

INTRODUCED: December 9, 2019

AN ORDINANCE No. 2019-334

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to accept a donation of professional services and associated tools valued at approximately \$75,000.00 from Greenlink Analytics, Inc., and in connection therewith to execute a Contract for Donated Goods and Services between the City and Greenlink Analytics, Inc., for the purpose of providing a citywide climate and energy model.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: JAN 13 2020 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, on behalf of the City of Richmond, is hereby authorized to accept a donation of professional services and associated tools valued at approximately \$75,000.00 from Greenlink Analytics, Inc., for the purpose of providing a citywide climate and energy model.

§ 2. That the Chief Administrative Officer, on behalf of the City of Richmond, is hereby authorized to execute a Contract for Donated Goods and Services between the City of

AYES:            9            NOES:            0            ABSTAIN: \_\_\_\_\_

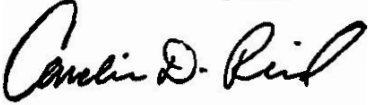
ADOPTED:    JAN 27 2020    REJECTED: \_\_\_\_\_    STRICKEN: \_\_\_\_\_

Richmond and Greenlink Analytics, Inc., in connection with the acceptance of the gift authorized by section 1 of this ordinance; provided that such Contract for Donated Goods and Services must first be approved as to form by the City Attorney and must be substantially in the form of the document attached to this ordinance.

§ 3. This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:**

**TESTE:**

A handwritten signature in black ink, appearing to read "Amelia D. Reed". The signature is written in a cursive style with a large initial 'A'.

**City Clerk**



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST
4-9409
NOV 13 2019
Office of the
Chief Administrative Officer

O&R REQUEST

DATE: November 13, 2019 EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

Handwritten initials and date 12/2/19

THROUGH: Lenora G. Reid, Acting Chief Administrative Officer

THROUGH: Robert C. Steidel, Deputy Chief Administrative Officer

FROM: Alicia Zatcoff, Sustainability Manager

RE: Acceptance of Donated Goods and Services from Greenlink Analytics

RECEIVED
DEC 02 2019
OFFICE OF THE CITY ATTORNEY

ORD. OR RES. No. \_\_\_\_\_

PURPOSE: To authorize the Acting Chief Administrative Officer to accept a gift of goods and services valued at \$75,000 from Greenlink Analytics ("Greenlink") in the form of professional services and associated tools to support the RVAgreen 2050 Planning Process at no cost to the City.

REASON: Due to the estimated value, an ordinance is necessary for the Acting Chief Administrative Officer to accept the gift.

RECOMMENDATION: Approval is recommended by the City Administration.

BACKGROUND: Greenlink will donate to the City professional services and associated tools valued at \$75,000 for the purpose of developing carbon neutral modeling and analysis to support the RVAgreen 2050 planning process. The donated goods and services are made possible by the support of the Southern Environmental Law Center (SELC) through an agreement with Greenlink. SELC supports the critical work of the RVAgreen 2050 equity-centered, integrated mitigation and climate resilience planning initiative. There will be no direct cost to the City outside of minimal time that staff will be providing during the project.

FISCAL IMPACT / COST: None

FISCAL IMPLICATIONS: None

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** None

**DESIRED EFFECTIVE DATE:** January 13, 2020

**REQUESTED INTRODUCTION DATE:** December 9, 2019

**CITY COUNCIL PUBLIC HEARING DATE:** January 13, 2020

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Land Use, Housing and Transportation

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** City Attorney's Office

**AFFECTED AGENCIES:** Office of Sustainability, Budget & Strategic Planning

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:**

Contract for Donated Goods and Services

**STAFF:** Alicia Zatcoff, Sustainability Manager, extension 3055

**CONTRACT FOR DONATED GOODS AND SERVICES**

This Contract for Donated Goods and Services (this "Contract"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), and Greenlink Analytics, a Georgia 501(c)3 organization, with offices at 695 Pylant Street NE, Atlanta, GA 30306 ("Greenlink"), is binding among and between these parties as of the date of the parties' final signatures.

**WHEREAS**, funded by a grant from the Southern Environmental Law Center, Greenlink desires to donate to the City certain professional services and associated tools for the purpose of developing a Carbon Neutral Modeling and Analysis to support the RVAgreen 2050 Planning Process, valued at approximately \$75,000.00;

**WHEREAS**, by Ordinance No. \_\_\_\_\_, adopted \_\_\_\_\_, 2020, the City's Chief Administrative Officer is authorized to accept the donation of professional services and associated tools valued at approximately \$75,000.00 from Greenlink, for the purpose of developing a Carbon Neutral Modeling and Analysis to support the RVAgreen 2050 Planning Process; and

**WHEREAS**, the City and Greenlink desire to execute this Contract to document the donation of the professional services and associated tools from Greenlink to the City and to set forth the terms and conditions governing the professional services and associated tools.

**THEREFORE**, in consideration of the Recitals as set forth above and good and valuable consideration as set forth below, the parties agree as follows:

1. **Scope of the Contract.** Greenlink shall provide the goods and services to the City as set forth in the Contract Documents enumerated in Section 2 below.
2. **Contract Documents.** This Contract shall consist only of the following documents, listed in order of precedence from highest to lowest:
  - A. This Contract, "Contract for Donated Goods and Services," between the City and Greenlink.
  - B. The "Contract for Consulting Services for the Development of a Carbon Neutral Modeling and Analysis for the City of Richmond, Virginia," between the City and Greenlink, attached hereto as Exhibit A.
  - C. The "Proposal: Consulting services for the development of carbon neutral modeling and analysis for the City of Richmond" as submitted by Greenlink to the Southern Environmental Law Center on October 30, 2019, attached hereto as Exhibit B.

All of these documents are incorporated herein by reference.

**IN WITNESS WHEREOF**, the parties hereto on the date written above have executed this Contract.

**For GREENLINK:**

By: \_\_\_\_\_  
 (Signature in ink) Date

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

\_\_\_\_\_  
 Title

**For the CITY:**

By: \_\_\_\_\_  
 Lenora G. Reid Date  
 Acting Chief Administrative Officer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
 Senior Assistant City Attorney Date  
 12/05/19

CONTRACT FOR CONSULTING SERVICES FOR THE DEVELOPMENT OF A CARBON  
NEUTRAL MODELING AND ANALYSIS FOR THE CITY OF RICHMOND,  
VIRGINIA

This CONSULTING CONTRACT (this "Contract") is entered into, by, and between Greenlink Analytics ("Consultant"), a Georgia 501(c)3 organization, with offices at 695 Pylant Street NE, Atlanta, GA 30306, and the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia located at 900 East Broad Street, Richmond, Virginia 23219 (the "City"), this \_\_\_\_ day of \_\_\_\_\_, 2020.

WHEREAS, the City seeks to develop a Carbon Neutral Modeling and Analysis (the "Model");

WHEREAS, Consultant is willing to develop the proposed Model for the City, including both goods and services;

WHEREAS, Consultant is willing to provide the City with the proposed Model at no cost to the City as a result of a \$75,000 grant to Consultant from the Southern Environmental Law Center for Consultant's work and expenses in developing the Model for the City;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Contract, Consultant and the City agree as follows:

1. **DEFINITIONS**

For purposes of this Contract, "Deliverables" shall mean the goods and consulting services set forth in Section 5 of this Contract.

2. **PAYMENTS, FEES AND TAXES**

Because Consultant is making a gift to the City of the Deliverables set forth herein, there are no payments, fees, costs, or taxes to be paid by the City under this Contract.

3. **TERM**

The term of this Contract shall begin on the date set forth above and shall terminate upon Consultant's delivery to the City of all of the Deliverable as set forth herein in Section 5 (DELIVERABLES), unless terminated earlier in accordance with the provisions of this Contract, or extended in writing by mutual agreement of the City and Consultant.

4. **PROPERTY RIGHTS**

The Deliverables to be provided by Consultant to the City pursuant to Section 5 herein, shall become the property of the City upon delivery, regardless of whether such Deliverables are goods or services.

5. **DELIVERABLES**

Consultant shall furnish the City with the following Deliverables:

- Development of baseline and net-zero scenarios for reducing GHG emissions that include both municipal operations and community-wide initiatives.
- Visualizations of each scenario.
- Analyses of CO<sub>2</sub> impacts and value of energy savings, health impacts, water impacts, and macroeconomic impacts of baseline and net-zero scenarios.
- Transportation modeling for light-duty vehicles, transit, and pedestrian/bike modes.
- Development and delivery of eight dynamic utility burden maps, including water, electricity, and gas burden analyses down to the census-tract level.
- Production of final materials to include:
  - slide deck(s)
  - matrix of actions, benefits, metrics, etc.
  - detailed methodology document

6. **NON-LOBBYING DISCLOSURE STATEMENT**

Every activity set forth in this Contract to be undertaken by Consultant shall be strictly non-lobbying as defined in Section 501(c)(3) of the U. S. Internal Revenue Code.

7. **PROJECT TEAM**

Consultant's team for this project shall consist of Dr. Matt Cox, as set forth in Exhibit B, Consultant's October 30, 2019 grant proposal to the Southern Environmental Law Center for consulting services for the development of a Carbon Neutral Modeling and Analysis for the City of Richmond, Virginia.

8. **FORCE MAJEURE**

Neither party shall be liable to the other party for any delay or failure in the performance of its obligations under this Contract while in effect or otherwise if such delay or failure arises from any cause or causes beyond the control of such party including without limitation, labor shortages or disputes, strikes, other labor or industrial disturbances, delays in transportation, acts of God, floods, lightning, fire, epidemic, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, an act of civil or military authority, sabotage, explosives, riots, insurrections, embargoes, blockades, actions, restrictions, regulations or orders of any government, agency or subdivision thereof, or failure of suppliers.

9. **MISCELLANEOUS PROVISIONS**

9.1 **Binding Effect.** This Contract and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9.2 **Amendment.** This Contract may be amended only by a writing duly executed by the authorized representatives of the parties hereto which makes specific reference to this Contract.

9.3 **Notices.** All notices, requests, demands, consents, authorizations, claims, and other communications (each a "Notice") hereunder must be in writing and shall be sufficiently given by either one or a combination of the following, whichever shall first occur: (i) sent to the other party by overnight delivery, or (ii) delivered by electronic mail to the person's last known business electronic mail address. Any Notice shall be deemed duly given upon such delivery. No party may send any Notice to the intended recipient using any other means. Notices to Consultant shall be sent to: (i) \_\_\_\_\_, Attn: General Counsel; or (ii) \_\_\_\_\_. Notices to the City shall be sent to the \_\_\_\_\_ at City of Richmond, 900 E. Broad Street, Room \_\_\_\_\_, Richmond, Virginia 23219, and with respect to Contractual Claims, also to the Director of Procurement as set forth in Section 10.7.3 herein, with copies of all Notices to the City Attorney, Richmond City Attorney's Office, 900 E. Broad Street, Suite 400, Richmond, Virginia 23219. Any party may change the addresses to which Notices are to be delivered by giving the other parties Notice in the manner herein set forth.



- 9.4 **Governing Law.** The validity and construction of this Contract and all matters pertaining thereto shall be determined in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. The parties agree that any proceedings related to this Contract, including any suit filed against Consultant, shall be brought in the Courts of the Commonwealth of Virginia located in the City of Richmond, Virginia. Consultant waives any objections to personal jurisdiction and venue to that forum. The parties specifically direct and agree that the CISG (UN-Convention on Contracts for the International Sale of Goods) and the Uniform Computer Information Transactions Act (UCIT A) are specifically excluded and neither shall apply to this Contract or to the performance hereof by the parties hereto.
- 9.5 **Waiver.** No party to this Contract shall be deemed to have waived any of its rights, powers or remedies under this Contract unless such waiver is expressly set forth in a writing signed by the waiving party. No written waiver of any provision of this Contract shall be deemed to be, or shall constitute, (i) a waiver of any other provision of this Contract, whether or not similar, or (ii) a continuing or subsequent waiver of the same or any other provision of this Contract. The failure of either party to enforce at any time any of the provisions of this Contract, or the failure to require at any time performance by the other party of any of the provisions of this Contract, shall in no way be construed to be a present or future waiver of any such provisions, or in any way affect the validity of either party to enforce each and every such provision thereafter.
- 9.6 **Captions.** The captions and headings of sections and subsections contained in this Contract are provided for convenience of reference only and shall not be considered a part hereof for purposes of interpreting this Contract, and, or affect the meaning or intent of this Contract or any of its terms or provisions.
- 9.7 **Severability.** If any section or other provision of this Contract, or the application of such section or provision, is held invalid, then the remainder of this Contract, and the application of such section or provision to persons or circumstances other than those with respect to which it is held invalid, shall not in any way be affected or impaired thereby. In the event that any provision of this Contract becomes or is declared by a court of competent jurisdiction or panel of arbitrators to be illegal, unenforceable or void, this Contract shall continue in full force and effect without said provision. The parties agree to negotiate in good faith a substitute valid and

enforceable provision that most nearly effects the parties' intent and to be bound by the mutually agreed substitute provision.

- 9.8 **Remedies.** All remedies shall be cumulative and not alternative and in addition to all other rights and remedies available in law and in equity.
- 9.9 **Negotiated Contract.** This Contract is a negotiated agreement between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Contract remains in effect.
10. **GENERAL TERMS AND CONDITIONS.**
- 10.1 **Duration of Contract.** The Contract term shall be as set forth in Section 3 herein.
- 10.1.1 **Extension of Contract.** The City reserves the right to extend the Contract for any reason for a period or periods up to but not to exceed 12 months. This extension clause may be exercised when the City determines that an extension of the Contract is advantageous to the City.
- 10.2 **Consultant Responsibilities.**
- 10.2.1 **Independent Contractor.** Consultant shall provide the services required under this Contract as an independent contractor.
- 10.2.2 **Advertising.** Consultant shall not use any indication of its services to the City for commercial or advertising purposes. However, Consultant may list the City as a reference account for prospective customers.
- 10.2.3 **Anti-Kickback Provision.** Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Consultant any fee, commission, percentage, brokerage fee, gifts or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the City shall have the right to annul or void this Contract without liability or, in its sole discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

- 10.2.4 **Century Compliance.** Consultant warrants that the hardware, software and firmware products, provided for use by the City or used by Consultant to provide any service or commodity that is the subject of this Contract, individually and in combination, shall successfully process, store and perform calculations with dates regardless of the century in which the dates occur.
- 10.2.5 **Compliance with Laws.** Consultant shall comply with the provisions of any statutes, ordinances, rules, regulations, or other laws enacted or otherwise made effective by any local, state, or federal governmental entity which may be applicable to the performance of this Contract and shall obtain all necessary licenses and permits thereunder.
- 10.2.6 **Consultant Misrepresentation.** If Consultant knowingly makes a material misrepresentation in submitting information to the City, such misrepresentation will be sufficient grounds for rescinding the award of this Contract.
- 10.2.7 **Drug-Free Workplace.**
- 10.2.7.1 **Policy.** City Council Resolution No. 2000-R197-191 prohibits the City from contracting with any contractor that fails to comply with this policy. Consultant certifies that it has taken and will continue to take appropriate and effective action to (i) educate its employees about the dangers of drug abuse in the workplace, (ii) provide its employees with effective drug counseling, rehabilitation and employee assistance programs, any or all, (iii) discipline employees who violate the requirement of a drug-free workplace, and (iv) minimize, to the greatest extent possible, the risks of drugs entering the workplace. Consultant is also prohibited from contracting with any other party that fails to comply with this policy. Failure by Consultant or its subcontractor to comply with the provisions outlined above will be cause for termination of the Contract.
- 10.2.7.2 **Consultant's Plan.** Consultant shall implement and maintain a Drug-Free Workplace Plan specific to the services and work covered by this Contract that is implemented and effectively used throughout the duration of this Contract to accomplish the requirements of Section 10.2.7.1 ("Policy") above.

10.2.8 **Human Rights.**

10.2.8.1 **Civil Rights Act Compliance.** During the performance of this Contract, Consultant agrees, pursuant to Resolution No. 74-R8-11 adopted February 25, 1974 by the Council of the City of Richmond, to comply fully with Titles VI and VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder. The essence of this requirement is found in the United States Code Annotated, Title 42, Section 2000e-2 (Unlawful employment practices), which states in part:

(a) It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.

By entering into this Contract, Consultant certifies that it has complied with Titles VI and VII of the Civil Rights Act of 1964, as amended.

10.2.8.2 **Richmond City Code Compliance.** Pursuant to Section 21-70 of the Code of the City of Richmond (2015), as amended, Consultant, as the City's contractor under this Contract, agrees as follows:

(1) During the performance of this contract, the contractor agrees as follows:

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

(b) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor 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.

(2) During the performance of this contract, the contractor shall include the provisions of subsection (1) of this Section 10.2.8.2 in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

- 10.2.9 **Intellectual Property.** Consultant represents and warrants that all goods and services that it will furnish under this Contract do not and will not infringe on any valid copyright, patent, service mark or trademark. Consultant shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Consultant or used by Consultant in the performance of its services. Consultant shall defend, hold harmless and indemnify the City from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.
- 10.2.10 **Personnel.** Consultant shall not replace a person indicated in Consultant's proposal as being assigned to perform services under this Contract for the City except in accordance with the provisions of this section. If Consultant wishes to replace such a person, Consultant shall provide the contract administrator of the City with a résumé of any proposed substitute, the opportunity to interview the proposed substitute and an explanation of the reason the substitution is necessary. The contract administrator of the City will only approve such a substitution when, in their opinion, the proposed substitute has equal or greater qualifications and experience than the person replaced.
- 10.2.11 **Property of Work.**
- 10.2.11.1 **Work Product.** Any material, report or product, whether in electronic or paper form, that results from the execution of this Contract shall be the sole property of the City. Consultant shall not copyright any material or reports. Upon request, Consultant shall turn over all work papers and related documents to the City.

10.2.11.2 **City Property.** Any data or material with which the City furnishes Consultant shall remain the property of the City. When it no longer needs such data or material for its performance of this Contract, Consultant shall return such data or material to the City or destroy such data or material using a method approved by the City.

10.3 **City Performance Subject to Annual Appropriations; City Not Liable for Taxes.**

10.3.1 **Subject-to-Appropriations.** All performance by the City under this Contract is subject to annual appropriations by the City Council; consequently, this Contract shall bind the City only to the extent that the City Council appropriates sufficient funds for the City to perform its obligations hereunder.

10.3.2 **Taxes.** The City shall not be liable for the payment of any taxes levied by any local, state, or federal governmental entity against Consultant, and Consultant shall pay all such taxes; furthermore, should the City nevertheless pay any such taxes, Consultant shall reimburse the City therefor.

10.4 **Indemnification and Insurance.**

10.4.1 **Indemnification.** Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach by Consultant of its obligations specified in this Contract, as well as all claims arising from errors, omissions, negligent acts or intentional acts of Consultant, its officers, agents and employees. Further, Consultant shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Consultant, its subcontractors, its agents or its employees under or in connection with this Contract. Consultant shall hold harmless and indemnify the City, and its agents, volunteers, servants, employees, and officers from and against any and all claims, losses or expenses, including but not limited to court costs and attorneys' fees, which any of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged. Consultant shall, upon written demand by the City, assume and defend at Consultant's sole expense any and all such claims or legal actions.

10.4.2 **Insurance.** Consultant shall provide and maintain throughout the life of this Contract insurance in the kinds and amounts specified in this section with an insurer authorized to transact insurance business in the Commonwealth of Virginia. Each

insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers and shall be countersigned by duly authorized local agents of such insurers.

10.4.2.1 **Costs and Premiums.** Consultant shall pay all premiums and other costs of such insurance. The consideration paid or to be paid to Consultant for the performance of the Contract includes the premiums and other costs of such insurance, and neither the City shall be responsible therefor.

10.4.2.2 **Policy Requirements.** All insurance contracts and policies shall provide, or be endorsed to provide, as follows:

(i) Subrogation against the City shall be waived for General Liability, Automobile Liability, and Worker's Compensation.

(ii) The City, and its officers, employees, agents and volunteers shall be listed as an additional insured, except for Workers Compensation, Employer's Liability, and Professional Liability.

(iii) Coverage will not be cancelled, non-renewed, or materially modified in a way adverse to the City without 30 days' written notice to the City.

(iv) The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies, subject to policy terms, condition, and exclusions.

10.4.2.3 **Evidence to Be Furnished.**

10.4.2.3.1 **Endorsements.** Consultant shall furnish the City with a copy of the policy endorsement listing the City, and its officers, employees, agents and volunteers as an additional insured (blanket endorsements are acceptable) for each policy, other than Workers Compensation, Employer's Liability, and Professional Liability, required under this Section 10.4.2 ("Insurance"). Consultant shall furnish the City with copies of such other endorsements as may be reasonably required under this Contract upon request by the City therefor.

10.4.2.3.2 **Certificates of Insurance.** Consultant shall furnish the City with a certificate of insurance evidencing the above coverage, indicating that the City, and its officers, employees, agents and volunteers are listed as additional insured for each policy,

other than Workers Compensation, Employer's Liability, and Professional Liability, and that the coverage will not be cancelled, non-renewed or materially modified in a way adverse to the City without 30 days' written notice to the City. All certificates of insurance shall show the Contract Number assigned to this Contract by the City.

- 10.4.2.3.3 **Contracts and Policies.** Consultant is not required to furnish the City with copies of insurance contracts or policies required by this Section 10.4.2 ("Insurance") unless reasonably requested at any time by the City's Director of Procurement Services.
- 10.4.2.4 **Schedule of Coverage.** Consultant shall provide and maintain the following types of insurance in accordance with the requirements of this Section 10.4.2 ("Insurance"):
- (i) Commercial General Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
  - (ii) Automobile Liability Insurance with a combined limit of not less than \$1,000,000 for each accident.
  - (iii) Statutory Workers' Compensation and Employers' Liability Insurance.
  - (iv) For professional services, Professional Liability Insurance with limits of not less than \$1,000,000 per claim and annual aggregate.
- 10.5 **Assignment, Delegation and Subcontracting.**
- 10.5.1 **By City.** The City may assign its rights or delegate its duties, in whole or in part, under this Contract by written notice delivered to Consultant. Such transfer of rights or duties shall take effect upon the date specified in the notice or upon the assumption, if necessary, of the delegated duties by the assignee, whichever is later.
- 10.5.2 **By Consultant.** Consultant shall not assign its rights or delegate its duties, or any part thereof, under this Contract without the prior written consent of the City. Further, Consultant shall not assign, sublet or transfer its interest or any part thereof in this Contract by means or as part of any sale, merger, consolidation, assignment or any other event that would result in new or different ownership, control, operation or administration of Consultant's business affairs without the prior written consent of the City.
- 10.5.3 **Subcontracting.** This Contract shall not be subcontracted without the prior written approval of the City's Director of Procurement Services.



10.6 **Remedies and Termination.**

10.6.1 **Default.** In case of default of Consultant or if Consultant fails to deliver the supplies or services ordered by the time specified, the City, after due notice in writing, may procure them from other sources and hold Consultant responsible for any excess cost occasioned thereby. This remedy shall be in addition to any other remedies available to the City.

10.6.2 **Termination with Cause.**

10.6.2.1 **Notice.** The City may terminate this Contract with cause at any time for Consultant's failure to perform its obligations under this Contract or to otherwise adhere to the terms and conditions of this Contract by delivery of written notice to Consultant of the intent of the City to so terminate. Such notice shall be delivered at least seven calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

10.6.2.2 **Cure.** If Consultant cures the failure to perform or otherwise adhere to the terms and conditions of this Contract to the satisfaction of the City, indicated in writing to Consultant, during this seven calendar day period, then the notice of termination with cause shall be deemed null and void.

10.6.2.3 **Effect.** Upon such termination, the City shall have full right to use completed or partially completed work in any manner when and where it may designate without claim on the part of Consultant for compensation.

10.6.3 **Termination without Cause.**

10.6.3.1 **Notice.** The City may terminate this Contract without cause by delivery of written notice to Consultant of the City's intent to so terminate. Such notice must be delivered at least 90 calendar days prior to the date of termination and must otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

10.6.3.2 **Effect.** Upon such termination, the City shall have full right to use completed or partially completed work in any manner when and where it may designate without claim on the part of Consultant for compensation.

10.6.4 **Termination by Consultant.**

10.6.4.1 **Notice.** Consultant may terminate this Contract if the City Council does not appropriate sufficient funds for the City to perform its obligations under this Contract by delivery of written notice to the City of Consultant's intent to so terminate. Such notice shall be delivered at least 45 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

10.6.4.2 **Cure.** If the City cures the non-appropriation of funds by appropriating sufficient funds during this 45 calendar day period, then Consultant's notice of termination shall be deemed null and void.

10.6.4.3 **Effect.** Upon such termination, Consultant shall have no further obligations under this Contract.

10.6.5 **Waiver.** The waiver by any party of any term or condition of this Contract shall not be deemed to constitute either a continuing waiver thereof or a waiver of any further or additional right that such party may hold under this Contract.

10.7 **Dispute Resolution.**

10.7.1 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Contract, or the rights and obligations of the City and Consultant in connection with this Contract, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

10.7.2 **Construction and Interpretation.** Each of the parties has had the opportunity to have its legal counsel review this Contract on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Contract, this Contract will be construed as if drafted jointly by the parties. Neither the form of this Contract, nor any language herein, shall be construed or interpreted in favor of or against any party hereto as the sole drafter thereof.

10.7.3 **Contractual Claims.**

10.7.3.1 **Notice and Submission.** Consultant shall give written notice of its intention to file a contractual claim at the time of the occurrence or the beginning of the work upon which the claim is based. In addition to such notice of its intention to file a claim, Consultant shall submit all contractual claims, whether for money or other relief, in writing to the City's Director of Procurement Services no later than 60 calendar days after final payment. (*See City Code § 21-167(a); see also Va. Code § 2.2-4363(A).*)

10.7.3.2 **Required Contents of Claim Submission.** Consultant's claim submission shall

(i) set forth the primary, secondary and indirect claim issues in a clear, concise manner,

(ii) identify the specific contract provisions, schedule impact and cost consequences related to each claim issue, and (iii) include all factual data supporting the claim as well as all supporting cost and delay data. The City's Director of Procurement Services, in the Director's sole discretion, may return claim submissions lacking any of the elements enumerated in the preceding sentence for resubmission or review the claim as though the missing elements are not factually present to support the claim. Such return of a claim submission shall not toll the 60-day period within which Consultant must submit a claim.

10.7.3.3 **Procedures and Time Limit.** The procedures set forth in this Section 10.7.3 ("Contractual Claims") and in City Code § 21-167 shall govern the consideration of contractual claims. The City's Director of Procurement Services shall issue a written decision on a claim no later than 90 calendar days after receipt of such claim in writing from Consultant. (*See City Code § 21-167(b); see also Va. Code § 2.2-4363(B).*)

10.7.3.4 **No Action before Decision.** Consultant may not invoke administrative procedures as provided in City Code § 21-168 or institute legal action as provided in City Code §21-169 prior to receipt of the decision on the claim, unless the City's Director of Procurement Services fails to render such decision within the 90-day time limit. A failure of the City's Director of Procurement Services to render a final decision within the 90-day time limit shall be deemed a final decision by the City denying the claim. (*See City Code § 21-167(c); see also Va. Code § 2.2-4363(D).*)

10.7.3.5 **Finality of Decision.** The decision of the City's Director of Procurement Services shall be final and conclusive unless Consultant appeals within 30 calendar days of the date

of the final decision on the claim by the Director either as provided in City Code § 21-168 for administrative appeals or, in the alternative, by instituting legal action as provided in City Code § 21-167. (*See* City Code § 21-167(d); *see also* Va. Code § 2.2-4363(E).)

- 10.7.3.6 **No Cessation of Performance.** Nothing in this Section 10.7.3 (“Contractual Claims”) shall be construed to authorize or permit Consultant, while pursuing, by any available procedure, an appeal of a contractual claim or dispute, to cease performance of the Contract while such claim or dispute is pending. (*See* City Code § 21-167(e).)
- 10.7.4 **Alternative Dispute Resolution.** The City’s Director of Procurement Services, with the concurrence of the City Attorney, may agree in writing on behalf of the City to submit particular disputes arising from this Contract to arbitration and to utilize mediation and other alternative dispute resolution procedures; however, any such procedures entered into by the City shall be nonbinding. (*See* City Code § 21-170; *see also* Va. Code § 2.2-4366.)
- 10.7.5 **Forum and Venue Choice.** Any and all disputes, claims and causes of action arising out of or in connection with this Contract, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in a federal or state court located in the city of Richmond, Virginia. Consultant accepts the personal jurisdiction of any court in which an action is brought pursuant to this Contract for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action.
- 10.8 **Miscellaneous Provisions.**
- 10.8.1 **Audit.** The City reserves the right to audit all aspects of this Contract, including but not necessarily limited to (i) Consultant’s financial capability and accounting system, (ii) the basis for progress payments, (iii) Consultant’s compliance with applicable laws and (iv) appropriate vendor records. The City further reserves the right to review, on demand and without notice, all files of Consultant or any subcontractor or vendor employed by Consultant to provide services or commodities under this Contract where payments by the City are based on records of time, salaries, materials or actual expenses. Consultant shall maintain all records subject to audit under this provision locally or in a manner deliverable at Consultant’s expense to a location in the metropolitan Richmond area.

- 10.8.2 **Captions.** This Contract includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles shall not affect the construal, interpretation or meaning of this Contract.
  
- 10.8.3 **Force Majeure.** If any party is unable to perform its obligations under this Contract due to acts of God or circumstances beyond its reasonable control, such obligations shall be suspended as long as those circumstances persist, provided that the delaying party promptly notifies the other party of the delay and the causes. Except where the delay is caused by an act or omission of the delaying party, any costs arising from such delay shall be borne by the party incurring the delay.
  
- 10.8.4 **Merger / Entire Agreement.** This Contract, including the exhibits incorporated herein, constitutes both a complete and exclusive statement and the final written expression of all the terms of this Contract and of the entire understanding between the City and Consultant regarding those terms. No prior written agreements or contemporaneous or prior oral agreements between the City and Consultant regarding this Contract's subject matter shall be of any effect.
  
- 10.8.5 **Modification.** This Contract shall not be amended, modified, supplemented, or otherwise changed except in the form of a City Contract Modification signed by the authorized representatives of the City and Consultant in accordance with the City's Purchasing Policies and Procedures.
  
- 10.8.6 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Contract, the City and Consultant hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Contract; (ii) the provisions of this Contract are not intended to be for the benefit of any individual or entity other than the City or Consultant; (iii) no individual or entity shall obtain any right to make any claim against the City or Consultant under the provisions of this Contract; and (iv) no provision of this Contract shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Contract.

#####

IN WITNESS WHEREOF, the parties hereto on the date written above have executed this Contract.

**For the Consultant:**

By: \_\_\_\_\_  
*(signature in ink)* *Date*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

**For the City:**

By: \_\_\_\_\_  
*Lenora G. Reid* *Date*  
*Acting Chief Administrative Officer*

**APPROVED AS TO FORM:**

*Wm B. Kenny* *12/05/19*  
*Senior Assistant City Attorney* *Date*