

SPONSORSHIP AGREEMENT

This Sponsorship Agreement (“Agreement”) made and entered into this 15 day of November 2024, by and between the City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia (“City”), and the Something in the Water, LLC (“Promoter”), a Delaware limited liability company with a principal office address of 10960 Wilshire Blvd, Fl 5, Los Angeles, California. Collectively, the City and Promoter may be referred to as “Parties.”

Whereas, the Promoter has requested the City make a financial and in-kind support sponsorship for the 2024 Something in the Water Festival (the “Festival” or “Event”);

Whereas, the Festival will occur on April 26 & 27, 2025 at the Oceanfront from 2nd street to pier, and other mutually identified locations to enhance the festival experience;

Whereas, City Council approved the sponsorship in the FY 24-25 budget;

Whereas, the Parties are committed to a Festival that promotes the resources of the City and offers recreation for residents and visitors; and

Now, therefore, for good a valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Promoter hereby agree as follows:

Section 1-Financial Sponsorship

City agrees to provide a financial sponsorship (the “Financial Sponsorship”) equal to the admissions taxes, meals taxes, and local portion of the sales taxes for activities within the footprint of the Festival. The definition of “footprint” is inclusive of 2nd Street to the Virginia Beach Fishing Pier, 1415 Atlantic Avenue, Virginia Beach, Virginia, 23454-4373, at the Virginia Beach Oceanfront within the area subject to the Festival’s special event permit and online ticket sales for the Festival. In addition to the Financial Sponsorship, the Parties agree to discuss in good faith additional funding opportunities for the City in connection with ancillary benefits and/or events associated with the Festival and Future Agreements (defined herein below).

The City shall provide a Financial Sponsorship as set forth below:

1. Upon full execution of this Agreement, the City shall provide one hundred thousand dollars (\$100,000) to Promoter to be used in connection with the Festival (“First Advance”).
2. Upon receipt of the Lineup (defined herein below) from the Promoter, the City shall provide two hundred thousand dollars (\$200,000) to the Promoter (“Second Advance”).
3. Upon completion of a Promoter’s Special Event Permit application, the City shall provide two hundred thousand dollars (\$200,000) to the Promoter (“Third Advance”). (collectively, the First Advance, Second Advance, and Third Advance shall be referred to as “\$500,000 Advance”)
4. Upon completion of the Event, the Promoter shall provide point-of-sale information to the City to assist in the calculation of the Financial Sponsorship, and such amounts, less the \$500,000 Advance, shall be paid to the Promoter within thirty (30) days of the City’s receipt of an invoice from the Promoter.

Section 2–City In-Kind Contributions

City agrees to provide the following in-kind resources to support the Festival:

- a. Use of various resort stages for concerts;
- b. Use of agreed-upon public parking lots for direct Festival support and rideshare;
- c. City Public Safety and Public Works personnel based on availability;
- d. City support of Promoter’s request to utilize School Board buses; and
- e. Availability of the Convention Center for the Promoter. Such availability will not include portions of the Convention Center rented to other patrons/businesses during the Festival.
- f. Use best efforts to ensure the beach within the footprint (as described herein) will be as wide as possible for the Festival.

Section 3-Promoter Responsibilities

The Promoter shall:

- a. Increase its efforts to reasonably collaborate with City Council liaisons and City staff to produce a professional music Festival that highlights the City of Virginia Beach, as expressly set forth herein. The City understands that final decisions regarding producing the Festival remain with the Promoter.
- b. Provide the City with the names of the publicly announced artists performing at the Event by December 31, 2024 (“Lineup”), with the understanding that the Lineup is subject to modification by Promoter prior to the Festival.
- c. Commence ticket sales for the Event no later than December 31, 2024.
- d. Cooperate with the City on its engagement of the Virginia Beach Resort Area business community to activate and welcome participants.
- e. Provide the City with pictures, drone videos and other marketing materials, as determined by Promoter in its sole discretion, for use in City-produced marketing and advertising to promote tourism in the City of Virginia Beach. Promoter shall obtain any required Certificate of Waiver or Authorization from with Federal Aviation Administration (“FAA”) for operation of unmanned aerial vehicles/systems, including film and photography drones. Failure to comply with FAA standards, rules, and regulations may result in the revocation of the Special Event Permit issued by the City, provided City shall, to the extent feasible, first send Promoter written notice of its failure to comply and a reasonable opportunity to cure.
- f. Use reasonable efforts to provide a positive economic impact for the City.
- g. Secure any necessary entertainment permits, including a Special Event Permit, licenses, and insurance required for the Festival. Promoter shall adhere to all terms, conditions, and requirements contained in the Special Event Permit and any addenda thereto.
- h. Provide the City with attendance and ticket sales information (in the form of a ticket audit or such other customary event attendance report) so that City can determine the amount of the Financial Sponsorship payable to Promoter.
- i. Include up to six (6) questions proposed by the City in Promoter’s post-Festival survey. The wording of such questions shall be subject to the prior approval of Promoter and must be submitted to Promoter for consideration no later than two (2) weeks prior to the Festival. Within sixty (60) days of the Festival, Promoter will share aggregate and non-identifiable data received in response to those questions. In no event shall Promoter be required to share name, address, email, or other personally identifiable information of the survey respondents.

- j. Promoter shall be responsible for contracting with and paying for one or more third parties to provide security and emergency medical services personnel during the Festival. City shall communicate the in-kind public safety resources available for the Festival and the quantity and type of security/medical personnel necessary to support City resources (based upon Festival details such as attendance projections, venue size and layout, anticipated alcohol sales, and other relevant factors).
- k. Promoter shall be responsible for providing entertainment line-ups, up-to-date attendance projections and sponsor information for safety and security purposes to contracted personnel and the City, through VBEM to VBPD.
- l. Promoter shall be solely responsible for contracting with, and paying, third parties for the production of the Festival, which such third parties collectively shall be responsible for the following:
 - 1. Providing staging, sound, and lighting equipment for the Festival suitable to accommodate live performances by artist(s); and
 - 2. Hiring, directing, and paying (if applicable) all necessary staff and labor for the operation of sound equipment and sound before, during, and after the Festival including, without limitation, set-up and break-down periods associated with the Festival.
- m. Public Safety. Promoter shall designate an executive safety officer as a primary point of contact to facilitate public safety planning and preparation with the City, through VBEM. Promoter, through such designated executive safety officer, shall facilitate public safety services in coordination with the City, through VBEM to the relevant City department. Upon request, Promoter shall assign at least one event manager with decision-making authority to the City Command Center to ensure effective public safety communication.
- n. Inclement Weather and Evacuation Plans. Promoter shall implement and adhere to the plan as required by the Special Events Tornado & Severe Thunderstorm Trigger Chart, attached hereto as Exhibit A, and incorporated herein by reference (“Trigger Chart”). Promoter shall designate an individual responsible for implementing the inclement weather/evacuation plans as prescribed by the Trigger Chart. In the event of a local emergency, consistent with Virginia Code §§ 44-146.16 and 44- 146.21, the City Manager may order evacuation of the Event site in the interest of public safety.
- o. The Promoter intends to produce Something in the Water Events in Virginia Beach in 2026 and 2027 on mutually agreed upon dates and terms. To the extent applicable, the parties agree to negotiate, in good faith, the terms and conditions of the 2026 and 2027 Events (collectively, “Future Agreements”). Future Agreements shall include event dates for the applicable year’s Event, and shall endeavor to provide timelines for the announcement of lineups and the commencement of ticket sales.

If, for any reason (except for a Force Majeure occurrence addressed in Section 18 below), Promoter determines not to produce an event in 2026 and/or in 2027 and/or the applicable year’s event is canceled in Promoter’s sole discretion (“N/A Event”), the City agrees that such shall not constitute a breach of the Agreement by Promoter and Promoter shall have no further liabilities or obligations in connection with the N/A Event under the Agreement.

Section 4–Documents incorporated by Reference.

The following document is incorporated by reference and shall assist in the construal of this Agreement and any terms and conditions included herein:

- Exhibit B, Standard City Terms and Conditions. Any reference to “Contractor” shall mean “Promoter.”

Section 5–Audit

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (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 Promoter, including, but not limited to those kept by Promoter, its employees, agents, assigns, successors solely in connection with the gross revenues of the Festival to the extent associated with the admissions taxes, meals taxes, and local portion of the sales taxes for activities within the footprint of the Festival. Promoter shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least six months following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon reasonable request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Promoter’s office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for both parties.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

Section 6-Term

This Agreement shall be in effect from the date this Agreement is executed and shall continue in force until the end of the Festival and reconciliation of any Financial Sponsorship. Upon the completion of the Festival and load out, the Promoter shall remove the Promoter’s materials and equipment from the Festival venue.

Section 7–Independent Contractors

It is understood and agreed by the Parties hereto that they do not stand in the relationship of partners or joint ventures in connection with this Agreement.

Section 8-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.

Section 9-Compliance with All Laws

The Parties shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this Agreement. Promoter expressly represents that it is duly organized, validly existing, and in good standing under the laws of the state in which it is organized and/or registered.

Section 10-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.

Section 11-Termination

Each Party reserves all rights and remedies (including, without limitation, the right to terminate this Agreement) in the event of the other Party's material breach of this Agreement, provided that it shall first give the other Party written notice and a reasonable opportunity to cure (if practicable and curable). In the event Promoter breaches a material provision of this Agreement, the City may give Contractor written notice of such default by email. Unless otherwise provided, Contractor shall have five (5) days from the date such notice is emailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Agreement as of the date the default notice was emailed and Promoter shall return the First Advance, Second Advance, and, if applicable, the Third Advance to the City within ten days of the date of termination.

Section 12-Non-Assignment

A party shall not assign its rights and duties under this Agreement without the prior written consent of the other party.

Section 13-Entire Agreement/Modification

The Parties agree that this writing constitutes the entire agreement of the parties and that there may be no modification of this Agreement, except in writing, executed by the authorized representatives of the City and Promoter.

Section 14-Non-Exclusivity

City is hereby granted non-exclusive sponsorship for the Event. City acknowledges and agrees that City is not the sole or exclusive sponsor of the Festival or any particular Event activities, and that Promoter has the right to sell and grant additional sponsorship and promotional partnership benefits to third parties, including, without limitation, signage space, booth space and/or other recognition to other sponsors and partners of the Festival, in Promoter's sole discretion.

Section 15-Miscellaneous

City shall not engage in any press releases/press that mentions the Festival without Promoter's prior written specific approval (email is sufficient). City's promotions that mention the Event are subject to Promoter's prior written approval (email is sufficient). This Agreement does not grant City any rights to include any third parties (i.e., performing artists/talent, audience members, other sponsors, etc.) in its promotions, and City is solely responsible for obtaining all rights, waivers, and/or clearances (at its sole cost) required by any third party to include such third party in its promotions. No branded or co-branded giveaways at the Event without Promoter's prior written approval. All

rights not expressly granted herein are reserved by the Promoter.

Section 16-Intellectual Property

City is the sole and exclusive owner of all rights in and to the **City of Virginia Beach** name, trademarks, trade names, logos, product designations, slogans, copyrighted materials, or any combination thereof, as well as any goodwill associated therewith (collectively, the “**City’s Marks**”) and, with the exception of the non-exclusive rights expressly granted hereunder, all other rights relating thereto are expressly reserved by City. City hereby grants to Promoter and its designees a limited, non-exclusive license to use the City’s Marks that City provides to Promoter hereunder during the Term, solely for the Event described and contemplated herein; provided that, all uses of City’s Marks by Promoter shall be subject to City’s prior written approval (as set forth below) which approval shall not be unreasonably withheld, conditioned, or delayed. Promoter acknowledges that all rights in and to City’s Marks are and shall continue to be owned and controlled exclusively by City. Promoter shall execute and deliver all documents reasonably requested by City, which evidence City’s exclusive rights in and to City’s Marks, and hereby assigns to City any and all rights it may acquire in and to City’s Marks. The license granted hereunder to Promoter shall expire upon the earlier of the expiration of the Term or termination of the Agreement as provided herein. Promoter shall contact the designated City representative for the purpose of obtaining City’s approval as to the use of City’s Marks and any Creative (defined below) approvals required by this Agreement. The definition of “City’s Marks” does not include the City Seal.

Promoter is the sole and exclusive owner of and/or enjoys the contractual right to use and exploit all rights in and to the Festival name, trademarks, trade names, logos, product designations, slogans, copyrighted materials, or any combination thereof, as well as any goodwill associated therewith (collectively, the “**Festival Marks**”) and, with the exception of the non-exclusive rights expressly granted hereunder, all other rights relating thereto are expressly reserved by Promoter and its affiliates. Promoter hereby grants to City a limited, non-exclusive license to use the Festival Marks that Promoter provides to City hereunder during the Term, solely for the Festival described and contemplated herein; provided that, all uses of the Festival Marks by City shall be subject to Promoter’s prior written approval and Promoter’s brand guidelines, which approval shall not be unreasonably withheld, conditioned, or delayed. City acknowledges that all rights in and to the Festival Marks are and shall continue to be owned and controlled exclusively by Promoter. City shall execute and deliver all documents reasonably requested by Promoter, which evidence Promoter’s (and its affiliates’) exclusive rights in and to the Festival Marks, and hereby assigns to Promoter and its affiliates any and all rights it may acquire in and to the Festival Marks. City will cause to appear on all materials generated by or at the request of City on which the Festival’s Marks appear such legends, markings and notices as Promoter may reasonably request in writing in order to preserve and protect Promoter and its affiliates’ rights in and to the Festival Marks. The license granted hereunder to City shall expire upon the earlier of the expiration of the Term or termination of the Agreement. City shall contact Promoter’s representative for the purpose of obtaining Promoter’s approval as to the use of Festival Marks and any Creative approvals required by this Agreement.

Prior to any use, publication and/or distribution by either Party of any of the other Party’s Marks, or of any media, materials, products, and/or creative content incorporating the other Party’s Marks (collectively, the “**Creative**”), the Parties agree to provide the other with the applicable draft or

Page 6 of 8

description of the Creative, including the proposed use of the Creative. The Parties shall work together in a reasonable manner to review and respond to requests for approval within a reasonable time period of time not to exceed forty-eight (48) hours. Should a Party fail to respond within said forty-eight (48) hour time period approval shall be deemed granted. Notwithstanding the foregoing, for the period of one (1) week leading up to the Festival and during the Festival the Parties shall have twenty-four (24) hours to approve of the Creative. Should a Party fail to respond within said twenty-four (24) hour time period approval shall be deemed granted.

Section 17–Insurance

During the Event (from the time set-up first commences until completion), Promoter shall maintain insurance policies with the types of coverages and minimum policy coverages limits, as follows:

- i. Commercial General Liability, Premises/Operations, Contractual, Independent Contractors, and automobile liability insurance, each in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate combined single limit for injury and property damage;
- ii. Business automobile liability insurance with a limit of not less than \$1,000,000 per occurrence with combined bodily injury and property damage and covering all owned, non- owned and hired vehicles; and
- iii. Worker’s compensation coverage equal to or greater than the applicable state statutory requirements, and Employer’s liability in an amount not less than \$500,000.

Upon written request, Promoter shall name “The City of Virginia Beach, its officers, employees, agents, and representatives” as additional insureds on the required insurance coverages set forth above. Promoter’s insurance shall be provided by an insurer admitted in the Commonwealth of Virginia and which has a current A.M. Best’s rating of no less than A: VIII or equivalent. Upon written request, Promoter shall furnish the City with a certificate of insurance evidencing the coverage required by this Agreement prior to the Event. In no event will the insurance coverages required hereunder be deemed to limit Promoter’s liability or responsibility pursuant to this Agreement. Failure to maintain such coverages or to obtain or deliver any certificate required hereunder shall not relieve Promoter of its obligations under this Agreement (including, without limitation, its breach in failing to deliver any such certificates).

The City of Virginia Beach is self-insured and has \$10,000,000 of excess liability coverage about its \$2,000,000 self-insurance program. This coverage is through States Self Insurers Risk Retention Group and includes automobile liability, commercial general liability, public official liability, and law enforcement liability coverage.

Section 18-Force Majeure

Festival is rain or shine. Notwithstanding the foregoing, neither Party shall be liable to the other and each Party shall be excused from performance of their obligations for any failure of or delay in the performance of their respective obligations under this Agreement to the extent such failure or delay is due to circumstances beyond a Party’s reasonable control and which renders performance impossible, infeasible, and/or unsafe, including, without limitation, acts of God, war, epidemics, pandemics, (such as COVID-19 and/or any variants thereof) local disease outbreaks, public health emergencies, quarantines, accidents, floods, civil disturbances, sabotage, accidents, insurrections,

blockades, embargoes, cancellation of the Festival, in whole or in part, due to weather or other circumstances (including, without limitation, restrictions, rules, laws, guidelines, advice from the applicable governmental and/or health authorities in connection with COVID-19 or variants thereof ("COVID Guidelines") that could interfere with the Festival from taking place as planned such as, without limitation, COVID Guidelines that could affect Festival's capacity, admission processes, operations, or otherwise), the unavailability of labor or materials, failure of Festival Artists to perform, failure of Festival production/technical facilities/transportation, terrorism, civil disorder, explosions, disaster (including but not limited to fire, flood, and earthquake), strikes or work stoppages, government regulation, curtailment of transportation facilities, or otherwise (each a "Force Majeure Occurrence"). For the avoidance of doubt, Force Majeure Occurrence(s) affecting either Party's performance or rights (including, without limitation, postponement and/or cancellation of the Festival, in whole or in part, due to a Force Majeure Occurrence) shall not constitute a breach of contract and City shall remain responsible for payment to Promoter of the full Financial Sponsorship and any other payments/compensation due under the Agreement.

AGREED AND ACCEPTED:

AGREED AND ACCEPTED:

SOMETHING IN THE WATER, LLC

CITY OF VIRGINIA BEACH

By: Penni Thow
Title: Authorized Signatory
Date: November 15, 2024

By: Amanda Jarratt
Deputy City Manager

CITY APPROVALS

Approved as to Content: Nancy Helman, Administrative

By: N. Helman Date: 11/18/24

Approved as to Funding: _____

By: Lotus & Statia Date: 11/18/2024

Approved for Legal Sufficiency: Aimee Knepp

By: Aimee Sullivan Date: 11/18/2024

Approved as to Risk Management: _____

By: Leah Hunger Date: _____

Exhibit A

Special Events Severe Weather Trigger Chart

WEATHER THREAT	ADVICE CONDITION	LOCATION From Venue	ACTION	RESPONSIBILITY
WEATHER ANTICIPATED 48 HOURS	ADVISORY	N/A	COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER. MONITOR FORECAST. REVIEW INCREMENT WEATHER AND EVACUATION PLANS WITH YOUR TEAM.	EVENT ORGANIZER
WEATHER ANTICIPATED 24 HOURS	ADVISORY	ANTICIPATED WITHIN 200 MILES	COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER. MONITOR FORECAST. COORDINATE WITH TEAM, EVENT EQUIPMENT / TENT / STAGE SUPPLIERS, ETC.	EVENT ORGANIZER
LIGHTNING OR THUNDERSTORM	ADVISORY	50 MILES ESTIMATED	COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER. POSSIBLE ON-SITE MEETING. ENSURE TEAM IS ON STANDBY TO IMPLEMENT INCREMENT WEATHER / EVACUATION PLANS. PREPARE ANNOUNCEMENTS / VIDEO MESSAGE. MONITOR RADAR.	EVENT ORGANIZER
LIGHTNING OR SURFACE WINDS 30-40 MPH OR THUNDERSTORM WATCH OR TORNADO WATCH	CONDITIONS ARE PRESENT OR WATCH IS ISSUED	25 MILES ESTIMATED	COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER. SECURE EVENT VENUE - EQUIPMENT / TENTS / STAGES. NOTIFY EVENT ATTENDEES OF POSSIBLE THREAT. START ANNOUNCEMENTS / VIDEO MESSAGE. PREPARE TO EVACUATE WATER/MARINE EVENTS. MONITOR RADAR.	EVENT ORGANIZER EVENT TEAM
LIGHTNING OR SURFACE WINDS 30-40 MPH OR THUNDERSTORM WATCH OR TORNADO WATCH	CONDITIONS ARE PRESENT OR WATCH IS ISSUED	15 MILES ESTIMATED	TEAM IN POSITION TO SECURE EVENT VENUE. CONTINUE TO IMPLEMENT INCREMENT WEATHER / EVACUATION PLANS. 2ND NOTIFICATION TO EVENT ATTENDEES OF POSSIBLE THREAT. CONTINUE ANNOUNCEMENTS / VIDEO MESSAGE. EVACUATE WATER/MARINE EVENTS. MONITOR RADAR.	EVENT ORGANIZER EVENT TEAM
LIGHTNING OR SURFACE WINDS 30-40 MPH OR THUNDERSTORM WATCH OR TORNADO WATCH	CONDITIONS ARE PRESENT OR WARNING IS ISSUED	10 MILES ESTIMATED	COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER. IMPLEMENT INCREMENT WEATHER / EVACUATION PLANS. BEGIN EVACUATION OF EVENT SITE. NOTIFY EVENT ATTENDEES OF EVACUATION. CONTINUE ANNOUNCEMENTS / VIDEO MESSAGE. MONITOR CROWD MOVEMENT. CONTINUE TO SECURE EVENT VENUE. MONITOR RADAR.	EVENT ORGANIZER EVENT TEAM
LIGHTNING OR SURFACE WINDS 30-40 MPH OR THUNDERSTORM WATCH OR TORNADO WATCH	CONDITIONS ARE PRESENT OR WARNING IS ISSUED	8 MILES	FINISH EVACUATION AND ALL PERSONS TAKE COVER. MONITOR EVENT VENUE.	EVENT ORGANIZER EVENT TEAM
ALL CLEAR	Storm Passed All clear	10 MILES	IF NO DAMAGE OR SAFETY ISSUES ARE IDENTIFIED, ALLOW RE-ENTRY AND CONTINUE EVENT. COMMUNICATION WITH CITY EVENT COORDINATOR AND EVENT ORGANIZER.	EVENT ORGANIZER EVENT TEAM

Note: The speed and direction of advancing storms and the size and nature of the event may alter the time needed to safely evacuate the site. Temporary structures shall not be used as sheltering locations for event participants. Failure to comply with the terms of the weather plan or any term or condition of the permit may result in the immediate revocation of the permit. Public safety agencies may order mandatory actions in the interest of public safety at any public place regardless of whether the permit has been revoked.

Exhibit B
Standard City Terms and Conditions

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

2. Compliance with Immigration Laws

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

3. Foreign and Domestic Corporations Transacting Business in Virginia

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

4. Nondiscrimination

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

A. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor.

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

B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor 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. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

5. Drug-Free Work Place

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

A. Contractor will provide a drug-free workplace for Contractor's employees.

B. Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

C. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.

D. Contractor will include the provisions of the foregoing Sections A, B, and C in each subcontract or purchase order over \$10,000, so the provisions are binding upon each subcontractor.

6. Governing Law and Venue.

A. Contract interpreted under laws of Virginia. 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. 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.

7. Compliance with Applicable Laws

The Contractor shall comply with all federal, state and local statutes, ordinances, regulations and guidelines now in effect or hereafter adopted, in the performance of the description of services set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its services. If the Contractor is a corporation, partnership, or limited liability company, Contractor expressly represents that it is a legal business entity in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Agreement.

8. Business License Requirement

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

9. Independent Contractor

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

10. Non-appropriation

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

11. Compliance with the Virginia Human Rights Act

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