



City of Virginia Beach

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DEPARTMENT OF FINANCE
PURCHASING DIVISION
PHONE (757)-385-4438
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MUNICIPAL CENTER
CITY HALL
2401 COURTHOUSE DRIVE, STE 3097
VIRGINIA BEACH, VA 23456

Date: October 19, 2022

To: All Offerors

Subject: **ADDENDUM #2** RFP #COVB-23-100902 – May 31, 2019 Memorial.

Dear Sir or Madam:

Please be advised the above referenced RFP is hereby amended, clarified, and/or changed as follows:

Vendor Questions:

1. Do you know where the funding for the project will come from?
 - *Funding for the initial design stipends has been appropriated by the City Council. Additional funding for full design and construction will come from City Council either in an annual budget process or by another appropriation action by the City Council.*
2. What is the scope of Kerns + Wests ongoing role? Will they be facilitating all ongoing public and stakeholder involvement?
 - *Kearns and West was hired to facilitate the Committee meetings specifically in relation to the procurement process. This facilitation will end when a design firm has been selected. Kearns and West will not facilitate any additional stakeholder meetings other than the meetings they have completed since the beginning of their contract. Kearns and West will continue to serve as the Family and Survivor liaison until mid-2023.*
3. Are volunteers and committee members allowed to pursue this project?
 - *No.*

4. For proposal section D, Images, are we limited to the 5 projects being profiled in section C?
 - *Yes, only up to 5 projects should be profiled.*
5. For section E, References, are actual reference letters to be included in the proposal, or just the names and contact information for references?
 - *The City shall accept reference letters, or names and contact information as long as names and contact information is submitted.*
6. Site lighting is mentioned in the RFP. Is it anticipated that the memorial site will be accessible at all hours?
 - *It is undetermined if the memorial site will be accessible at all hours.*
7. Are there City staff members who have expressed an interest in staying involved in the design? Are these design professionals or from other fields?
 - *No specific City staff members have been identified as expressing specific interest in the design of the memorial. However, members of the committee have expressed a desire for the design firm to engage with the professional engineers and others in departments directly impacted by the tragedy in case there is a way they can and would like to participate in the development of the project. Some of these individuals have expressed a willingness to do so in conversation with committee members.*
8. Does the City want the temporary memorial pieces to be included in the design plan of the memorial site?
 - *Some comments from the public engagement sessions indicated a desire to incorporate pieces from the temporary memorial. However, this is not a specific mandate of the design, as the committee understands there are many views and wanted design firms to have artistic freedom in their submissions.*

Clarification:

1. In addition to the Phase I submittals, the design team shall submit completed Anticollusion/Nondiscrimination statement. See attachment A.
2. The successful design firm will be required to sign the Agreement Between the Owner and Architect. See attachment B.

These provisions shall become part of the RFP package and Offerors should acknowledge receipt of the addendum by signing in the space provided below and returning this page with the RFP submittal. All other terms and conditions and specifications of the Request for Proposal shall remain the same.

Signature: _____
(Offeror)

Sincerely,

Ekaterina V. Andujar

Ekaterina V. Andujar
Procurement Specialist II

ATTACHMENT A
ANTICOLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSE

ANTICOLLUSION CLAUSE:

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

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

DRUG-FREE WORKPLACE:

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

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

NONDISCRIMINATION CLAUSE:

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

Name and Address of Offeror:

Date:

By:

Signature in Ink

Printed Name

E-mail Address: _____
Telephone Number: (____) _____
Fax Phone Number: (____) _____

FIN/SSN #: _____

Title

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

Attachment B – Owner Architect Agreement Sample.

CITY OF VIRGINIA BEACH

AGREEMENT BETWEEN OWNER AND ARCHITECT
THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST
FAITH-BASED ORGANIZATIONS.

AGREEMENT made as of the _____ day of _____ 2023_.

BETWEEN the Owner: City of Virginia Beach
 Municipal Center
 2401 Courthouse Drive,
 STE 3097
 Virginia Beach, Virginia 23456

and the Architect:

For the following Project: **Architectural/Engineering Services for Construction of 5/31 Memorial**

In consideration of the mutual covenants contained herein with respect to the performance of professional services by the Architect and the payment for those services by the Owner, the Owner and the Architect agree as set forth below:

ARTICLE 1

TERM OF AGREEMENT

- 1.1 The professional services set forth in this Agreement shall commence upon issuance of the Notice to Proceed, to the Architect, by the Owner and terminate one year after Substantial Completion of the Project. If the services covered by this Agreement have not been completed within _____ months from the date of Notice to Proceed, through no fault of the Architect, extension and compensation for the Architect’s services shall be subject to re-negotiation.

- 1.2 The Architect represents that it possesses the requisite skill and ability to enable it to perform the services defined by this Agreement, and covenants that it will exercise and apply its skill, ability and judgment in the performance of all of its responsibilities under this Agreement, with the normal skill and care exercised by similar professionals rendering these types of services.

ARTICLE 2

BASIC SERVICES

The Architect’s Basic Services consist of the four phases described in Paragraphs 2.1 through 2.5 and include normal architectural, landscape architectural, civil, structural, mechanical, electrical engineering services.

2.1 SCHEMATIC DESIGN PHASE

- 2.1.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and arrive at a mutual understanding of such requirements with the Owner.
- 2.1.2 The Architect shall provide a preliminary evaluation of the Program and the Project budget requirements, each in terms of the other.
- 2.1.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project. The Architect shall be prepared to discuss the probable cost ramifications with each alternative approach.
- 2.1.4 The Architect shall prepare a schedule outlining the completion dates for each of the five phases of the Architect’s Basic Services. This schedule shall be submitted to the Owner for approval. This schedule shall include allowances for periods of time required for the Owner’s review and approval of submissions and for review and approval of authorities having jurisdiction over the Project.
- 2.1.5 Based on the mutually agreed upon Program and the fixed limit of construction cost, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components.
- 2.1.6 The Architect shall submit to the Owner a cost estimate (based on current area, volume or other unit costs) and two sets of progress prints (shall include site plan, floor plans, and main elevations).

2.2 DESIGN DEVELOPMENT PHASE

- 2.2.1 Based on the approved Schematic Design Documents the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, landscape architectural, civil, structural, mechanical, and electrical systems, materials, furniture and equipment, and such other elements as may be appropriate.
- 2.2.2 The Architect shall schedule and present his proposed design in a review meeting with the Owner.
- 2.2.3 The Architect shall research pertinent and applicable regulations and code requirements which affect this Project.
- 2.2.4 The Architect shall confirm the location, size and adequacy of all existing utilities serving the site. The Architect’s investigation shall include documenting all existing easements that may impact the plan or adjacent properties, and coordinating with all utility companies (e.g., without limitation, Virginia Natural Gas, Dominion Power, Hampton Roads Sanitation District, Cox Communications, etc.) to show all existing utilities and easements on the construction documents, and to plan for relocation of utilities as necessary. To the extent the Architect’s plan relies on off-site easements or rights of way for drainage or other purposes, such easements or rights of way shall be documented and shown on the plan.

2.2.5 The Architect shall determine the necessary requirements for connections to existing utilities.

2.2.6 The Architect shall submit to the Owner a cost estimate based on the Construction Specifications Institute (CSI) format, and two sets of progress prints and specifications. An acceptable alternative will be the most current version of the Naval Facilities Engineering Command Cost Estimating System (CES). The estimate will include a statement and explanation of cost estimate if it exceeds the fixed limit of construction cost.

2.3 CONSTRUCTION DOCUMENTS PHASE

2.3.1 Based on the approved Design Development Documents the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.3.2 The Architect shall advise the Owner of any adjustments to the previous cost estimate indicated by changes in requirements or general market conditions.

2.3.3 The Architect shall submit a cost estimate and three sets of construction documents to the Owner at the 50% and 90% completion phases in order for the Owner to conduct a review of said documents. The Architect shall schedule a review meeting with the Owner to discuss the Owner's comments.

2.3.4 The Architect shall submit 100% construction documents required for approval to the governmental authorities having jurisdiction over the Project, and three sets for the Owner for review.

1. The Architect shall submit two sets of 100% construction documents to the Permits & Inspections Department of the City of Virginia Beach for Plan approval. The Architect shall revise plans and specifications as necessary to obtain approval at no additional cost to the Owner.

2. The Architect shall submit 100% construction documents to the Development Services Center (DSC) of the City of Virginia Beach for Site Plan approval. The Architect shall revise site plan, as necessary, to obtain DSC approval at no additional cost to the Owner.

2.3.5 Upon approval of the Construction Documents by all governmental authorities having jurisdiction over the Project and inclusion of the Owner's review comments, the Architect shall submit for the Owner's approval, the following:

1. 6 sets of Construction Documents (documents shall be signed, sealed and completely approved by governmental authorities having jurisdiction over the project. Specifications shall be presented in 3 ring binders).
2. Cost Estimate.
3. 3 sets of half size blue line prints.
4. Statement and explanation of cost estimate if exceeds fixed limit of construction cost.

5. Review comments from Governmental Agencies.
6. Checklist of all Submittal items specified (i.e.: shop drawings, manufacturer’s literature, warranty, etc.). The submittal checklist shall be included in the technical specifications for mandatory use by the general contractor unless such requirement is specifically waived in writing by the Owner.
7. A checklist of all extended warranty items, with time period of warranty, shall be included as part of the technical specifications.
8. One color/sample board.

2.4 BIDDING PHASE AND CONSTRUCTION CONTRACT AWARD

- 2.4.1 Following the Owner’s approval of the Construction Documents, the Owner with the assistance of the Architect shall prepare and place the necessary advertisement and invitation for bid and submit it to the newspapers. Applicable fees associated with advertisement shall be paid for by the Owner.
- 2.4.2 The Architect shall attend the pre-bid meeting.
- 2.4.3 The Architect shall attend the bid opening, if deemed necessary by the Owner.
- 2.4.4 The Architect shall promptly review the bids received and shall prepare and submit to the Owner a written recommendation of acceptance or rejection of the lowest bid. In the event of rejection, the Architect shall include and explain the grounds and basis for such a determination of rejection.
- 2.4.5 The Architect shall assist the Owner in preparation of the Agreement between Owner and Contractor to be furnished by the Owner. The Owner shall submit the Agreement to the Contractor for execution.

**2.5 CONSTRUCTION PHASE
ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

- 2.5.1 The Construction Phase will commence with the issuance of the Notice to Proceed by the Owner to the Contractor.
- 2.5.2 The Architect shall provide administration of the Construction Contract as set forth here-in and in the City of Virginia Beach / Contracts General Conditions Article 1 through 5.
- 2.5.3 The Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided here-in.
- 2.5.4 The Architect shall review all reports based on inspections and tests and shall notify the Owner and Contractor of any observed deficiencies in the work.
- 2.5.5 Regardless of any inspections performed by representatives of the Owner, the Architect shall visit the site at intervals appropriate to the state of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site inspections the Architect shall keep the Owner informed of the progress and deficiencies in the Work of the Contractor. The Architect shall promptly evaluate and respond in writing to any oral or written report made by Owner's representative to the Architect.
- 2.5.6 The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 2.5.7 The Architect shall determine the amounts due the Contractor for work performed, based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall sign and issue Certificates for Payment in such amounts, as provided in the Contract Documents.
- 2.5.8 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, and on the data comprising the Contractor's Application for Payment, that (i) the Work has progressed to the point indicated; (ii) the quality of the Work is in accordance with the Contract Documents; and (iii) the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.
- 2.5.9 The Architect and the Owner shall be the interpreters of the requirements of the Contract Documents and shall be the judges of proper performance thereunder. After consultation with the Owner, the Architect shall render written recommendations with reasonable promptness upon written request of either the Owner or the Contractor, on any and all matters relating there to.

- 2.5.10 The Owner shall take into consideration the Architect’s recommendation in matters relating to aesthetics; the decision of the Owner shall be final.
- 2.5.11 The Architect, with the Owner’s approval, shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect’s reasonable opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.
- 2.5.12 The Architect shall review and approve or take appropriate action within 10 calendar days, upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, for conformance with the Contract Documents. The Architect shall not revise or modify the design documents nor add scope to the design during or as part of the shop drawings/submittal review and approval process. If a design error, omission, or ambiguity is discovered during or as part of the shop drawings/submittal review and approval process, the Architect shall notify and seek direction from the Owner regarding how to proceed. Following the Architect’s review of each submittal the Architect will return the submittal to the Contractor with the Architect’s stamp and signature affixed thereto, annotated with one of the following:
- “**APPROVED**” means approved for construction, fabrication and/or manufacture.
- “**APPROVED AS NOTED**” means it is approved for construction, fabrication and/or manufacture, upon compliance with all annotations and/or corrections indicated on the submittal.
- “**DISAPPROVED**” means that major deviations from the requirements of the Contract exist in the submittal. No Work based on such submittal shall be constructed, fabricated, or manufactured. The Contractor shall revise the submittal in compliance with the Architect’s annotations and pursuant to all requirements of the Contract and shall resubmit it to the Architect.
- 2.5.13 If the Architect approves Shop Drawings, Product Data and Samples that do not conform to the requirements of the Contract Documents, and results in additional cost to the Owner, the Architect will reimburse the Owner the additional cost incurred.
- 2.5.14 The Architect shall respond immediately to issues involving noncompliance committed by the Contractor. In the event of such non-compliance, and with the Owner’s consent, the Architect shall have the authority to issue a Stop Work Order in the immediate area of non-compliance.
- 2.5.15 The Architect shall receive, coordinate, evaluate, and process all Request for Information (RFIs) and Change Order proposals. Change Order proposals and/or Request for Information may be initiated by the contractor, Owner or Architect. No change or alteration to the requirements of the Contract Documents will be authorized without the approval of the Owner, including no-cost changes. Upon agreement by the Owner that a change order is necessary or appropriate, the Architect shall prepare all sketches and technical specification language necessary to fully describe the scope of work for contractor pricing and performance. The Owner may request that the Architect evaluate contractor proposals to confirm proper scope and pricing. Architect support for Owner-requested change orders outside of the original program shall be deemed an additional service. The final decision regarding whether or not change order support services

represent an additional service shall rest with the Owner in its reasonable discretion. Upon agreement with the contractor, the Owner will issue the formal change order and provide executed copies to the Architect. The Architect shall verify that all executed change orders are included in the record drawings.

- 2.5.16 The Architect shall conduct inspections to determine the Dates of Substantial Completion and Final Completion, shall receive, review, and forward to the Owner for the Owner’s review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment. Before inspecting the Work to determine the Date of Substantial Completion and before determining such Date, the Architect shall consult with the Owner regarding the progress of the Work and the extent or completion necessary to constitute Substantial Completion as defined in the Contract Documents.
- 2.5.17 The Architect shall be available to consult with and make recommendations to the Owner during the first year warranty period in connection with inadequate performance of materials, systems and equipment under warranty.
- 2.5.18 The Architect shall provide to the Owner, after Project completion, “record” drawings of the entire facility. These “record” drawings shall be prepared by the Architect and based on information obtained from the general contractor’s “as-built” drawings. The Architect will routinely review the contractor’s “as-built” drawings during construction and approve the “as-built” drawings as a submittal upon project completion. “Record” drawings will include a full set of reproducible drawings, two full sets of prints, and a copy of the electronic media (if the drawings were prepared in an electronic format).
- 2.5.19 The extent of the duties, responsibilities and limitations of authority of the Architect as the Owner’s representative during construction shall not be modified or extended without written consent of the Owner and the Architect.

ARTICLE 3

PROJECT REPRESENTATION BEYOND BASIC SERVICES

- 3.1 If the Owner and Architect agree that more extensive representation is required at the site, the Architect shall provide one or more Project Representatives to assist the Architect in carrying out such responsibilities.
- 3.1.2 Such Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as mutually agreed between the Owner and the Architect.
- 3.1.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such Project Representatives shall not modify the rights, responsibilities or obligations of the Architect.

ARTICLE 4

ADDITIONAL SERVICES

See Attachment “B” for Additional Services included in this Agreement.

ARTICLE 5

REIMBURSABLE EXPENSE

See Attachment “C” for Reimbursable Expenses included in this Agreement.

ARTICLE 6

THE OWNER’S RESPONSIBILITIES

- 6.1 The Owner shall provide full information regarding requirements for the Project which shall set forth the Owner’s design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.
- 6.2 The Owner shall designate a representative or representatives authorized to act in the Owner’s behalf with respect to the Project. The Owner or such authorized representative(s) shall examine the documents submitted by the Architect and shall render decisions pertaining thereto in a timely manner to avoid unreasonable delay in the Architect’s progress.
- 6.3 The Owner will furnish the Architect information to clearly define the boundaries, zoning and any deed restrictions of the site. The Architect shall be entitled to rely upon the accuracy and completeness of all information furnished by the Owner.
- 6.4 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Contractor’s Application for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the Owner.
- 6.5 The Owner shall provide the Architect access to the work whenever it is in preparation or progress.

ARTICLE 7

CONSTRUCTION COST

7.1 DEFINITION

7.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

7.1.2 For the purpose of this Agreement, a fixed limit of construction cost shall be _____ dollars (_____) and shall include all costs normally associated with the building (site work, building cost and furnishings).

7.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner.

7.2 RESPONSIBILITY FOR CONSTRUCTION COST

7.2.1 Evaluations of the Owner's Project budget, and Detailed Estimates of Construction Cost, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the fixed limit of construction cost, or from any cost estimate or evaluation prepared by the Architect.

7.2.2 The Architect shall be permitted to include reasonable contingencies for bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Construction Documents, to make reasonable adjustments in the scope of the Project, if approved by the Owner, in order to avoid exceeding the fixed limit of construction cost.

7.2.3 If the bidding or Negotiation Phase has not commenced within three months after the Architect submits the Bid Documents to the Owner, the fixed limit of Construction Cost shall be adjusted to reflect any documented change in the general level of prices in the construction industry between the date of submission of the Bid Documents to the Owner in accord with the approved schedule, and the date on which proposals are sought.

7.2.4 If the fixed limit of Construction Cost is exceeded by the lowest responsible and responsive bid, the Owner shall (1) give written approval of an increase in such fixed limit, (2) authorize re-bidding or negotiation of the low bid within a reasonable time, (3) if the Project is abandoned, terminate this Agreement, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), the Architect, without additional compensation, shall modify the Bid Documents as necessary to comply with the fixed limit. The providing of such service shall be the limit of the Architect's responsibility, and having done so, the Architect shall be entitled to compensation for all other services performed, in accordance with this Agreement, whether or not the Construction Phase is commenced.

ARTICLE 8

COMPENSATION

8.1 PAYMENTS ON ACCOUNT OF SERVICES RENDERED

8.1.1 The Owner shall make payments to the Architect monthly, within thirty (30) days from receipt of an approved Architect's invoice or notify Architect within ten (10) days if the invoice can not be approved. Payment shall be in proportion to services rendered within each phase.

8.2 PAYMENTS WITHHELD

8.2.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractor, or on account of the cost of changes in the Work other than those for which the Owner, in its sole discretion, determines the Architect is responsible. If, however, the Architect should at any time fail to perform in accordance with the terms of this Agreement, the Owner may (after providing written notice to the Architect) withhold from subsequent payments such amounts as are necessary to protect the Owner from potential financial damages resulting from the Architect's lack of performance.

8.2.2 Cost records pertaining to services rendered shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner during reasonable business hours.

8.2.3 If a design error, omission, or ambiguity, or a deficient submittal or shop drawing review results in construction rework or any other additional costs to the Owner, the Architect shall be responsible to the Owner for all such costs, and the Owner shall have the right to setoff such costs against the Architect's contract funds, including withholding or deducting such costs from any payment otherwise due and owing to the Architect under this Agreement.

8.3 CLAIMS FOR EXTRA COMPENSATION

8.3.1 In any case where the Architect believes extra compensation is due for work and services not clearly covered by this Agreement or supplement thereto, the Architect shall promptly notify the Owner in writing of their intention to make claim for such extra compensation before they begin the work on which they base their claims.

If such notification is not given, no claim for such extra compensation will be considered. Such notice by the Architect shall not in any way be construed as proving the validity of the claim. The claim must be approved by the Owner. In case the claim is found to be just, it shall be allowed and paid for as extra work in accordance with the terms of a supplemental agreement entered into before such work is started.

The costs incurred by the Architect in preparing a claim shall be maintained in a separate account. Such account shall be clearly coded and identified, and shall be subject to audit by the Owner. These costs shall become a part of the claim and serve as documentation thereto. If the claim is allowed and paid, these costs shall become and be paid as a part of the claimed payment; if disallowed, the costs of preparing the claim will also be disallowed. If the claim is allowed and paid in part, the cost of preparation will be paid on a pro-rated basis.

8.4 BASIS OF COMPENSATION

8.4.1 BASIC SERVICES

Schematic Design Phase: Lump Sum _____
Design Development Phase: Lump Sum _____
Construction Documents Phase: Lump Sum _____
Bidding or Negotiation Phase: Lump Sum _____
Construction Phase: Lump Sum _____
Total Basic Services: Lump Sum _____

8.4.2 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES

Lump Sum _____
See Attachment “A”

8.4.3 COMPENSATION FOR ADDITIONAL SERVICES INCLUDED IN THIS AGREEMENT

Estimated Sum _____
See Attachment “B”

8.4.4 REIMBURSABLE EXPENSES

Estimated Sum _____
See Attachment “C”

8.4.5 (NOT-IN-USE)

8.4.6 TOTAL FEE _____

ARTICLE 9

PROGRESS SCHEDULE

(See Attachment)

ARTICLE 10

OWNERSHIP AND USE OF DOCUMENTS

10.1 Construction Contract Documents, upon payment to the Architect, shall become and remain the property of the Owner whether the Project is constructed or not. If the Owner uses the said

documents (or any part thereof) in connection with any other project without the written verification, adaptation, and consent of the Architect, such use shall be at the Owner’s sole risk and the Architect shall have no liability therefore.

ARTICLE 11

TERMINATION OF AGREEMENT

11.1 The Owner reserves the right to terminate this Agreement in whole or in part at any time, after providing the Architect fifteen (15) day advance notice in writing, at which time the Architect shall discontinue all work and services and, upon payment of all amounts owed to the Architect, shall deliver to the Owner all records, drawings, field notes, plans or other data completed or partially completed, and these shall become and remain the property of the Owner.

In the event this Agreement is so terminated, payment shall be made on the basis of the actual percent complete on the effective date of termination.

ARTICLE 12

INSURANCE

12.1 The Architect agrees to secure and maintain in full force and effect at all times during the period this Agreement is in effect, the following policies of insurance:

12.1.1 Workers’ Compensation Insurance as required under Title 65.2 of the Code of Virginia.

12.1.2 Commercial 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.

12.1.3 Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles 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.

12.1.4 Errors and Omissions (Professional Liability) Insurance at limits not less than one million dollars (\$ 1,000,000.00).

12.1.5 All policies of insurance required herein shall be written in a form, and by insurance companies licensed to conduct the business of insurance in Virginia and, acceptable to the Owner, and shall carry the provision that the insurance will not be canceled or materially modified without thirty days (30) prior written notice (or 10-day notice in the case of non-payment of premium) to the Owner.

12.1.6 The enclosed ACORD should be used for certification of such insurance, as well as any and all other insurance which is required under the terms of this Agreement.

ARTICLE 13

HOLD HARMLESS - INDEMNIFICATION

13.1 PROFESSIONAL RESPONSIBILITY OF ARCHITECT:

13.1.1 Architect 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 architectural practice and principles.

As to all matters of professional responsibility, Architect agrees to indemnify and hold harmless the Owner, 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 Architect or those for whom Architect is legally liable.

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

13.2 GENERAL RESPONSIBILITY OF ARCHITECT:

13.2.1 As to all matters of liability related to or arising out of this Agreement other than professional liability, Architect agrees to indemnify and hold harmless the Owner, its agents, volunteers, servants, employees and officials from and against any and all liability, loss, costs, reasonable attorney's fees and litigation expenses, or other expenses suffered by any indemnified party as the result of any claim to the extent it is found to have been caused by the acts, errors or omissions, of Architect or those for whom Architect is legally liable.

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

ARTICLE 14

NONDISCRIMINATION CLAUSE/DRUG FREE WORKPLACE PROVISION

14.1 Employment discrimination by Architect shall be prohibited.

14.1.1 During the performance of this AGREEMENT, the Architect agrees as follows:

A. Architect 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 Architect. Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. Architect, in all solicitations or advertisements for employees placed by or on behalf of Architect, will state that Architect is an equal opportunity employer.
- C. 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.
- D. Architect will include the provisions of the foregoing Sections A, B and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

- A. Architect will provide a drug-free workplace for Architect’s employees.
- B. Architect 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 Architect’s workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- C. Architect will state in all solicitations or advertisements for employees placed by or on behalf of Architect that Architect maintains a drug-free workplace.
- D. Architect will include the provisions of the foregoing Sections A, B and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

ARTICLE 15

SUCCESSORS AND ASSIGNS

- 15.1 The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Architect shall not assign, sublet or transfer any interest in this Agreement without the written consent of the Owner.

ARTICLE 16

EXTENT OF AGREEMENT

- 16.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect.

ARTICLE 17

ANTI-COLLUSION STATEMENT

- 17.1.1 The Architect warrants that they did not either directly or indirectly enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Sections 59.1.-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia (1950) as amended.
- 17.1.2 The Architect hereby certifies that this Agreement or any claims resulting therefrom is not the result of or affected by any act of collusion with or any act of another person or persons, firm or corporation engaged in the same line of business or commerce.
- 17.1.3 The Architect hereby further certifies that they have not knowingly falsified, concealed, misled, or covered up by any trick, scheme, or device a material fact in connected with this project. The Architect also certify that they have not made any false, fictitious or fraudulent statements or representations or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry in connection with this project.
- 17.1.4 The Architect further agrees that neither they, nor any partnership, association or corporation in which their officers, directors or shareholders shall have a pecuniary interest, will sell or furnish any building materials, supplies or equipment for any building or structure designed pursuant to this Agreement.
- 17.1.5 The Architect further agrees to require all subcontractors, subconsultants, or any other persons, corporations, or legal entities providing or furnishing labor, material, equipment, work, or professional services related to this Agreement valued in excess of \$10,000 to execute an anti-collusion statement as a condition of payment.

ARTICLE 18

PROPRIETARY PRODUCTS

- 18.1 In accordance with the 1982 Virginia Public Procurement Act, the Architect will identify, to the Owner, all proprietary products designed, specified or directed to be used in this Project, prior to incorporation into the bidding documents.
- 18.2 “Proprietary” specifications are defined as including only one name brand with or without “or equal” if the Architect knows or reasonably should know that there is only one practicable supplier of the product. Two or more manufacturers of each product specified must be included in the bidding documents unless approved, in advance, by the Owner.

ARTICLE 19

COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA) OF 1990

- 19.1 The Architect shall be contractually obligated, as part of basic services, to incorporate in the final Project design the Accessibility Guidelines of the Americans with Disabilities Act (ADA) of 1990 as amended.

ARTICLE 20

APPLICABLE LAW/COMPLIANCE WITH ALL LAWS/VENUE

- 20.1 A. Applicable Law:
- This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- B. The Architect shall comply with all federal, state and local laws and ordinances applicable to the work in effect on the effective date of this Agreement, and as subsequently amended.
- C. Architect agrees that it 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.
- D. Venue:
- Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach.
- E. The applicable statute of limitation shall begin to run and all claims and causes of action, other than claims or causes of action relating to a latent design defect, shall be deemed to have accrued (i) with respect to all claims and causes of action hereunder arising from any act or failure to act by either party to this Agreement occurring before the Date of Substantial Completion of the Work, on the Date of Substantial Completion, and (ii) with respect to all claims and causes of action arising hereunder from any such act or failure to act occurring on or after the Date of Substantial Completion, on the date of issuance of the final Certificate for Payment. With respect to all claims and causes of action hereunder arising from a latent design defect, the applicable statute of limitations shall begin to run and all claims and causes of action shall be deemed to have accrued on the date of discovery of such latent design defect; but in the event discovery occurs more

than five (5) years after issuance by Owner to Contractor of a Notice to Proceed, the statute of limitations shall expire ten (10) years after the date of such Notice to Proceed.

- F. 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, Architect shall comply with the Virginia Human Rights Act, as amended.

ARTICLE 21

ENVIRONMENTAL CONSIDERATIONS

- 21.1 Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or release 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 Owner, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the 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 the Architect (or its agents, officers, employees, subcontractors, subconsultants, or any other persons, corporations or legal entities employed, utilized, or retained by the Architect) in the performance of this Agreement or related activities, shall be paid by the Architect. This paragraph shall survive termination, cancellation or expiration of this Agreement.

ARTICLE 22

CHANGES IN WORK

- 22.1 There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the Owner and the Architect.

ARTICLE 23

PROPRIETARY INFORMATION

- 23.1 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 Owner 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.

ARTICLE 24

SUBMISSION AND DISPOSITION OF CLAIMS

- 24.1 Prompt knowledge by the Owner of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the Owner and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the Owner with notice of the Architect intention to file a claim which (i) describes the act or omission by the Owner or its agents that the Architect 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 Owner 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 Architect to result from its acting on an order from the Owner, it shall immediately take written exception to the order. For purposes of this provision, “claim” shall include, without limitation, any request for an increase in the contract price or time and any request for equitable adjustment. Submission of a notice of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for damages or other relief by the Architect. Neither an oral notice or statement, nor an untimely notice or statement will be sufficient to satisfy the requirements herein.

The Owner will review the claim and render a final decision in writing within 30 days of receipt of Architect’s written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

ARTICLE 25

LAWS TO BE OBSERVED

- 25.1 The Architect shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Architect shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the Owner and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or sub-Architect. If the Architect observes that the contract documents are at variance therewith, he shall promptly notify the Owner in writing. The Architect shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his bid or Contract or prosecution of the work thereunder. The Architect shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

In accordance with Title 2.2, Subtitle II, Part B, Chapter 43, Article 4, of the Code of Virginia (Virginia Public Procurement Act), the Architect shall make payment to all sub-Architects, as defined in the Code, within 7 days after receipt of payment from the Owner; or, shall notify the Owner and the sub-Architect 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 Architect shall pay interest at the rate of 1 percent per month, unless otherwise provided in the contract, to the sub-Architect on all amounts that remain unpaid after 7 days except for the amount withheld as provided herein.

The same requirements shall be included in each subcontract and shall be applicable to each lower-tier sub-Architect. The Architect shall provide Owner with its social security number or federal taxpayer identification number prior to any payments under this Contract.

The Architect obligation to pay an interest charge to a sub-Architect pursuant to the payment clause in this section may not be construed to be an obligation of the Owner. 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.

ARTICLE 26

CONSULTANT PERFORMANCE EVALUATION (CPE)

- 26.1 A tool developed by the City to provide standardized historical consultant performance information across department lines which will be maintained on file for reference purposes in future project awards. The City shall complete a Consultant Performance Evaluation on all City projects. **Copy of the form is provided with this contract as an attachment.**

ARTICLE 27

AUDITS

- 27.1 The Owner shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this 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 Architect, including, but not limited to, those kept by Architect, its employees, agents, assigns, successors and subconsultants. The Architect 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 the 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 Owner, through its employees, agents, representatives, contractors or other designees, during normal business hours at Architect'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 that is convenient for the Owner. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Owner may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

ARTICLE 28

COMPLIANCE WITH THE VIRGINIA HUMAN RIGHTS ACT

- 28.1 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.

Corporate Name

By: _____
President

Virginia Code 47.1-14

He/She/They is/are personally known to me or has/ have produced _____ as identification.

STATE OF _____

CITY OF _____: to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____, President of _____ whose name is signed to the writing above bearing date on _____ has acknowledged the same before me in my City and State aforesaid.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 201__.

[AFFIX NOTARY SEAL]

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

CITY OF VIRGINIA BEACH

By: _____
City Purchasing Agent