

CITY OF VIRGINIA BEACH
AGREEMENT BETWEEN
THE CITY OF VIRGINIA BEACH, VIRGINIA
AND
Hillard Heintze

This Agreement (the "Agreement") made and entered into as of this 17th day of July, 2019 by and between the City of Virginia Beach, Virginia, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City," and Hillard Heintze hereinafter referred to as the "Contractor." (Collectively, the City and the Contractor may be referred to as the "Parties")

The parties to this Agreement, in consideration of the mutual covenants and stipulations set forth below, agree as follows:

- I. **Scope of Work** The Contractor shall perform an independent review of the tragic events of May 31, 2019 in conformity with the attached resolution of the City Council, adopted July 2, 2019, attached hereto as Exhibit A. Contractor shall perform services in a manner consistent with a certain proposal of the Contractor dated July 12, 2019, which was submitted to the City in response to the City Auditor Request for Proposals for Independent Consultant and such proposal is attached hereto as Exhibit B. In the event that a conflict exists between the referenced proposal of Contractor and this Agreement, the terms of this Agreement shall govern and supersede any such conflicting terms of the proposal.
- II. **Consideration/Payment Schedule** In consideration of the work to be performed by Contractor, the City agrees to pay Contractor for such work as is required to complete those tasks set forth in Exhibit A and any other activities to be undertaken, which in the discretion of the Contractor requires examination, to complete the report described in Exhibit A. The City agrees to pay invoices submitted by the Contractor within thirty days of the receipt by the City of such invoices. The Parties have a preliminary project cost estimate of \$389,995 plus travel as detailed in Section XXXIII.4, but the Parties acknowledge the actual amount of payment will be based upon the amount of work set forth in the invoices submitted to the City.
- III. **Term of Agreement** This Agreement shall commence immediately and continue thereafter until the tasks described in Paragraphs I and II are completed.
- IV. **Termination with Cause/Default/Cancellation** In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Section XXVI.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the City may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

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

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

VI. **Drug Free Workplace** During the performance of this Agreement, Contractor agrees as follows:

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

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

VIII. **Compliance with Immigration Laws** Contractor 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.

- IX. **Business Entity Registration**
Foreign and domestic businesses authorized to transact business in the Commonwealth.
The Contractor shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. The Contractor shall submit proof of such registration to the City. Additionally, the Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the Agreement.
- X. **Compliance with All Laws** Contractor 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. Contractor 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.
- XI. **Agreement Interpreted Under Laws of Virginia** This Agreement shall be deemed to be a Virginia Agreement and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- XII. **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, or the U.S. District Court for the Eastern District of Virginia, Norfolk District.
- XIII. **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.
- XIV. **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.
- XV. **Representation Regarding City Employment; Conflict of Interest** Contractor represents at the time of contracting and through the pendency of this Agreement that no one with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee of the Contractor is also an employee

of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Contractor further represents that no individual with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee has a spouse, other relative or person who resides with the individual that is currently an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Should the Contractor have reasonable belief of a possible conflict of interest, that issue should immediately be brought to the attention of the City's Purchasing Division for review.

- XVI. **Integration/Merger** This Agreement and any appendices attached hereto constitute the entire agreement of the parties and supersedes all prior agreements, understandings and negotiations, whether written or oral, between the parties. This Agreement may not be modified, except in a writing signed by both parties that is expressly stated to be an amendment hereto.
- XVII. **Severability** The provisions of this Agreement shall be deemed to be severable, and should any one or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.
- XVIII. **Waiver** No failure of the City to exercise any right or power given to it by law or by this Agreement, or to insist upon strict compliance by Contractor with any of the provisions of this contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the City's right to demand strict compliance with the terms of this Agreement.
- XIX. **Interpretation** Whenever the context hereof shall require, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- XX. **Descriptive Headings** The descriptive headings appearing in this Agreement are for convenience only and shall not be construed either as a part of the terms, covenants, and conditions hereof or as an interpretation of such terms, covenants, and conditions.
- XXI. **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 appropriations were received without penalty or expense to the City of any kind whatsoever.
- XXII. **Assignment of Agreement** The Contractor shall not, without the prior written consent of the City, assign, delegate, or otherwise transfer, in whole or in part, the Agreement or any of the Contractor's rights or obligations arising hereunder. The City may, in its sole discretion, consent or decline to consent to any such assignment, delegation, or transfer, or may give its conditional consent thereto. In the event the City conditionally consents to such an assignment, delegation, or transfer, such consent may, without limitation, be conditional upon Contractor's remaining fully and unconditionally liable to the City for any breach of the terms of this Agreement by

Contractor's transferee and for any damage or injury sustained by a third party or parties as a result of the intentional act or omission, negligence, or breach of warranty by Contractor's transferee.

XXIII. Termination Without Cause The City may at any time, and for any reason, terminate this Agreement by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in this Agreement.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination.

If the City terminates this Agreement without cause, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Agreement, and turn over to the City any work completed or in process for which payment has been made.

XXIV. Hold Harmless/Indemnification It is understood and agreed that Contractor 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 tortious act or omission on the part of Contractor, 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. Contractor 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 the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

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

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

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision, that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the City. In certain cases,

where coverage is unavailable through licensed carriers, certificates of insurance written by a Surplus Lines Carrier authorized by the Virginia State Corporation Commission to transact the business of insurance in Virginia and acceptable to the City of Virginia Beach may be approved. Contractor shall furnish the City with certificate of insurance showing Contractor's compliance with the foregoing requirements.

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

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

Lyndon S. Remias
City Auditor
2401 Courthouse Drive, Room 344
Virginia Beach, VA 23456

Notices for Contractor shall be addressed as follows:

Arnette F. Heintze
30 South Wacker Drive,
Suite 100
Chicago, IL 60606

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

XXVII. **Audits** The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating 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 Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this 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 Contractor's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

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.

XXVIII. **Small Business Enhancement Program Compliance** The Contractor shall provide the required information, including reporting, to comply with the City's Small Business Enhancement Program. If there is a subcontracting plan, this plan shall be open to public inspection pursuant to the Virginia Freedom of Information Act. Prior to final payment, the Contractor shall submit the information, including reporting, required by the City Code.

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

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor. The Contractor shall provide the City with its social security number or federal taxpayer identification number prior to any payment being made under this Agreement.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

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

XXXI. Submittal of Proposals

1. The proposal and required copies shall be emailed in PDF format or placed in an envelope or package that shall be identified with the Request for Proposals for Independent Consultant item number, the Date and Time of closing, and the name and address of the Offeror.
2. If sending by mail an **original** and **three (3) copies** of each proposal shall be submitted. The original proposal should be clearly marked "**ORIGINAL**" on its outside cover.
3. All proposals shall be received and time-stamped in the office location described below no later than **3:00 p.m. local time, July 19, 2019**. Proposals received after the specified date and time (time-stamped 3:01 p.m. or later) shall not be considered and shall be returned unopened to the Offeror.
4. Mail to:

Lyndon S. Remias
City Auditor
2401 Courthouse Drive, Rm 344
Virginia Beach, VA 23456

Email to: Lremias@vbgov.com

5. Proposals received by telephone, telegraph, facsimile shall not be accepted.

Direct any questions to Lremias@vbgov.com or call (757) 385-5870.

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

XXXIII. Preparation Guidelines

1. Experience

Offeror shall provide a concise description of their work experiences as it relates to the scope of work outlined herein, including the information as required in Section I.C, 1 - 5. Said description should include, but not be limited to:

- a) Offeror's established experience record in providing comparable services.
- b) Number of years the Offeror has been providing these types of services;
- c) A minimum of two (2) references for which Offeror has provided services comparable to those described in this RFP. For each reference, detail:
 - (1) Name of firm;
 - (2) Address of firm;
 - (3) Name, title, e-mail address, and phone for a contact for the firm;
 - (4) Number of years Offeror has served the firm; and
 - (5) Brief summary of scope of services provided.

2. Capability and Skills

Offeror shall provide a description of the qualifications and skills of the organization and personnel who shall be responsible for performance of the services. Such description shall, at a minimum, include the following:

- a) Background information about the organization, e.g., philosophy, ownership, number of employees, officers, directors, etc.
- b) Management structure of the organization, i.e., organization chart of the firm.
- c) Qualifications of the firm to provide the services.
- d) A listing of the personnel that will actually perform the services for the City of Virginia Beach along with a summary of their qualifications and specific responsibilities for the project.
- e) Resources available to the organization for performance of the contract.
- f) Description of financial stability and other resources that most adequately ensure the delivery of acceptable services to the City. Offeror shall indicate the type of organization they represent, i.e., individual, partnership, or corporation. If Offeror represents a corporation or partnership, the names of the President, Vice-President, Secretary, Treasurer, and all principals or partners shall be listed. If available, Offeror should provide financial statements, i.e., audited annual financial reports for the previous three years.

3. Services to be Provided

Offeror should provide a description outlining the services to be performed. Such description should, at a minimum, provide the following information:

- a) Offeror's understanding of the project.
- b) Parameters of services to be provided by Offeror.
- c) Proposed approach to providing the services.
- d) List of any exceptions taken to the provisions of this RFP.
- e) Estimated time in months / weeks to fully complete entire project.

4. Fee

Offeror shall provide the **total cost** to perform the scope of work specified in Section I. A breakdown of the total cost should be provided to include staffing, hourly rates, and associated billing procedures associated with provisions of the services.

As evidence of their agreement to the terms and conditions set forth herein, the Parties affix their authorized signatures hereto:

Hillard Heintze

CITY OF VIRGINIA BEACH, VIRGINIA

By: *Arnette Heintze*
Signature

By: *Lyndon S. Remias*
Signature

Name: Arnette F. Heintze

Name: Lyndon S. Remias

Title: Chief Executive Officer

Title: City Auditor

Date: 07-18-2019

Date: 7/19/2019

NOTARY CERTIFICATE FOR CONTRACTOR

STATE OF Illinois
CITY/COUNTY OF COOK, to-wit:

The foregoing instrument was acknowledged before me this 18th day of July, 2019, by Arnette Heintze of Hillard Heintze, a Limited Liability Corp. corporation, on behalf of the corporation. He/She is personally known to be or has produced IL Drivers License as proper identification.

Notary Public

My Commission expires: May 15, 2022
My Registration Number: 801995



NOTARY CERTIFICATE FOR CITY

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

The foregoing instrument was acknowledged before me this 19th day of July, 2019, by Lyndon S. Remias on behalf of the City of Virginia Beach, Virginia. He/She is personally known to be or has produced City I.D. as proper identification.

Notary Public

My Commission expires: 08/31/2021
My Registration Number: 192634

Sarah Deal Jenkins

Commonwealth of Virginia
Sarah Deal Jenkins - Notary Public
Commission No. 192634
My Commission Expires 8/31/21

Requested by Mayor Dyer, Vice Mayor Wood, and Councilmembers Abbott, Berlucchi, Jones, Moss, Rouse, Tower, Wilson and Wooten

A RESOLUTION DIRECTING THE CITY AUDITOR TO ENGAGE AN INDEPENDENT CONSULTANT TO CONDUCT AN INDEPENDENT REVIEW OF THE MAY 31, 2019 TRAGEDY

WHEREAS, the City Council desires to authorize an independent review of the tragic events of May 31, 2019 (the "Tragedy") to ensure transparency and public trust in the results of such review; and

WHEREAS, to safeguard independence and public confidence in this undertaking, the Council believes the City Auditor is the appropriate City official to engage an independent consultant and to oversee such an investigation in the limited manner set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA:

1. That the Council hereby directs the City Auditor to engage an independent consultant to conduct a review of the Tragedy. The review should include creation of a timeline; a review of the perpetrator's employment history and workplace interactions; and a review of relevant City policies, procedures and practices, including, without limitation, those related to facility security, prevention of workplace violence, and employee alerting and response to active shooter notifications. The role of the City Auditor in such engagement shall be as the point of contact for the City and shall be limited to the procurement of the independent consultant and the administration of the contract, such as approval of invoices. The City Auditor shall have no control over the substance of the review.
2. That the procurement of the independent review authorized herein is to commence immediately, and the investigation shall begin as soon as the contract is awarded and no later than August 15, 2019.
3. That, pursuant to City Code § 2-468, the City Auditor and independent consultant shall have unrestricted access to all employees, reports, documents, and other records necessary to complete the independent review.
4. That, upon completion of the independent review, the independent consultant engaged by the City Auditor is to submit a written report to the City Council and present the findings of the review to the City Council. The written report should include recommendations as to best practices that should be employed by the City. The written report should segregate confidential employee information and safety sensitive facility security information from the main body of the report.
5. The City Council authorizes any costs associated with the independent review to be paid from amounts currently appropriated in the Risk Management Fund.

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Requires approval by a majority of the members of City Council.

Adopted by the Council of the City of Virginia Beach, Virginia on the _____ day
of _____, 2019.

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY'S OFFICE

CA14788/R-5/June 27, 2019