

CITY OF VIRGINIA BEACH  
ADVERTISING AND PUBLIC RELATIONS  
SERVICES AGREEMENT  
ECONOMIC DEVELOPMENT DEPARTMENT

THIS AGREEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, hereinafter referred to as Agency, and the CITY OF VIRGINIA BEACH to include the Virginia Beach Development Authority (VBDA), a municipal corporation of the Commonwealth of Virginia (the "City"), acting by and through the Director of the Economic Development Department, (hereinafter referred to as the "Director"), and by the directors of other City agencies. All work shall be performed on an as needed basis.

WITNESSETH

That for and in consideration of the mutual promises hereinafter set forth, the Agency and the City covenant and agree each with the other as follows:

1. That beginning \_\_\_\_\_, and continuing for a term of one (1) year, or until \_\_\_\_\_, the Agency shall perform such advertising and public relations services as may be authorized and required by the Directors to advertise and promote Economic Development Department and to analyze and provide subject matter content , at the request of the Directors, the effectiveness of the advertising and public relations programs implemented pursuant to this Agreement. The City may at its option renew the term for four (4) additional one-year period. Any and all contracts entered into by the Agency in furtherance of this Agreement shall be entered into in the name of the Agency, and not the name of the City of Virginia Beach.
2. Notwithstanding anything herein to the contrary, combined total expenditures to and through the Agency for advertising and public relations and including all related charges, shall not exceed those annual advertising budgets established by the

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Directors with the City and any additional amounts that may be duly authorized for any year during the period of this Agreement.

3. Advertising, Content Development, Promotion and Public Relations.

A. With respect to commissionable media, the Agency will be compensated by the City for media space and time costs, less any cash discount allowed by media. In lieu of the standard fifteen percent (15%) commission paid the Agency by media, Agency shall accept a reduced commission of \_\_\_\_\_ percent with the difference being rebated back to the City. The reduced commission shall compensate the Agency for its costs in connection with media placements which include but are not limited to the following:

- (1) Office overhead;
- (2) Customary analysis and research;
- (3) Time as required by the Directors in order to provide for a close working relationship between the Agency and the Directors, or their representatives, in programming, content development, and planning effective advertising and promotion programs;
- (4) Travel and communication between the offices of the Agency and the Directors as may be required of the Agency by the Directors from time to time; and
- (5) Other out-of-pocket and incidental expenses not directly involved in production or media scheduling.

B. With respect to non-commissionable media, the Agency will be compensated by the City for media space and time costs, less any cash discount allowed by media. The Agency shall be entitled to a commission of \_\_\_\_\_ percent (\_\_\_\_\_ percent of gross billing) on such space and time

costs to compensate it for its costs in connection therewith which include but are not limited to items (1) through (5) set forth in paragraph 3A above. Any non-commissionable material or work for which the Agency will be compensated shall be discussed and agreed to by the Directors prior to Agency's preparation of such work or material. Probably need to reword this if we are taking it out.

- C. With respect to public relations services, the Agency will be compensated in an amount to be agreed upon in advance for each such project.
4. Upon request by the City, the Agency shall provide to the City copies of all duly executed contracts and/or insertion orders or contracts previously authorized by the Directors covering advertising purchases in selected media. Contracts shall state the name of media, insertion date(s), and rate(s) and cash discount(s) if allowed. (In the event that there is compensation or giveaways (i.e. tickets, shirts, foursomes, etc.) for the placement of ads, the ED Director will notify his /her DCM and get prior approval for the disposition of those items received. This will be contemplated prior to the placement of the ad and may be grounds for not pursuing that specific ad placement.)
  5. Upon request by the City, the Agency shall provide the Directors with tearsheets or other proof of performance of all advertising as soon as practical.
  6. The City will compensate the Agency for production costs, including creative direction, content development, visual art work, final art work, composition, photographs, typography, engravings and printing with respect to projects finally accepted for use by the City, provided that the Agency shall have first presented to the City an estimate of said production costs and provided further that the final production costs shall not exceed the estimate without prior approval. Personal

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service costs shall be itemized to show actual rate routinely charged by the Agency for the employees' services and the number of hours devoted to the production unit. Any request for payment of production services performed by Agency subcontractors shall be supported by itemized invoices from the subcontractor. The Agency shall be entitled to an add-on fee of percent of the subcontractor's bill for work produced by such subcontractors with respect to projects authorized by the City. Probably need to reword this if we are taking it out. Any travel costs in connection with production services will be considered billable if authorized in advance by the Directors. All estimates need approval before work begins. Such travel will be reimbursed in accordance with the then-current City travel regulations. Production charges will be billed at the end of the month in which the production unit is completed, except in the case of unusually large projects that may span an excessive period of time. In such cases, partial billing by the Agency may be rendered at the end of various phases of the project for costs actually incurred by the Agency.

7. Reimbursement to the Agency for authorized special research and other projects not considered as customary services in the execution of advertising, promotion and/or public relations assignments will be subject to advance negotiation and agreement/approval for each such project.
8. All job control and time records with respect to production costs shall be open to inspection by the Directors or their authorized agent(s) during regular business hours.
9. The Agency will not accept or participate in any proposition to promote or otherwise conduct campaigns for political candidates running for City offices and/or for City constitutional offices, so long as this Agreement remains in effect. The Agency will

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not engage in advertising or public relations services for any other economic development organization without the prior approval of the Director. Further, the Agency agrees to hold confidential and shall not make public any work product, strategy, campaign or prospect names unless expressly authorized to do so by the Director.

10. This Agreement may be terminated by the City, with or without cause, by giving sixty (60) days written notice, by registered or certified mail, to that effect to the other party.
11. Upon termination of this Agreement, the Agency shall:
  - (1) Transfer and make available to the Directors or their authorized representatives all property and materials under its control which belong to the City's advertising and promotion and public relations services and programs in its possession; and
  - (2) Assign, subject to approval of third parties in interest, if necessary, all reservations, contracts and arrangements with advertising media or others for advertising space, time, materials, or services yet to be used with all rights and claims thereto and therein, and no extra compensation shall be paid to the Agency for its services in making such assignment. The City shall assume, upon said assignment, all obligations of the Agency which the City authorized it to incur with third parties and for which the Agency has not been paid, and the City shall release the Agency therefrom. If any third party in interest fails to approve the assignment to the City by the Agency of any reservation, contract, or other arrangement with such third parties, then the Agency shall fulfill its obligation to the City pertaining to such reservation, contract, or arrangement as if this Agreement had not been terminated.

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12. At the end of the term of this Agreement or upon termination thereof, all plans for advertising, preliminary sketches, collateral materials, layouts, copy materials, films, slides, electronic files, and other materials used in the City's advertising and promotion programs and/or public relations services and paid for the City shall be the exclusive property of the City and returned to the Directors to include all web based formats, websites, and social media referencing content.
13. Upon termination of this Agreement, the Agency shall bill the City for, and the City shall then pay, all amounts not previously billed or paid for which the Agency is entitled to claim reimbursement from the City under the terms of this Agreement. The Agency is to receive no further compensation or commissions in connection with space, time, materials, or services, the payment for which shall become due to an advertising medium or others after the termination of this Agreement, except to the extent that the Directors shall have already approved material prepared by the Agency and has authorized the Agency to place the same in the media for specific dates that are past the dates of termination of this Agreement.
14. Agency shall submit to the City a certificate of insurance written by a company or companies acceptable to the City and licensed to conduct the business of insurance in the Commonwealth of Virginia. Such certificate of insurance shall be submitted to the City prior to beginning work under the Agreement and no later than ten (10) days after execution of the Agreement. Such insurance shall be maintained during the entire term of the Agreement and shall be in the forms and limits as shown below:
  - A. Commercial General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000). Such insurance shall name the City of Virginia Beach as an additional insured.

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- B. Workers' Compensation at levels in accordance with Virginia statutory requirements.
- C. Advertising liability or its equivalent in an amount not less than Five Million Dollars (\$5,000,000).
- D. Commercial crime insurance including employee dishonesty coverage and endorsements naming the City as joint loss payee at limits not less than Five Hundred Thousand Dollars (\$1,000,000.)

The City of Virginia Beach shall be named as an additional insured under any and all such policies.

- 15. Reserve.
- 16. It is understood and agreed that the Agency hereby assumes 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 the Agency, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. The Agency agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by the Agency or those for whom the Agency is legally liable. Upon written demand by the City, the Agency shall assume and defend at the Agency's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

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The Agency agrees that it shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement and shall save harmless and indemnify the City and its officers and employees from and against all claims of whatever nature asserted by third parties against the City and its officers and employees based upon "contracts" made between the Agency and such third parties in carrying out the terms of this Agreement, provided, however, that the City shall pay to the Agency any charges made by any such third party where such a contract had been previously presented to and approved by the City and such contract has been satisfactorily performed. The term "contract" as used in this paragraph shall mean an agreement between the Agency and any third party for the purchase of advertising time or space in any medium or the purchase of advertising materials or services, including, but not limited to, engravings, films, slides, and production costs.

17. Employment discrimination by the Agency shall be prohibited. During the performance of this Agreement, the Agency agrees as follows:
  - A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, sex, age, national origin, or handicap, except where religion, sex, age, national origin or handicap is a bona fide occupational qualification reasonably necessary to the normal operation of the Agency. The Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - B. The Agency, in all solicitations or advertisements, for employees placed by or on behalf of the Agency, shall state that such Agency is an equal opportunity employer.



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- 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. The Agency will include the provisions of the foregoing paragraphs 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.
18. THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.
  19. Notwithstanding anything in this Agreement to the contrary in the event that this Agreement is terminated by the City as a result of a breach thereof by the Agency, then the City shall have the right to retain any sums due or to become due to the Agency to be applied to the payments of any damages as costs to the City which result from or arise out of the breach of this Agreement by the Agency.
  20. This Agreement is not assignable without the written consent of the City and the Agency.
  21. This Agreement is entered into and is intended to be performed in Virginia, and the validity, enforceability, interpretation, and construction hereof shall be determined and be governed by the laws of the Commonwealth of Virginia, and the parties designate the Circuit Court of the City of Virginia Beach or the U.S. District Court for the Eastern District of Virginia, Norfolk Division for purposes of all litigation and venue.
  22. The City's RFP Item #COVB-21-100129 and the Agency's proposal submitted in response to the solicitation and subsequent modifications made to the proposal through the RFP process are hereby incorporated by reference; provided, however, that in the event there is a conflict between the provisions of the RFP or the

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proposal, and the provisions of this Agreement, the provisions of this Agreement shall be controlling.

23. In the event any provision or provisions of this Agreement are determined to be void, ultra vires, or otherwise unenforceable by a court of competent jurisdiction, as designated herein, the remaining portions of this Agreement shall continue in full force and effect.
24. It is understood and agreed between the parties herein that the City will be bound hereunder only to the extent that funds shall have been appropriated and budgeted or are otherwise available for the purpose of this Agreement. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments due under this Agreement, the City shall immediately notify the Agency of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever.
25. Agency shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Agency represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work. Agency further represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Agreement.
26. During the performance of this Agreement, the Agency agrees to (i) provide a drug-free workplace for the Agency's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying

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employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Agency'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 Agency that the Agency maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Agreement 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 Agreement.

27. This Agreement shall not be modified without the prior written consent of both parties.
28. Agency acknowledges that all services it provides under this Agreement are provided as an independent contractor on a work-for-hire basis. All intellectual property rights and other proprietary rights in any work resulting from the performance of services under this Agreement shall vest and be held in the name of the City.
29. Agency 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.

30. Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the City and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the City with notice of Agency's intention to file a claim which (i) describes the act or omission by the City or its agents that the Agency contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the claim. Such written statement shall be submitted to the City within twenty (20) days of the time of the occurrence, learning of the existence of the claim, or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of the Agency to result from its acting on an order from the City, it shall immediately take written exception to the order. For purposes of this provision, "claim" shall include, without limitation, any request for an increase in the Agreement price or time and any request for equitable adjustment. In no event shall a delay in providing such notice preclude recovery for an existing or pending claim unless such delay has prejudiced the City and then only to the extent of such prejudice. Neither an oral notice or statement will be sufficient to satisfy the requirements herein.

The City will review the claim and render a final decision in writing within thirty (30) days of receipt of Agency's written request for a final decision. Agency reserves all rights to challenge the final decision in a court of competent jurisdiction

31. Foreign and Domestic Businesses Authorized To Transact Business In The Commonwealth:

The Agency shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. The Agency shall submit proof of such

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registration to the City. Additionally, the Agency 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, to be revoked or canceled at any time during the term of the Agreement.

32. Business License Requirement:

If Agency is a business, located in the City of Virginia Beach or at any time during the performance of this Contract 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 Revenue of the City, and Agency covenants that it has a business license where one is required to perform this Contract.

33. Audits:

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, on a phone per text/IM 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 Agency, including, but not limited to those kept by Agency, its employees, agents, assigns, successors and subcontractors. Agency 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 three years 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 request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Agency's office or place of business in Virginia Beach,

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Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

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.

34. Offset/Setoff:

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

35. 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.

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IN WITNESS WHEREOF, the Agency and the City have caused this Agreement to be signed and sealed by their duly authorized officers.

CITY OF VIRGINIA BEACH, VIRGINIA

By \_\_\_\_\_  
Rebecca Kee  
Purchasing Agent

AGENCY

By \_\_\_\_\_  
Name:  
Title:

STATE OF VIRGINIA,  
CITY OF VIRGINIA BEACH, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that Rebecca Kee, Purchasing Agent for the CITY OF VIRGINIA BEACH, whose name as such is signed to the foregoing Agreement, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
CITY OF \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that \_\_\_\_\_, whose name as such is signed to the foregoing Agreement, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_