned unopened to the Offeror;
8. Proposals received by telephone, telegraph, facsimile or any other means of electronic transfer shall not be accepted.
9. Issuing Office:

*City of Virginia Beach  
Ekaterina V. Andujar  
2401 Courthouse Drive Suite 3097  
Virginia Beach, VA 23456*

**C. Examination**

Offeror shall carefully examine the contents of this Request for Proposal and any subsequent addenda.

**D. Questions**

1. Any material changes to the solicitation document will be addressed by issuance of a written addendum to all Offerors of Record that will become part of the proposal documentation.
2. Oral instructions do not form a part of the proposal documents.
3. The Offeror shall check with the Issuing Office within forty-eight (48) hours prior to proposal closing to secure any addenda affecting Proposal.

**E. Conditions of Work**

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

**F. Anticollusion/Nondiscrimination Form**

Offeror shall execute and return the Anticollusion/Nondiscrimination page located in the Offer Form of this Request for Proposal. The City shall report any perceived incidence of price fixing or antitrust violation to the State Attorney General.

**G. Certified Small, Woman, Minority, Service Disabled Veteran or Employment Services Organization**

1. It is the policy of the City of Virginia Beach to encourage the participation of Small, Woman, Minority and Service Disabled Veteran owned businesses, or Employment Services Organizations in its procurement processes. The City expects Offerors to embrace these goals to the maximum extent possible. To the extent practicable, the submitted proposal should provide for the fair inclusion of these businesses in their proposal. The businesses shall be certified by the Virginia Department of Small Business and Supplier Diversity. List of certified businesses may be found at the following link:
  - a. [Directory Listing \(virginia.gov\)](http://virginia.gov) or
  - b. <https://directory.sbsd.virginia.gov/#/directory>
2. Virginia Department of Minority Business Enterprise - Small, Women and Minority (SWaM) Vendors Search.

**H. Proposal Binding**

The Offeror agrees that this proposal shall be good and may not be withdrawn for a period of two hundred and ten (210) calendar days after the scheduled closing time for the Request For Proposal.

**I. Proprietary Information**

Offerors are advised that Section 2.2-4342 of the Code of Virginia, i.e., the Virginia Public Procurement

Act, shall govern public inspection of all records submitted by the Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, **Offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is needed.** Furthermore, the Offeror shall submit proprietary information under separate cover, and the City reserves the right to submit such information to the City attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the Proposal to proprietary information; however, all information contained within the body of the Proposal not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes.

## **J. Proposal Costs**

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

## **K. Fraud, Waste, and/or Abuse**

The City of Virginia Beach is committed to eliminating fraud and maintaining a highly ethical environment throughout our organization. The City's Fraud, Waste and Abuse Prevention Program, coordinated by the Office of the City Auditor, consists of a Fraud Hotline, web site, awareness training and investigation services. While this program is designed to assist City employees, departments, agencies and programs in preventing and detecting incidents of fraud, waste and abuse in the City of Virginia Beach, it is also available to City contractors for this same purpose. This program focuses on dishonest acts by City employees or its contractors. Therefore, if you suspect any Fraud, Waste and/or Abuse regarding a City employee or contractor please call the Fraud Hotline at (757) 468-3330.

## **L. Public Notice of Award or Decision to Award**

Public notice of the award or announcement of the decision to award shall be provided by posting the appropriate notice on the "Proposal board" located in the Issuing Office and with DemandStar.

## **M. Proposal Opening**

There will be no public opening of this solicitation.

# **VIII SPECIAL TERMS AND CONDITIONS**

## **A. Modification**

There may be no modification of any resulting Contract, except in writing, executed by the authorized representatives of the City and the Contractor.

## **B. Company Personnel Standards**

1. Personnel shall be trained/qualified to perform requested services. If any of the successful Offerors

personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the City, the Offeror shall remove any such personnel and replace them with satisfactory personnel.

2. Offeror shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The City retains the right to require the successful Offeror to halt all work activities until such conditions are resolved.

### **C. Ownership**

Contractor acknowledges that all services it provides under this Agreement are provided as an independent contractor on a work-for-hire basis. All intellectual property rights and other proprietary rights in any work resulting from the performance of services under this Agreement shall vest and be held in the name of the City.

### **D. Payment Schedule**

1. Payment on invoices shall be Net 30 days after receipt of invoice.
2. The City uses Paymode to process ACH payments. At no cost to the Contractor, the City requests that the Contractor sign up via [www.paymode.com/vbgov](http://www.paymode.com/vbgov) to access Paymode ACH services.

## **IX GENERAL TERMS AND CONDITIONS**

### **A. Termination with Cause/Default/Cancellation**

1. In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in association contract or in Vendor's RFP response.
2. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Agreement as of the mailing date of the default notice.
3. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.
4. In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

### **B. Nondiscrimination**

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

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### **C. Drug Free Workplace**

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

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

### **D. Faith Based Organizations**

The City of Virginia Beach does not discriminate against Faith-Based Organization.

### **E. Compliance With Immigration Laws**

Contractor does not currently, and shall not during the performance of this contract, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986.

### **F. Business Entity Registration**

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

### **G. Exclusivity**

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

**H. Compliance with All Laws**

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

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

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

**J. Venue**

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

**K. Business License Requirement**

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

**L. Independent Contractor**

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

**M. Representation Regarding City Employment; Conflict of Interest**

Contractor represents at the time of contracting and through the pendency of this Agreement that no one with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee of the Contractor is also an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Contractor further represents that no individual with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee



has a spouse, other relative or person who resides with the individual that is currently an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Should the Contractor have reasonable belief of a possible conflict of interest, that issue should immediately be brought to the attention of the City's Purchasing Division for review.

#### **N. Integration**

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

#### **O. Severability**

The provisions of this contract shall be deemed to be severable; and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

#### **P. Environmental Liability**

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

#### **Q. Waiver**

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

#### **R. Interpretation**

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

#### **S. Descriptive Headings**

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

**T. Non-Appropriation – Availability of Funds**

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

**U. Assignment of Agreement**

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

**V. Termination without Cause**

1. The City may at any time, and for any reason, terminate the contract by written notice to the Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to the Contractor by certified mail/return receipt requested.
2. In the event of such termination, the Contractor shall be paid such amount as shall compensate the Contractor for work satisfactorily completed, and accepted by the City, at the time of termination.
3. If the City terminates the contract, the Contractor shall withdraw its personnel and equipment, cease performance of any further work under the contract, and turn over to the City any work completed or in process for which payment has been made.

**W. Hold Harmless/Indemnification-RFP**

**Professional Responsibility of the Engineer.**

Engineer agrees, for itself, its agents, servants, employees, subcontractors, and subconsultants, to perform all work hereunder or associated herewith in accordance with any and all applicable professional standards and in accordance with sound engineering practice and principles.

As to all matters of professional responsibility, Engineer agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney’s fees and litigation expenses or other expenses suffered by any indemnified party or entity as the result of any claim to the extent it is found to have been caused by the negligent acts, errors, or omissions of Engineer, or those for whom Engineer is legally liable.

With the prior approval of the City, Engineer may assume the defense of any such professional liability claim(s) made against the City, its agents, volunteers, servants, employees or officials.

**General Responsibility of Engineer:**

As to all matters of liability related to or arising out of this Contract other than professional liability, Engineer agrees to indemnify and hold harmless the City, its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney’s fees and litigation expenses, or other expenses suffered by any indemnified party or entity as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of Engineer or those for whom Engineer is legally liable.

With the prior approval of the City, Engineer may assume the defense of any such claim(s) made against the City, its agents, volunteers, servants, employees or officials.

**X. Insurance**

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

1. Workers' Compensation Insurance of not less than \$500,000.
2. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the City of Virginia Beach as an additional insured.
3. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).
4. Errors and Omissions (Professional Liability) Insurance at limits not less than one million dollars (\$1,000,000).

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision, that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the City. In certain cases, where coverage is unavailable through licensed carriers, certificates of insurance written by a Surplus Lines Carrier authorized by the Virginia State Corporation Commission to transact the business of insurance in Virginia and acceptable to the City of Virginia Beach may be approved. Certificates of insurance shall list the City of Virginia Beach as an additional insured, and the City of Virginia Beach Risk Management Division, Municipal Center, Virginia Beach, Virginia, 23456, as the Certificate Holder.

**Y. Notice**

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

Notices for the City of Virginia Beach shall be addressed as follows:

*City of Virginia Beach  
Ekaterina V. Andujar  
2401 Courthouse Drive Suite 3097  
Virginia Beach, VA 23456*

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

## **Z. Offset/Setoff**

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

## **AA. Audits**

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating to or pertaining to any resulting Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three (3) years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

## **AB. Submission and Disposition of Contractual Claims**

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

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

## **AC. Payments to Subcontractors**

1. In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), the Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City, or, shall notify the City and subcontractor in writing of the intention to withhold all or part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, the Contractor shall pay interest at the rate of one (1%) percent per month, unless otherwise provided in the contract, to the subcontractor on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

2. These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor. The Contractor shall provide the City with its social security number or federal taxpayer identification number prior to any payments being made under this Contract.
3. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

#### **AD. Subcontractors**

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

#### **AE. Compliance with the Virginia Human Rights Act**

The Virginia Human Rights Act, as amended, includes protections against discrimination based on an individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, status as a veteran, or national origin. During the performance of this Agreement, Contractor shall comply with the Virginia Human Rights Act, as amended.