



**CITY OF PETERSBURG  
GOODS AND SERVICES CONTRACT**

This Emergency Contract (this "Contract"), dated this 25<sup>th</sup> day of October 2016 (the "Effective Date") between the City of Petersburg, Virginia (the "City"), The Robert Bobb Group, LLC ("RBG" or the "Contractor"), is binding among and between these parties.

**WHEREAS**, on October 10, 2016, the City Council made a motion to authorize the Acting City Manager to direct Mrs. Tangela Innis, to enter into emergency procurement pursuant to § 2-293 of the code of Petersburg and § 2.2-403F "Emergency Procurement" of the Virginia State Code to preserve the interest of the City to maintain proper function of the government, to maintain the official rendering of public service to provide the proposed Administrative and Organizational Assessment and Financial Restructuring in connection with city management services (the "Proposal") attached hereto as Exhibit A as revised.

**WHEREAS**, the Parties have negotiated this Contract consistent with the emergency procurement guidelines, other applicable law, and the detailed proposal, and discussions between representatives of the City and the Contractor.

**NOW, THEREFORE**, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. SCOPE OF SERVICES.**

The Contractor shall perform all duties and assume all powers granted to the City Manager under the City of Petersburg Charter and Code of Ordinances (the "Services"). The Services shall include, without limitation:

**A. ENGAGEMENT PERSONNEL**

The Contractor shall provide employees and/or subcontractors (the "Engagement Personnel") to fill the following positions: (1) Project Executive (Robert C. Bobb), (2) Interim City Manager, (3) Budget and Finance Director, and (4) Accounting Personnel. The duties and responsibilities for each of the positions is set forth below:

**1. General Duties of Interim City Manager:**

- i. Responsible for the operations of the City; provided, however, that the interim City Manager has no responsibilities with respect to the City Clerk's Department, the City Assessor's Department, the Legal Department, or the Municipal Court, all of whom are direct reports to the Mayor and City Council.
- ii. Perform all duties and assume all powers granted to the City Manager under the City of Petersburg Charter and Code of Ordinances;

- iii. Facilitate discussions with the Mayor, City Council and City Administration in connection with organizational goals, service levels and future directions;
- iv. Review of the existing organizational structure;
- v. Analyze existing organizational relationships and position descriptions;
- vi. Assist the General Manager of Petersburg Area Transit with recent triennial audit findings to ensure FTA compliance by the recommended deadlines;
- vii. Assist and perform with the General Manager of P.A.T. the Single Audit, also known as the OMB A -133 audit. The objective of the Single Audit is to provide assurance, as to the management and use of such funds by recipients such as states, cities universities, and non-profit organizations;
- viii. Assist the GM of P.A.T in providing the Interim City Manager, City Council, MPO, governmental agencies, regulatory boards and various public groups on proposed transit projects and improvements through data gathering, analyses, and presentation of technical information; and
- ix. Perform duties detailed in the General Job Description attached hereto as Exhibit B.

2. Budget and Finance Director

- i. Provide oversight of all City of Petersburg financial operations;
- ii. Recommend enforcement actions to the Interim City Manager to induce payment in accordance with the City's laws, policy and procedures;
- iii. Prepare monthly financial reports showing revenues and expenses to date in comparison with budget projections and submit report to the Interim City Manager;
- iv. Develop a Capital Improvement plan that incorporates the capital needs of the City. Provide or develop a strategy to fund the projects identified;
- v. Recommend to Mayor and City Council funding opportunities to include obtaining new forms of funding and take the necessary steps to obtain short term and long term funding; and
- vi. Perform duties detailed in the General Job Description attached hereto as Exhibit B.

For the avoidance of doubt, the City understands that while the Contractor and the Engagement Personnel will perform the functions of positions as described above the Engagement Personnel shall not be full time employees of the City and may work for other clients during the term of this Contract.

**B. ADDITIONAL DUTIES**

In addition to the provision of the Engagement Personnel, the Services shall include the following:

1. Perform a financial review of the City, including but not limited to a review and assessment of financial information that has been, and that will be, provided by the City to its creditors, including without limitation its short and long-term projected cash flows and operating performance;
2. Assist in the identification (and implementation) of cost reduction and operations improvement opportunities;
3. Assist the Mayor and City Council and other City authorized professionals in developing for the City Council's review possible restructuring plans or strategic alternatives for maximizing the enterprise value of the City's various economic development opportunities;
4. The Project Executive, Interim City Manager and Interim Finance Director shall serve as the principal contact with the City's creditors with respect to the City's financial and operational matters;
5. The Contractor shall perform such other services as requested or directed in an order by the City Council. However, any such services that would increase the Contract Price may only be undertaken following the execution of a Change Order which must be approved by written order of the City Council;
6. Report, at least monthly, to the Mayor, the City Council, Joseph Preston and Tangela Innis or other authorized personnel as mutually agreed upon between the City and the Contractor, in order to make recommendations to and consult with the City Council.

**C. INFORMATION PROVIDED BY CITY AND FORWARD LOOKING STATEMENTS**

The City shall use all reasonable efforts to: (i) provide the Contractor with access to management and other representatives of the City; and (ii) to furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the City that the Contractor reasonably request in connection with the Services. The Engagement Personnel shall rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the City and otherwise reviewed by the Engagement Personnel in connection with the Services. The City acknowledges and agrees that the Engagement Personnel are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. The Contractor is under no obligation to

update data submitted to it or to review any other areas unless specifically requested by the City Council to do so.

The City understands that the Services to be rendered by the Engagement Personnel may include the preparation of projections and other forward-looking statements, and numerous factors can affect the actual results of the City’s operations, which may materially and adversely differ from those projections. In addition, the Engagement Personnel will be relying upon information provided by the City in the preparation of those projections and other forward- looking statements.

**D. AUTHORIZED CITY PERSONNEL BY CITY COUNCIL**

JOSEPH PRESTON, CITY ATTORNEY  
 135 N. UNION STREET  
 PETERSBURG, VA 23803

TANGELA INNIS, OPERATION/BUDGET AND PURCHASING MANAGER  
 103 W. TABB STREET  
 PETERSBURG, VA 23803

**2 COST OF SERVICES, INVOICING AND PAYMENT**

**A. CONTRACT AMOUNT**

In consideration of the provision of Services by the Contractor, the City shall pay to the Contractor the total contract amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the “Contract Amount”). The City will approve expenses up to \$25,000 for the period of this agreement for hotel, apartment rental, travel, lodging and meals. The prices and amounts set forth shall not be modified except by a Change Order, approved by City of Petersburg City Council and entered upon the minutes as described.

**B. INVOICES**

The Contractor shall submit five invoices in the amount of \$70,000 each, plus any reimbursable expenses, to the City in accordance with the schedule detailed below:

<b>Invoice Due Date</b>	<b>Payment Due Date</b>
November 25, 2016	30 days from Invoice Date
December 25, 2016	30 days from Invoice Date
January 25, 2017	30 days from Invoice Date
February 25, 2017	30 days from Invoice Date
March 25, 2017	30 days from Invoice Date

The Contractor shall submit original invoices to the Purchasing Agent's Technical Representative (hereinafter defined) which clearly describe and itemize the Services provided. In addition, invoices shall contain, at a minimum, the following information: (1) the date of this Contract; (2) the Contract Number;

(3) the portion of the Contract Amount due and payable. Itemized invoices shall clearly distinguish between contractual management services and travel or lodging expenses.

The City reserves the right to determine whether the invoice is clear and properly itemized. However, if abbreviations or jargon are used on the invoice, the Contractor shall provide a key printed directly on the invoice to explain the abbreviation or jargon.

### **C. WITHHELD PAYMENT**

The City may decline to make payment or may withhold funds to protect the City from loss because of:

1. Defective and/or inadequate Service(s) not remedied by the Contractor within 30 days of receiving written notice or, in the reasonable opinion of the City, not likely to be remedied by the Contractor;
2. Claims of third parties against the City or the City's property due solely to the acts or omission of the Contractor;
3. Failure by the Contractor to pay Engagement Personnel or other amounts not reasonably disputed in a prompt and proper fashion;
4. Evidence that the balance of Services cannot and/or will not be completed in accordance with this Contract and Exhibit A as revised for a reason other than a force majeure event or the actions of the City;
5. Persistent failure to provide the Services and/or carry out the work in accordance with this Contract and Exhibit A as revised for a reason other than a force majeure event or the actions of the City;
6. Damage to the City and/or a third party to whom the City is, or may be liable, that is solely a direct result of the Contractor's action(s) and/or inaction(s).

### **D. PAYMENT OF SUBCONTRACTORS**

The Contractor agrees to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the City for work performed by a subcontractor under this contract:

1. Pay the subcontractor for the proportionate share of the total payment received by the Contractor attributable to the work performed by the subcontractor under this contract; or
2. Notify the City and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment with the reason for nonpayment.

The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment for work performed by the

subcontractor under this contract, except for amounts withheld as allowed in (B) above. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month. The interest charge shall not be deemed an obligation of the City, and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tiered subcontractor.

**E. UNEXCUSED FAILURE TO PAY**

If within forty-five (45) calendar days after the Payment Due Date, as detailed above, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after ten (10) additional calendar days' provide written notice to the City, and without prejudice to any other available rights or remedies it may have, stop the provisions of the Services until payment of those amounts due from the City have been received. Any payment not made within forty-five (45) calendar days after the date due shall bear an interest at the rate of no more than one percent (1%) per annum.

**F. CONTROLLING PROVISION**

The City and the Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Virginia Public Procurement Act, Section 2.2-4352, and the provisions of the Virginia Public Procurement Act are herein waived.

**3 GENERAL TERMS AND CONDITIONS**

This Contract shall commence on the Effective Date first written above and shall continue until five (5) months from the Effective Date, unless extended upon the written consent of both parties. Such extension shall be governed by the terms and conditions of the City Municipal Code, and the terms and conditions set forth below.

**A. CONTRACT ADMINISTRATION**

1. Contracting Officer: The City's Purchasing Agent shall be the Contracting Officer for the City. The Contracting Officer is the ONLY official authorized to legally bind the City or make changes to the terms and conditions of this Contract. Only [he] or [his] designee may increase, decrease, extend or terminate this Contract. All other changes are unauthorized. No Notice to the City shall be effective unless a copy is delivered to the Purchasing Agent in accordance with the terms of the Contract. The initial Contracting Officer is:

Tangela Innis  
Operations/Budget and Purchasing Manager  
103 W. Tabb Street  
Petersburg, VA 23803  
Telephone: (804) 733-2345

[tinnis@petersburg-va.org](mailto:tinnis@petersburg-va.org)

2. Authority of the Purchasing Agent's Technical Representative: The Contract shall be administered by the City Council, or its designated representative, who shall be referred to in the Contract Documents (hereinafter defined) as the "Purchasing Agent's Technical Representative." The Purchasing Agent's Technical Representative shall ensure that the Services conform to the day-to-day technical requirements of this Contract. It is understood and agreed that the Purchasing Agent's Technical Representative shall not have authority to make changes in the scope or terms and conditions of this Contract. The initial Purchasing Agent's Technical Representatives are:

Tangela Innis in consultation with respective Department Director/Heads  
Operations/Budget and Purchasing Manager  
103 W. Tabb Street  
Petersburg, VA 23803  
Telephone: (804) 733-2345  
[tinnis@petersburg-va.org](mailto:tinnis@petersburg-va.org)

Joseph Preston  
City Attorney  
135 N. Union Street  
Petersburg, VA 23803  
Telephone: (804) 733-2305  
[jpreston@petersburg-va.org](mailto:jpreston@petersburg-va.org)

"Contract Documents" shall mean (i) this Contract, (ii) RBG Proposed Administrative and Organizational Assessment and Organizational Assessment, and (iii) Job Descriptions.

#### **B. TERMS FOR PERFORMANCE**

1. Performance of Services: The Services required to be delivered pursuant to this Contract shall be in strict accordance with the Contract Documents. All persons performing Services pursuant to the Contract shall be duly qualified to perform those Services and shall hold any licenses required by law for persons performing such Services.

2. Time for Performance: Time is of the essence of this Contract. The Contractor shall perform all Services at the time(s) and in the manner(s) specified in the Contract Documents.

#### **C. APPLICABLE LAWS AND COURTS**

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought only in the courts of the City of Petersburg. The City and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia of 1950*, as amended, § 2.2-4366). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**D. ANTI-DISCRIMINATION**

The Contractor certifies to the City that:

1. The Contractor will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA);
2. The 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 reasonably necessary to the normal operation of the Contractor and will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;
3. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an equal opportunity employer;
4. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements;
5. The Contractor will include the provisions of 2-4 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**E. ETHICS IN PUBLIC CONTRACTING**

The Contractor certifies that the Proposal and this Contract were made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with the Proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**E. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

The Contractor certifies that it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

**F. DEBARMENT STATUS**

The Contractor certifies that it is not currently debarred by the City from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### **G. ANTITRUST**

The Contractor conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular services purchased or acquired by the City under said contract.

#### **H. PRECEDENCE OF TERMS**

The following General Terms and Conditions: APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Contract, the Special Terms and Conditions shall apply.

#### **I. ASSIGNMENT**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the City.

#### **J. CHANGES TO THE CONTRACT**

Changes to this Contract, the Services and/or the Contract Amount may be made by mutual agreement in writing to modify the scope of the contract (each, a "Change Order"). The Contract Amount may be changed only by a Change Order, approved by the City Council and entered upon the minutes as described in the Procurement Code of the City of Petersburg Code.

The execution of a Change Order by the City and RBG shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Services, this Contract as thus amended, the Contract Amount and the term of this Contract. The Contractor, by executing a Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of and/or resulting from the Services included within or affected by such executed Change Order.

#### **K. INSURANCE**

1. The Contractor shall purchase and maintain in force, at its own expense, such insurance as will protect it and the City from claims which may arise out of or result from the Contractor's activities, whether such be by its employees, agents, subcontractors, or by anyone for whose acts any of them may be liable. Insurance shall remain in effect until final payment and at all times thereafter when the Contractor may be correcting, removing, or

replacing defective work. All insurance coverages will be provided by insurance companies authorized by the Virginia State Corporation Commission to sell insurance in Virginia. The Contractor shall furnish as a minimum the hereinafter coverages and limits, and on forms and of companies which are acceptable to the City Attorney and/or Risk Management, and shall require and show evidence of insurance coverages on behalf of any subcontractors (if applicable), before entering into any agreement to sublet any part of the work to be done under this Contract.

2. The Contractor shall maintain the following minimum insurances coverages and limits:

- i. Workers' Compensation - Statutory requirements and benefits, regardless of being subject to Title 65.2 of the *Code of Virginia of 1950* (Workers' Compensation). Coverage shall include an "all states" endorsement and shall be provided for any proprietor, partner, executive officer, or member.
- ii. Employers' Liability - \$100,000 bodily injury by accident each accident; \$100,000 bodily injury by disease each employee; \$500,000 bodily injury by disease policy limit.
- iii. Commercial General Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage, as well as contractual liability coverage. The City of Petersburg must be named as an additional insured and so endorsed on the policy.
- iv. Commercial Automobile Liability - \$1,000,000 combined single limit each accident. Automobile Liability is to cover "any auto".
- v. Professional Liability - \$1,000,000 per occurrence.

3. The Contractor and its insurance company have carefully reviewed the insurance requirements applicable to this Contract.

4. Please note that the Insurance Certificate must state that the Commercial General Liability and the Umbrella Liability Insurance Policies, as applicable, name the "City of Petersburg" as an additional insured. Many Certificates have a space headed "Description" where the language may be inserted as follows: the "City of Petersburg is additional insured" or that the "City of Petersburg is additional insured with respects to General Liability; and/or Umbrella Liability policies".

5. The Certificate Holder should be listed as:

The City of Petersburg  
c/o Purchasing Office  
103 West Tabb Street

Petersburg VA 23803  
Contract No. 17-0003

The Contractor will provide an original, signed Certificate of Insurance, and such endorsements as prescribed herein.

#### **L. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing 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 this Contract, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

#### **M. TAXES**

The Contractor shall pay all city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the Contract Amount between the City and the Contractor, as the taxes shall be an obligation of the Contractor and not of the City, and the City shall be held harmless for same by the Contractor.

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

#### **N. BANKRUPTCY**

If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, and after giving the Contractor seven (7) calendar days' written notice, terminate this contract and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional out-of-pocket cost reasonably required by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment. If the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Contract Amount, the Contractor shall pay reasonable out of pocket expenses to the City.

**O. ENTIRE AGREEMENT**

The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith.

**P. SEVERABILITY**

Should any provision of this Contract be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Contract had been executed with the invalid provision(s) eliminated, and it is hereby declared the intention of the parties that they would have executed the other provisions of this Contract without including therein such provision(s) which may for any reason hereafter be declared invalid.

**Q. SURVIVAL**

Any provision of this Contract which contemplates performance subsequent to any termination or expiration of this Contract, including, without limitation, the provisions of Record Retention and Audit (4.A), and Indemnification (4.B) shall survive any termination or expiration of this Contract and shall remain in full force and effect according to their terms.

**R. NON-WAIVER**

The failure of the Contractor or the City to exercise any right, power or option arising under this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by the Contractor or City of their rights at any time thereafter to require exact and strict compliance with all the terms thereof.

**S. HEADINGS**

Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Contract are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

**4 SPECIAL TERMS AND CONDITIONS**

**A. RECORD RETENTION AND AUDIT**

All records, reports and documents relating to this Contract shall be maintained by the Contractor for a period of five (5) years following Final Payment (the "Audit Period"). Such records, reports and documents shall be subject to review and audit by City and the City's consultants or auditors at mutually convenient times.

## **B. CITY AUTHORITY**

The City has all necessary power and authority to execute and deliver this Contract and to carry out its provisions. All action on the City's part required for the lawful execution and delivery of this Contract has been taken. Upon its execution and delivery, this Contract will be valid and binding obligations of the City, enforceable in accordance with its terms.

## **C. INDEMNIFICATION**

Subject to Section 4.L, the Contractor hereby assumes all liability for and agrees to indemnify and hold harmless the City and its officers, authorized representatives and employees against any and all claims, losses, costs, damages, penalties, liabilities and fees (including reasonable attorneys' fees) and expenses resulting from any material breach of the representations, warranties and covenants of the Contractor contained in the Contract Documents or from any injuries to persons or property caused by the gross negligence of the Contractor or the Engagement Personnel, or in any other manner arising out of the provision of the Services.

## **D. NOTICE**

1. Notice: All Notices required by the terms of this Contract shall be in writing. For purposes of this Paragraph, "writing" shall include facsimile transmissions and electronic mail, provided that reasonable care is used to ensure that the Notice is received by its intended recipient.
2. Notice to Contractor: Written Notice may be served on the Contractor by mail, courier, facsimile transmission or electronic mail to the Contractor's business address as stated in the Proposal cover sheet.
3. Notice to City: Written Notice may be served on the City by mail, courier, facsimile transmission or electronic mail to the Purchasing Agent's Technical Representative, with a copy to the Purchasing Agent.

## **E. TERMINATION OR SUSPENSION**

1. Termination for Convenience: Either party may terminate this Contract at its own convenience for any reason by giving thirty (30) days prior written Notice of termination to the other party. Upon termination of this Contract for convenience, any fees and expenses due to the Contractor shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination). Each subcontract shall contain a similar termination provision for the benefit of the Contractor and the City.

The City shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Paragraph. The City shall have the right of audit (and the Contractor shall have the obligations) stated in Section 4.A, above, insofar as they pertain to amounts claimed to be due hereunder.

2. Termination for Default: The City of Petersburg may, by written Notice to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

- (a) If the Contractor fails to perform the Services as specified in this Contract, and does not cure such failure within a period of ten (10) days after receipt of Notice from the Purchasing Agent or his designee;
- (b) If the Contractor fails to perform any of the other provisions of this Contract, and does not cure such failure within a period of ten (10) days after receipt of Notice from the Purchasing Agent or his designee; or
- (c) Without further notice, if the Contractor defaults in the performance of its duties pursuant to subsections (a) and/or (b) above more than twice within any consecutive twelve (12) month period, whether or not the Contractor subsequently cures such earlier defaults.

#### **F. NON-APPROPRIATION OF FUNDS**

This Contract is conditioned upon an appropriation made by the City Council of the City of Petersburg of funds sufficient to pay the compensation due the Contractor under this Contract. If such an appropriation is not made in any fiscal year, and the City lacks funds from other sources to pay the compensation due under this Contract, the City will be entitled, at the beginning of or during such fiscal year, to terminate this Contract. In that event, the City will not be obligated to make any payments under this Contract beyond the amount properly appropriated for Contract payments in the immediately prior fiscal year. The City will provide the Written Notice of Termination of this Contract due to the non-appropriation of funds at least fifteen (15) calendar days before the effective date of the termination. However, the City's failure to provide such Notice will not extend this Contract into a fiscal year in which funds for Contract payments have not been appropriated.

#### **G. FORCE MAJEURE**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs of failure to perform if the failure to perform this Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Excusable causes include, but are not limited to, acts of God or of the public enemy and acts of the federal or state government in either their sovereign or contractual capacities. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractors, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Services were obtainable from other sources in sufficient time for the Contractor to meet the required time(s) for performance.

#### **H. ADVERTISING**

In the event a contract is awarded for services resulting from this proposal, no indication of such sales or services to the City will be used in product literature or advertising. The Contractor shall not state

in any of its advertising or product literature that the City has purchased or uses any of its services, and the Contractor shall not include the City in any client list in advertising and promotional materials.

### **I. CONFLICTS**

RBG is not currently aware of any relationship that would create a conflict of interest with the City or those parties-in-interest of which the City has made RBG aware. Because RBG and its affiliates and subsidiaries comprise a consulting firm that serves clients on an international basis in numerous cases, both in and out of court, it is possible that RBG may have rendered or will render services to, or have business associations with, other entities or people which had or have or may have relationships with the City, including creditors of the City. RBG will not be prevented or restricted by virtue of providing the Services under this Contract from providing services to other entities or individuals, including entities or individuals whose interest may be in competition or conflict with the City's provided RBG makes appropriate arrangements to ensure that the confidentiality of information is maintained.

RBG shall request written approval (which shall not be unreasonably withheld) prior to undertaking any services or representation that may create a conflict with its representation of the City.

### **J. CONFIDENTIALITY/NON-SOLICITATION**

RBG shall keep as confidential all non-public information received from the City in conjunction with the provision of the Services, except: (i) as requested by the City or its legal counsel; (ii) as required by legal proceedings, court order or administrative order; or (iii) as reasonably required in the performance of this engagement. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is, or becomes, public other than as a result of a breach of this provision. The City agrees that, until two (2) years subsequent to the termination of this engagement, it will not solicit, recruit, hire or otherwise engage any employee or independent contractor of RBG and any of its subcontractors who worked on this engagement while employed by RBG (each, a "Solicited Person"). In the event that the City does solicit, recruit, hire or otherwise engage a Solicited Person within such two-year period, the City shall pay RBG a fee equal to the Solicited Person's hourly client billing rate at the time of the offer multiplied by 4,000 hours for the Project Executive and 2,000 hours for any other Solicited Person. The City acknowledges and agrees that this fee fairly represents the loss that RBG will suffer if the City breaches this provision. The fee shall be payable at the time of the Solicited Person's acceptance of employment or engagement.

### **K. NO THIRD PARTY BENEFICIARY**

The City acknowledges that all advice (written or oral) provided by RBG and the Engagement Personnel to the City in connection with this engagement is intended solely for the benefit and use of the City (limited to the City Council and the Mayor) in considering the matters to which this engagement relates. The City agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without RBG's prior approval (which shall not be unreasonably withheld), except as required by law.

### **L. LIMITATION ON LIABILITY**

The City shall indemnify the Engagement Personnel acting as officers (the "Indemnified Professionals") to the same extent as the most favorable indemnification it extends to its officers and directors, whether under the City's governing documents, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Indemnified Professionals. The Indemnified Professionals shall be covered as officers under the City's existing director and officer liability insurance policy. As a condition of the Contractor accepting this engagement, a Certificate of Insurance evidencing such coverage shall be furnished to the Contractor prior to the Effective Date. The City shall give thirty (30) days' prior written notice to the Contractor of cancellation, non-renewal or material change in coverage, scope or amount of such director and officer liability policy. This Section 4.K is a contractual obligation, and no change in applicable law or the City's governing documents or policies shall affect the Indemnified Professionals' rights hereunder.

The City agrees to hold harmless and indemnify the Contractor (including its members, officers, employees, agents and subcontractors) (collectively, the "Indemnified Parties") against all claims, damages, and costs (including reasonable attorneys' fees and disbursements) arising out of this Contracts, except to the extent such claims, damages, and costs are finally determined to be solely from the Indemnified Parties' gross negligence, fraud or willful misconduct. The City also agrees that neither Contractor nor the Indemnified Parties shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the City for or in connection with the Services except to the extent that any such liability for losses, claims, damages or expenses are finally determined to have resulted solely from the Indemnified Parties' gross negligence, fraud or willful misconduct. The City shall not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding involving an Indemnified Party unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.

In the event that, at any time whether before or after the termination of this Contract, as a result of or in connection with this Contract or the Services provided hereunder, the Contractor or any Indemnified Party is required to produce any of its personnel (including former employees) for examination, deposition, or other written, recorded or oral presentation, or the Contractor or any Indemnified Party is required to produce or otherwise compile, submit, duplicate, search for, organize or report on any materials within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the City shall reimburse such Indemnified Party for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will compensate such Indemnified Party for the time expended at such party's then applicable hourly rate.

Notwithstanding anything to the contrary, the Contractor's total liability relating to this Contract and/or the Services shall not exceed the fees actually paid to the Contractor for the portion of the Services giving rise to the liability, except to the extent such liability is finally determined to have arisen solely from the fraud or willful misconduct of the Contractor. In no event shall the Contractor be liable for any special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). This provision shall survive the termination of this Contract.

**M. PUBLIC RECORD**

RBG understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to provisions of Code of Virginia § 42.1-76 ("The Virginia Public Records Act") and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

**5     ATTACHMENTS**

Exhibit A: RBG Proposed Administrative and Organizational Assessment and Organizational Assessment as revised

Exhibit B: Job Descriptions

IN WITNESS WHEREOF, the parties hereto on the latest day and year written below have executed this Contract in three counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

**THE ROBERT BOBB GROUP., LLC:**

**CITY OF PETERSBURG, VA:**

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

By: \_\_\_\_\_  
*Tangela Innis* *Date*  
*Purchasing/Budget and, Operations Manager*

\_\_\_\_\_  
*(Typed name)*

Attest: \_\_\_\_\_  
*(Signature in ink)* *Date*

\_\_\_\_\_  
*Dironna Belton* *Date*  
*Acting City Manager*

\_\_\_\_\_  
*(Typed title)*

\_\_\_\_\_  
*Joseph Preston* *Date*  
*City Attorney*



**CITY OF PETERSBURG  
GOODS AND SERVICES CONTRACT**

This Emergency Contract (this "Contract"), dated this 25<sup>th</sup> day of October 2016 (the "Effective Date") between the City of Petersburg, Virginia (the "City"), The Robert Bobb Group, LLC ("RBG" or the "Contractor"), is binding among and between these parties.

**WHEREAS**, on October 10, 2016, the City Council made a motion to authorize the Acting City Manager to direct Mrs. Tangela Innis, to enter into emergency procurement pursuant to § 2-293 of the code of Petersburg and § 2.2-403F "Emergency Procurement" of the Virginia State Code to preserve the interest of the City to maintain proper function of the government, to maintain the official rendering of public service to provide the proposed Administrative and Organizational Assessment and Financial Restructuring in connection with city management services (the "Proposal") attached hereto as Exhibit A as revised.

**WHEREAS**, the Parties have negotiated this Contract consistent with the emergency procurement guidelines, other applicable law, and the detailed proposal, and discussions between representatives of the City and the Contractor.

**NOW, THEREFORE**, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. SCOPE OF SERVICES.**

The Contractor shall perform all duties and assume all powers granted to the City Manager under the City of Petersburg Charter and Code of Ordinances (the "Services"). The Services shall include, without limitation:

**A. ENGAGEMENT PERSONNEL**

The Contractor shall provide employees and/or subcontractors (the "Engagement Personnel") to fill the following positions: (1) Project Executive (Robert C. Bobb), (2) Interim City Manager, (3) Budget and Finance Director, and (4) Accounting Personnel. The duties and responsibilities for each of the positions is set forth below:

**1. General Duties of Interim City Manager:**

- i. Responsible for the operations of the City; provided, however, that the interim City Manager has no responsibilities with respect to the City Clerk's Department, the City Assessor's Department, the Legal Department, or the Municipal Court, all of whom are direct reports to the Mayor and City Council.
- ii. Perform all duties and assume all powers granted to the City Manager under the City of Petersburg Charter and Code of Ordinances;

- iii. Facilitate discussions with the Mayor, City Council and City Administration in connection with organizational goals, service levels and future directions;
- iv. Review of the existing organizational structure;
- v. Analyze existing organizational relationships and position descriptions;
- vi. Assist the General Manager of Petersburg Area Transit with recent triennial audit findings to ensure FTA compliance by the recommended deadlines;
- vii. Assist and perform with the General Manager of P.A.T. the Single Audit, also known as the OMB A -133 audit. The objective of the Single Audit is to provide assurance, as to the management and use of such funds by recipients such as states, cities universities, and non-profit organizations;
- viii. Assist the GM of P.A.T in providing the Interim City Manager, City Council, MPO, governmental agencies, regulatory boards and various public groups on proposed transit projects and improvements through data gathering, analyses, and presentation of technical information; and
- ix. Perform duties detailed in the General Job Description attached hereto as Exhibit B.

2. Budget and Finance Director

- i. Provide oversight of all City of Petersburg financial operations;
- ii. Recommend enforcement actions to the Interim City Manager to induce payment in accordance with the City's laws, policy and procedures;
- iii. Prepare monthly financial reports showing revenues and expenses to date in comparison with budget projections and submit report to the Interim City Manager;
- iv. Develop a Capital Improvement plan that incorporates the capital needs of the City. Provide or develop a strategy to fund the projects identified;
- v. Recommend to Mayor and City Council funding opportunities to include obtaining new forms of funding and take the necessary steps to obtain short term and long term funding; and
- vi. Perform duties detailed in the General Job Description attached hereto as Exhibit B.

[tinnis@petersburg-va.org](mailto:tinnis@petersburg-va.org)

2. Authority of the Purchasing Agent's Technical Representative: The Contract shall be administered by the City Council, or its designated representative, who shall be referred to in the Contract Documents (hereinafter defined) as the "Purchasing Agent's Technical Representative." The Purchasing Agent's Technical Representative shall ensure that the Services conform to the day-to-day technical requirements of this Contract. It is understood and agreed that the Purchasing Agent's Technical Representative shall not have authority to make changes in the scope or terms and conditions of this Contract. The initial Purchasing Agent's Technical Representatives are:

Tangela Innis in consultation with respective Department Director/Heads  
Operations/Budget and Purchasing Manager  
103 W. Tabb Street  
Petersburg, VA 23803  
Telephone: (804) 733-2345  
[tinnis@petersburg-va.org](mailto:tinnis@petersburg-va.org)

Joseph Preston  
City Attorney  
135 N. Union Street  
Petersburg, VA 23803  
Telephone: (804) 733-2305  
[jpreston@petersburg-va.org](mailto:jpreston@petersburg-va.org)

"Contract Documents" shall mean (i) this Contract, (ii) RBG Proposed Administrative and Organizational Assessment and Organizational Assessment, and (iii) Job Descriptions.

## **B. TERMS FOR PERFORMANCE**

1. Performance of Services: The Services required to be delivered pursuant to this Contract shall be in strict accordance with the Contract Documents. All persons performing Services pursuant to the Contract shall be duly qualified to perform those Services and shall hold any licenses required by law for persons performing such Services.

2. Time for Performance: Time is of the essence of this Contract. The Contractor shall perform all Services at the time(s) and in the manner(s) specified in the Contract Documents.

## **C. APPLICABLE LAWS AND COURTS**

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought only in the courts of the City of Petersburg. The City and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia of 1950*, as amended, § 2.2-4366). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**D. ANTI-DISCRIMINATION**

The Contractor certifies to the City that:

1. The Contractor will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA);

2. The 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 reasonably necessary to the normal operation of the Contractor and will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

3. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an equal opportunity employer;

4. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements;

5. The Contractor will include the provisions of 2-4 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**E. ETHICS IN PUBLIC CONTRACTING**

The Contractor certifies that the Proposal and this Contract were made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with the Proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**E. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

The Contractor certifies that it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

**F. DEBARMENT STATUS**

The Contractor certifies that it is not currently debarred by the City from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### **G. ANTITRUST**

The Contractor conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular services purchased or acquired by the City under said contract.

#### **H. PRECEDENCE OF TERMS**

The following General Terms and Conditions: APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Contract, the Special Terms and Conditions shall apply.

#### **I. ASSIGNMENT**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the City.

#### **J. CHANGES TO THE CONTRACT**

Changes to this Contract, the Services and/or the Contract Amount may be made by mutual agreement in writing to modify the scope of the contract (each, a "Change Order"). The Contract Amount may be changed only by a Change Order, approved by the City Council and entered upon the minutes as described in the Procurement Code of the City of Petersburg Code.

The execution of a Change Order by the City and RBG shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Services, this Contract as thus amended, the Contract Amount and the term of this Contract. The Contractor, by executing a Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of and/or resulting from the Services included within or affected by such executed Change Order.

#### **K. INSURANCE**

1. The Contractor shall purchase and maintain in force, at its own expense, such insurance as will protect it and the City from claims which may arise out of or result from the Contractor's activities, whether such be by its employees, agents, subcontractors, or by anyone for whose acts any of them may be liable. Insurance shall remain in effect until final payment and at all times thereafter when the Contractor may be correcting, removing, or

replacing defective work. All insurance coverages will be provided by insurance companies authorized by the Virginia State Corporation Commission to sell insurance in Virginia. The Contractor shall furnish as a minimum the hereinafter coverages and limits, and on forms and of companies which are acceptable to the City Attorney and/or Risk Management, and shall require and show evidence of insurance coverages on behalf of any subcontractors (if applicable), before entering into any agreement to sublet any part of the work to be done under this Contract.

2. The Contractor shall maintain the following minimum insurances coverages and limits:

- i. Workers' Compensation - Statutory requirements and benefits, regardless of being subject to Title 65.2 of the *Code of Virginia of 1950* (Workers' Compensation). Coverage shall include an "all states" endorsement and shall be provided for any proprietor, partner, executive officer, or member.
- ii. Employers' Liability - \$100,000 bodily injury by accident each accident; \$100,000 bodily injury by disease each employee; \$500,000 bodily injury by disease policy limit.
- iii. Commercial General Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage, as well as contractual liability coverage. The City of Petersburg must be named as an additional insured and so endorsed on the policy.
- iv. Commercial Automobile Liability - \$1,000,000 combined single limit each accident. Automobile Liability is to cover "any auto".
- v. Professional Liability - \$1,000,000 per occurrence.

3. The Contractor and its insurance company have carefully reviewed the insurance requirements applicable to this Contract.

4. Please note that the Insurance Certificate must state that the Commercial General Liability and the Umbrella Liability Insurance Policies, as applicable, name the "City of Petersburg" as an additional insured. Many Certificates have a space headed "Description" where the language may be inserted as follows: the "City of Petersburg is additional insured" or that the "City of Petersburg is additional insured with respects to General Liability; and/or Umbrella Liability policies".

5. The Certificate Holder should be listed as:

The City of Petersburg  
c/o Purchasing Office  
103 West Tabb Street

Petersburg VA 23803  
Contract No. 17-0003

The Contractor will provide an original, signed Certificate of Insurance, and such endorsements as prescribed herein.

#### **L. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing 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 this Contract, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

#### **M. TAXES**

The Contractor shall pay all city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the Contract Amount between the City and the Contractor, as the taxes shall be an obligation of the Contractor and not of the City, and the City shall be held harmless for same by the Contractor.

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

#### **N. BANKRUPTCY**

If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, and after giving the Contractor seven (7) calendar days' written notice, terminate this contract and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional out-of-pocket cost reasonably required by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment. If the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Contract Amount, the Contractor shall pay reasonable out of pocket expenses to the City.

**O. ENTIRE AGREEMENT**

The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith.

**P. SEVERABILITY**

Should any provision of this Contract be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Contract had been executed with the invalid provision(s) eliminated, and it is hereby declared the intention of the parties that they would have executed the other provisions of this Contract without including therein such provision(s) which may for any reason hereafter be declared invalid.

**Q. SURVIVAL**

Any provision of this Contract which contemplates performance subsequent to any termination or expiration of this Contract, including, without limitation, the provisions of Record Retention and Audit (4.A), and Indemnification (4.B) shall survive any termination or expiration of this Contract and shall remain in full force and effect according to their terms.

**R. NON-WAIVER**

The failure of the Contractor or the City to exercise any right, power or option arising under this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by the Contractor or City of their rights at any time thereafter to require exact and strict compliance with all the terms thereof.

**S. HEADINGS**

Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Contract are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

**4 SPECIAL TERMS AND CONDITIONS**

**A. RECORD RETENTION AND AUDIT**

All records, reports and documents relating to this Contract shall be maintained by the Contractor for a period of five (5) years following Final Payment (the "Audit Period"). Such records, reports and documents shall be subject to review and audit by City and the City's consultants or auditors at mutually convenient times.

## B. CITY AUTHORITY

The City has all necessary power and authority to execute and deliver this Contract and to carry out its provisions. All action on the City's part required for the lawful execution and delivery of this Contract has been taken. Upon its execution and delivery, this Contract will be valid and binding obligations of the City, enforceable in accordance with its terms.

## C. INDEMNIFICATION

Subject to Section 4.L, the Contractor hereby assumes all liability for and agrees to indemnify and hold harmless the City and its officers, authorized representatives and employees against any and all claims, losses, costs, damages, penalties, liabilities and fees (including reasonable attorneys' fees) and expenses resulting from any material breach of the representations, warranties and covenants of the Contractor contained in the Contract Documents or from any injuries to persons or property caused by the gross negligence of the Contractor or the Engagement Personnel, or in any other manner arising out of the provision of the Services.

## D. NOTICE

1. Notice: All Notices required by the terms of this Contract shall be in writing. For purposes of this Paragraph, "writing" shall include facsimile transmissions and electronic mail, provided that reasonable care is used to ensure that the Notice is received by its intended recipient.
2. Notice to Contractor: Written Notice may be served on the Contractor by mail, courier, facsimile transmission or electronic mail to the Contractor's business address as stated in the Proposal cover sheet.
3. Notice to City: Written Notice may be served on the City by mail, courier, facsimile transmission or electronic mail to the Purchasing Agent's Technical Representative, with a copy to the Purchasing Agent.

## E. TERMINATION OR SUSPENSION

1. Termination for Convenience: Either party may terminate this Contract at its own convenience for any reason by giving thirty (30) days prior written Notice of termination to the other party. Upon termination of this Contract for convenience, any fees and expenses due to the Contractor shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination). Each subcontract shall contain a similar termination provision for the benefit of the Contractor and the City.

The City shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Paragraph. The City shall have the right of audit (and the Contractor shall have the obligations) stated in Section 4.A, above, insofar as they pertain to amounts claimed to be due hereunder.

2. Termination for Default: The City of Petersburg may, by written Notice to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

- (a) If the Contractor fails to perform the Services as specified in this Contract, and does not cure such failure within a period of ten (10) days after receipt of Notice from the Purchasing Agent or his designee;
- (b) If the Contractor fails to perform any of the other provisions of this Contract, and does not cure such failure within a period of ten (10) days after receipt of Notice from the Purchasing Agent or his designee; or
- (c) Without further notice, if the Contractor defaults in the performance of its duties pursuant to subsections (a) and/or (b) above more than twice within any consecutive twelve (12) month period, whether or not the Contractor subsequently cures such earlier defaults.

#### **F. NON-APPROPRIATION OF FUNDS**

This Contract is conditioned upon an appropriation made by the City Council of the City of Petersburg of funds sufficient to pay the compensation due the Contractor under this Contract. If such an appropriation is not made in any fiscal year, and the City lacks funds from other sources to pay the compensation due under this Contract, the City will be entitled, at the beginning of or during such fiscal year, to terminate this Contract. In that event, the City will not be obligated to make any payments under this Contract beyond the amount properly appropriated for Contract payments in the immediately prior fiscal year. The City will provide the Written Notice of Termination of this Contract due to the non-appropriation of funds at least fifteen (15) calendar days before the effective date of the termination. However, the City's failure to provide such Notice will not extend this Contract into a fiscal year in which funds for Contract payments have not been appropriated.

#### **G. FORCE MAJEURE**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs of failure to perform if the failure to perform this Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Excusable causes include, but are not limited to, acts of God or of the public enemy and acts of the federal or state government in either their sovereign or contractual capacities. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractors, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Services were obtainable from other sources in sufficient time for the Contractor to meet the required time(s) for performance.

#### **H. ADVERTISING**

In the event a contract is awarded for services resulting from this proposal, no indication of such sales or services to the City will be used in product literature or advertising. The Contractor shall not state

in any of its advertising or product literature that the City has purchased or uses any of its services, and the Contractor shall not include the City in any client list in advertising and promotional materials.

#### **I. CONFLICTS**

RBG is not currently aware of any relationship that would create a conflict of interest with the City or those parties-in-interest of which the City has made RBG aware. Because RBG and its affiliates and subsidiaries comprise a consulting firm that serves clients on an international basis in numerous cases, both in and out of court, it is possible that RBG may have rendered or will render services to, or have business associations with, other entities or people which had or have or may have relationships with the City, including creditors of the City. RBG will not be prevented or restricted by virtue of providing the Services under this Contract from providing services to other entities or individuals, including entities or individuals whose interest may be in competition or conflict with the City's provided RBG makes appropriate arrangements to ensure that the confidentiality of information is maintained.

RBG shall request written approval (which shall not be unreasonably withheld) prior to undertaking any services or representation that may create a conflict with its representation of the City.

#### **J. CONFIDENTIALITY/NON-SOLICITATION**

RBG shall keep as confidential all non-public information received from the City in conjunction with the provision of the Services, except: (i) as requested by the City or its legal counsel; (ii) as required by legal proceedings, court order or administrative order; or (iii) as reasonably required in the performance of this engagement. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is, or becomes, public other than as a result of a breach of this provision. The City agrees that, until two (2) years subsequent to the termination of this engagement, it will not solicit, recruit, hire or otherwise engage any employee or independent contractor of RBG and any of its subcontractors who worked on this engagement while employed by RBG (each, a "Solicited Person"). In the event that the City does solicit, recruit, hire or otherwise engage a Solicited Person within such two-year period, the City shall pay RBG a fee equal to the Solicited Person's hourly client billing rate at the time of the offer multiplied by 4,000 hours for the Project Executive and 2,000 hours for any other Solicited Person. The City acknowledges and agrees that this fee fairly represents the loss that RBG will suffer if the City breaches this provision. The fee shall be payable at the time of the Solicited Person's acceptance of employment or engagement.

#### **K. NO THIRD PARTY BENEFICIARY**

The City acknowledges that all advice (written or oral) provided by RBG and the Engagement Personnel to the City in connection with this engagement is intended solely for the benefit and use of the City (limited to the City Council and the Mayor) in considering the matters to which this engagement relates. The City agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without RBG's prior approval (which shall not be unreasonably withheld), except as required by law.

#### **L. LIMITATION ON LIABILITY**

The City shall indemnify the Engagement Personnel acting as officers (the "Indemnified Professionals") to the same extent as the most favorable indemnification it extends to its officers and directors, whether under the City's governing documents, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Indemnified Professionals. The Indemnified Professionals shall be covered as officers under the City's existing director and officer liability insurance policy. As a condition of the Contractor accepting this engagement, a Certificate of Insurance evidencing such coverage shall be furnished to the Contractor prior to the Effective Date. The City shall give thirty (30) days' prior written notice to the Contractor of cancellation, non-renewal or material change in coverage, scope or amount of such director and officer liability policy. This Section 4.K is a contractual obligation, and no change in applicable law or the City's governing documents or policies shall affect the Indemnified Professionals' rights hereunder.

The City agrees to hold harmless and indemnify the Contractor (including its members, officers, employees, agents and subcontractors) (collectively, the "Indemnified Parties") against all claims, damages, and costs (including reasonable attorneys' fees and disbursements) arising out of this Contracts, except to the extent such claims, damages, and costs are finally determined to be solely from the Indemnified Parties' gross negligence, fraud or willful misconduct. The City also agrees that neither Contractor nor the Indemnified Parties shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the City for or in connection with the Services except to the extent that any such liability for losses, claims, damages or expenses are finally determined to have resulted solely from the Indemnified Parties' gross negligence, fraud or willful misconduct. The City shall not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding involving an Indemnified Party unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.

In the event that, at any time whether before or after the termination of this Contract, as a result of or in connection with this Contract or the Services provided hereunder, the Contractor or any Indemnified Party is required to produce any of its personnel (including former employees) for examination, deposition, or other written, recorded or oral presentation, or the Contractor or any Indemnified Party is required to produce or otherwise compile, submit, duplicate, search for, organize or report on any materials within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the City shall reimburse such Indemnified Party for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will compensate such Indemnified Party for the time expended at such party's then applicable hourly rate.

Notwithstanding anything to the contrary, the Contractor's total liability relating to this Contract and/or the Services shall not exceed the fees actually paid to the Contractor for the portion of the Services giving rise to the liability, except to the extent such liability is finally determined to have arisen solely from the fraud or willful misconduct of the Contractor. In no event shall the Contractor be liable for any special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). This provision shall survive the termination of this Contract.

**M. PUBLIC RECORD**

RBG understands that the public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to provisions of Code of Virginia § 42.1-76 ("The Virginia Public Records Act") and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

**5     ATTACHMENTS**

Exhibit A: RBG Proposed Administrative and Organizational Assessment and Organizational Assessment as revised

Exhibit B: Job Descriptions



IN WITNESS WHEREOF, the parties hereto on the latest day and year written below have executed this Contract in three counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

**THE ROBERT BOBB GROUP., LLC:**

By: *Robert C. Bobb* 10/18/2016  
(Signature in ink) Date  
Robert C. Bobb  
(Typed name)

Attest: *Joyce Bobb* 10/18/2016  
(Signature in ink) Date  
Joyce Bobb  
(Typed title)

**CITY OF PETERSBURG, VA:**

By: *Tangela Injris* 10/24/16  
(Signature in ink) Date  
Tangela Injris  
Purchasing/Budget and, Operations Manager

*Dironna Belton* 10/24/16  
(Signature in ink) Date  
Dironna Belton  
Acting City Manager

*Joseph E. Preston* \_\_\_\_\_  
(Signature in ink) Date  
Joseph Preston  
City Attorney

