

GOVERNING BODY AGENDA ITEM

Name/Department:

Meeting Month:

Meeting Week:

(Week 1) Board of Directors

(Week 2) Public Hearings & Presentations

(Week 3) Regular Meeting/Consent

Time Sensitive? Yes No

Topic: Leigh Agency contract revision.

Brief Summary of Topic: The Leigh Agency contract revision had an errant provision, pursuant to VPPA, which provided for four (4) one year renewal periods after the initial nine (9) month term. The term has been adjusted to reflect a simple nine (9) month period. The Leigh Agency has been advised of the adjustment and is in full agreement with the altering of the term.

MARKETING AND GRAPHIC DESIGN SERVICES AGREEMENT

THIS MARKETING AND GRAPHIC DESIGN SERVICES AGREEMENT (this "Agreement") is made and entered into this 5th day of January, 2010, by and between THE CITY OF MANASSAS PARK, a Virginia municipal corporation (the "City"), and THE LEIGH AGENCY, LLC a Virginia limited liability company (the "Contractor").

WITNESSETH:

WHEREAS, the City requires the provision of marketing and graphic design services and related supportive capabilities to support the promotion of the new Community Center; and

WHEREAS, the City lacks sufficient resources to provide such services; and

WHEREAS, in accordance with Section 2-175 of the Code of the City of Manassas Park, Virginia, the City has solicited three businesses to submit quotations to provide marketing and graphic design services (the "Solicitation"); and

WHEREAS, in response to the Solicitation, the Contractor submitted a Scope of Services and Schedule of Costs to provide for marketing and graphic design services (the "Proposal"), which Proposal is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

WHEREAS, following consideration of all quotes received by the City in response to the Solicitation, the City has determined that the Contractor's Proposal was most responsive and that the Contractor is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and tasks set forth in this Agreement, and therefore desires to contract with the Contractor in accordance with the terms and conditions of this Agreement, the Virginia Public Procurement Act, and Section 2-175 of the Code of the City of Manassas Park, Virginia.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The Contractor shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Proposal (the "Scope of Services"). The work performed will be bound by the specifications according to this Agreement and the following documents, which documents are incorporated herein by reference:

- A. The Proposal (Exhibit A)
- B. Insurance Certificates

2. TERM.

The term of this Agreement (the "Term") shall commence on the date of execution of this Agreement (the "Effective Date") and shall terminate on the date that is nine (9) months following the Effective Date. This Agreement shall be deemed to have been terminated as of the date of the expiration of the Term and shall thereafter have no further force and/or effect, except for those provisions that by definition necessarily survive the termination of this Agreement (e.g., liability).

3. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services included in the Scope of Services shall be made monthly following the performance of such services in accordance with the fee schedule included in the Proposal.

B. No payment shall be made for any service rendered by the Contractor except for services identified and set forth in this Agreement.

C. For all work outside the Scope of Services, the Contractor shall submit a task proposal based on direction by the City. The City shall pay the Contractor for such work in accordance with the fee proposal included in the Proposal. To the extent that this Agreement conflicts in any way with the Proposal, this Agreement shall control.

D. The Contractor shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered during the prior month. The City shall make payment to the Contractor within thirty (30) days from receipt thereof. Requests for more rapid payment will be considered if a discount is offered for early payment.

E. The Contractor reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of six (6) years after the expiration of this Agreement. The Contractor shall at all reasonable times during said 6-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during said 6-year period.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of work contemplated by this Agreement.

B. In the performance of the work contemplated herein, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the work; provided, however, that the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Contractor may, however, employ such individuals(s) on other projects not related to City projects.

7. HOLD HARMLESS INDEMNIFICATION.

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

A. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage.

2) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

B. The City shall be named as an additional insured on all insurance policies with respect to work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9. TREATMENT OF ASSETS.

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Contractor pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

A. The Contractor, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

C. The Contractor acknowledges that, pursuant to Section 58.1-3133 of the Code of Virginia, the City's treasurer has the authority to withhold payment of any warrant drawn on this Agreement to pay any and all taxes and other charges due to the City from the Contractor. Furthermore, if such warrant is insufficient to pay the entire amount due, then the treasurer shall credit the bill for such taxes or other charges by the amount of the warrant.

11. NONDISCRIMINATION.

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis

prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The Contractor will include the provisions of the foregoing paragraphs 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.

12. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement:

1. The Contractor will provide a drug-free workplace for the Contractor's employees.

2. The 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 the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

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

B. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

13. ASSIGNMENTS/SUBCONTRACTING.

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation.

B. Any rights, work or services assigned or delegated hereunder shall be subject to each provision of this Agreement and procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement must have express advance written approval by the City.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder; provided, however, that no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

15. PROHIBITED INTEREST.

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

16. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. All work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the services proposed by this Agreement resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as work outside the Scope of Services pursuant to Subsection 3C above or deleted from the Scope of Services.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

17. TERMINATION.

A. Except as otherwise provided in this Agreement, either party may terminate this Agreement at any time by providing at least sixty (60) days advance written notice of such termination to the other party. The Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. The Contractor shall promptly submit a termination claim to the City following the City's termination of this Agreement pursuant to this subsection. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in a manner directed by the City.

B. If the Contractor fails to perform in the manner called for in this Agreement, or if the Contractor fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) business days following written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a

notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

18. NOTICE.

Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice provided for in this Agreement shall be hand delivered or sent by overnight mail or certified U.S. mail to the City at One Park Center Court, Manassas Park, Virginia 20111, and to the Contractor at the address designated for the Contractor on the Contractor's signature page. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

19. ATTORNEYS' FEES AND COSTS.

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees and other costs incurred in such action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

21. SEVERABILITY.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal, void or unenforceable.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. Both parties acknowledge that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

{Signature Page Follows}

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

THE CITY OF MANASSAS PARK,
a Virginia municipal corporation

By: _____
Francis C. Jones, Jr., Mayor

COMMONWEALTH OF VIRGINIA
CITY OF MANASSAS PARK, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Francis C. Jones, Jr., Mayor of the City of Manassas Park, Virginia.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

Dean H. Crowhurst, City Attorney

CONTRACTOR

The Leigh Agency, LLC,
a Virginia limited liability company

Address: _____

Tax ID#: _____

By: _____
Name: _____
Title: _____

STATE/Commonwealth of _____
CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2009, by _____ as _____
of The Leigh Agency, a _____, on behalf of the corporation.

Notary Public

My Commission Expires: _____

EXHIBIT A
THE PROPOSAL