

April 19, 2019

Mr. R. Neville Reynolds, PWS
Vanasse Hangen Brustlin, Inc.
351 McLaws Circle, Suite 3
Williamsburg, Virginia 23185

Re: NDRC – Ohio Creek - Environmental Services – Amendment

Dear Mr. Reynolds:

Enclosed is your executed copy of your renewal Amendment to the referenced Agreement. Please proceed in accordance with the Amendment.

Sincerely,



Toni Alvarez
Contract Monitoring Specialist

cc: Dept. of Public Works Budget & Accounting Manager
Department of Finance
Scott Smith, P.E., Coastal Resiliency Manager
Kyle Spencer, Deputy Resilience Officer
eBuilder Project #17020

April 2, 2019

Mr. R. Neville Reynolds, PWS
Vanasse Hangen Brustlin, Inc.
351 McLaws Circle, Suite 3
Williamsburg, Virginia 23185

RE: Vanasse Hangen Brustlin, Inc. / City of Norfolk – Renewal
Our File No. 2018-194124-MPM-CT

Dear Mr. Reynolds:

Pursuant to Paragraph 2 of the enclosed Agreement dated April 7, 2017, the City renews the Agreement for the period from March 2, 2019 to March 2, 2020, under the same terms and conditions as set forth in the Agreement. Please sign and return the original of this letter to Martha P. McGann, Deputy City Attorney, 900 City Hall Building, 810 Union Street, Norfolk, VA 23510, if you concur with this extension. A copy is enclosed for your file.

Very truly yours,



Douglas L. Smith
City Manager

Agreed:



Vanasse Hangen Brustlin, Inc. – Authorized Representative

Signature Page for City of Norfolk

Attest:

RLA Bunn

City Clerk

Contents Approved:

Richard Bunn

Director of Public Works

Form & Correctness Approved:

RLK

Martha P. McLean

Deputy City Attorney

**AGREEMENT BY AND BETWEEN THE CITY
OF NORFOLK AND VANASSE HANGEN BRUSTLIN, INC.**

This Agreement, dated this 7th day of April, 2017, between and among City of Norfolk, a municipal corporation chartered by the Commonwealth of Virginia, (the "City") and Vanasse Hangen Brustlin, Inc. (the "Contractor").

WHEREAS, the City desires to procure environmental services for the City as a sub-recipient to the Commonwealth of Virginia's HUD-National Disaster Resilience Funding (NDRC – Ohio Creek Project), including preparation of Environmental Assessments, Environmental Impact Statements, Permitting and additional services and accordingly issued a Request for Proposals dated August 19, 2016, for such services (the "RFP"); and

WHEREAS, the Contractor is qualified to provide such services and submitted its Proposal dated September 29, 2016 and Rate Schedule dated November 9, 2016, in response to the RFP (collectively, the "Proposal"); and

WHEREAS, the Proposal was found to be the most advantageous to the City; now therefore,

WITNESSETH:

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

1) SCOPE OF SERVICES

The Contractor shall provide the services on an as needed basis as set forth in the RFP attached hereto and incorporated herein as Exhibit A and the Proposal and Rate Schedule attached hereto and incorporated herein, collectively, as Exhibit B. The following Exhibits are a part of this Agreement:

1. Exhibit A - RFP with Addenda
2. Exhibit B - Proposal and Rate Schedule

In the event of any inconsistency between this Agreement and the Exhibits, such inconsistency shall be resolved in the following order of precedence: (1) this Agreement, (2) Exhibit B and (3) Exhibit A.

The City shall issue work orders for specific tasks to be performed by the Contractor.

2) TERM

The term of this Agreement shall be for a period of one year with two options to renew for additional one-year periods.

3) COMPENSATION

The City will pay Contractor hourly rates set forth in Exhibit B.

The total amount payable under this Agreement shall not exceed One Million and no/100 Dollars (\$1,000,000.00).

The City will pay the Contractor within thirty (30) days after the receipt of a proper and correct invoice. Invoices shall be sent to:

City of Norfolk
501 Boush Street
Norfolk, VA 23510
Attn: Scott A. Smith, PE, LS
Public Works, Coastal Resiliency

4) APPROPRIATION OF FUNDS AND RECEIPT OF GRANT FUNDS

Compensation pursuant to performance under this Agreement shall be subject to appropriation by the Council of the City of Norfolk and receipt of CDBG/NDR funds. The City shall not incur any obligation or liability under this Agreement beyond the funds appropriated for such obligation or liability and/or receipt of CDBG/NDR funds in any fiscal year in which this Agreement is in effect. Funds are certified for the Initial Term of this Agreement. In the event the City exercises an option for an additional year, the Director of Finance shall certify the funds for that Contract Year. If such funds are not available and/or appropriated, the City may cancel the Agreement without incurring any liability and/or damages of any type to the Contractor but for the City's obligation to pay for goods actually delivered or services performed through the date of cancellation. Any such cancellation may be by a written notice from the City to the Contractor.

5) PAYMENT OF SUBCONTRACTORS

The Contractor is obligated 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 any subcontractor under this Agreement:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this Agreement; or

b. Notify the City and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the City for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent (1%) per month.

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

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

6) INSURANCE REQUIREMENTS

The Contractor shall maintain during the term of this Agreement insurance of the types and in the amounts described below. All general liability and automobile/vehicle liability policies will be written in an "occurrence" form unless otherwise specifically approved by the City. The City of Norfolk will be named on such liability policies as "Additional Insured" on such policies. Insurance policies shall provide that the Contractor will receive at least thirty (30) days written notice in the event of cancellation of the policies. Contractor will provide City advance notice of material change adverse to City's interests. If the Contractor fails to maintain the insurance as set forth in this Agreement, upon ten days advance notice to allow Contractor to cure any insurance deficiency, the City shall have the right, but not the obligation, to purchase such insurance at Contractor's expense. A combination of primary and umbrella or excess liability insurance may be utilized to meet the required minimum insurance policy limits below.

A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** The CONTRACTOR shall maintain Commercial General Liability Insurance ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, \$3,000,000 general aggregate. CGL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under insured contract.

B. **WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE:** The Contractor shall maintain the applicable statutory Workers' Compensation

Insurance, and Employer's Liability Insurance with a limit of at least \$500,000 per accident/disease, and policy limit of \$500,000.

C. **INSURANCE POLICIES/CERTIFICATE OF INSURANCE:** The Contractor shall upon award, furnish the City with a certificate(s) of insurance evidencing policies, required in the insurance requirements section of this document. The certificate(s) shall specifically indicate that the insurance includes any extensions of coverage required above. In the event of cancellation of, or material change in, any of the policies, the Contractor shall notify the City within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this Agreement. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Agreement, the Contractor shall furnish a certificate of insurance evidencing renewal of such coverage to the City within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this agreement. Failure of the City, an, or the City's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, and, or (2) identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

D. **SUBCONTRACTOR'S INSURANCE:** Contractor shall require each of its Subcontractors to take out and maintain during the life of its subcontract the same insurance coverage required of Contractor under this Paragraph. Each Subcontractor shall furnish to Contractor two copies of a certificate of insurance and such certificate shall contain the same information required in Paragraph F below. Contractor shall furnish one copy of the certificate to the City.

7) INDEMNIFICATION

The Contractor shall indemnify and save harmless the City and its representatives from and against all losses and claims, demands, suits, actions, payments, and judgments arising from personal injury or death, brought or recovered against the City and its representative to the extent caused by a negligent act or negligent omission of the Contractor, its agents, servants or employees, in the execution of the contracted work, including any and all expense, legal and otherwise, incurred by the City or its representatives in the defense of claim or suit. The Contractor must pay all litigation costs, attorney's fees, settlement payments and any damages awarded. This paragraph shall survive the expiration or termination of this Agreement.

8) FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal.

The City shall not be held responsible for failure to perform its duties and responsibilities imposed by this Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the City that make performance impossible or illegal.

9) CITY OF NORFOLK BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 24 ("Licenses and Taxation") of the City of Norfolk Code, if applicable. For information on the provisions of that Chapter and its applicability to this Agreement, the Contractor must contact the City of Norfolk Business License Division, Office of the Commissioner of the Revenue, 810 Union Street, City Hall, First Floor, West Wing, Norfolk, Virginia 23510.

10) DEFAULT AND TERMINATION

If Contractor fails or refuses to perform any of the terms of this Agreement, including poor services, work or materials, the City may, by written notice to Contractor, terminate this Agreement in whole or in part and receive a refund of any prepaid or unearned fees. In addition to any right to terminate, the City may enforce any remedy available under this Agreement in connection with such default, and Contractor shall be liable for damages to the City resulting from Contractor's default. The City further reserves the right to immediately obtain such work or services from other entities in the event of Contractor's default.

11) SUSPENSION OR TERMINATION OF AGREEMENT BY CITY

The City, at any time, may order Contractor to immediately stop work on this Agreement, and/or by thirty (30) days written notice may terminate this Agreement, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Agreement whether completed or in process (unless otherwise directed by the notice).

- A. If the termination or stop work order is due to the failure of the Contractor to fulfill any of its Agreement obligations, the City may, at City's expense, take over the Work and prosecute the same to completion by contract or otherwise.
- B. Should the Agreement be terminated or work is stopped not due in any way to the fault of the Contractor, the Contractor shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by the City and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.
- C. The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement and City may pursue any and all such rights and remedies against Contractor as it deems appropriate.

12) CONTRACTUAL DISPUTES

If the Contractor has a claim against the City, whether for money or other relief, the Contractor shall give written notice of intent to file a claim within sixty (60) days of the occurrence on which the claim is based or when Contractor becomes aware of the occurrence on which the claim is based, whichever is later, or the claim shall be deemed irrevocably waived. Even though a claim is intended, the Contractor shall submit an invoice for final payment within ten (10) days after final delivery of the CCM. Pendency of claims shall not delay payment of amounts agreed due in the final payment. After reviewing the facts and circumstances of the dispute, the City Manager shall make the City's determination regarding the resolution of claims and notify Contractor of such determination. Under no circumstances may the Contractor suspend, delay, or terminate performance pending resolution of or any action upon any claim. Rather, the Contractor shall have an affirmative and on-going obligation to diligently execute and complete all work in a timely manner pending resolution of any dispute with the City.

13) ASSIGNMENT

A party shall not assign, transfer, subcontract, or otherwise dispose of its rights or duties under this Agreement to any other person, firm, partnership, company, or corporation without the previous consent in writing of the other party.

14) NOTICES

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly made when received by U.S. Mail, sent first class, return receipt requested, or hand-delivery.

Notices to the City shall be addressed as follows:

City Manager
City of Norfolk
1101 City Hall Building
810 Union Street
Norfolk, Virginia 23510

With copy to:

City Attorney
City of Norfolk
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Notices to Contractor shall be addressed as follows:

Vanasse Hangen Brustlin, Inc.
351 McLaws-Circle
Williamsburg, Virginia 23185
Attn: R. Neville Reynolds, PWS

15) INDEPENDENT CONTRACTOR

Contractor shall at all times act as an independent contractor in the performance of this Agreement. Neither Contractor nor its employees or agents shall represent themselves to be, or be deemed to be, employees of the City.

16) SEVERABILITY

If any provisions of this Agreement are held to be unenforceable, this Agreement shall be construed without such provisions.

17) WAIVER

The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

18) CHANGES

This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties.

19) GOVERNING LAW AND VENUE

This Agreement is made under and shall be construed according to the laws of the Commonwealth of Virginia. Venue, in the event of litigation, shall be in City of Norfolk.

20) ETHICS IN PUBLIC CONTRACTING

Contractor hereby certifies that it has familiarized itself with §§33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public

Contracting," and further that all amounts received by Contractor, pursuant to this Agreement are proper and in accordance therewith.

21) NON-DISCRIMINATION

In the performance of this Agreement, Contractor agrees that it will adhere to the nondiscrimination requirements set forth in §33.1-53 of the Code of the City of Norfolk, Virginia, 1979, as amended.

22) DRUG FREE WORKPLACE

The City of Norfolk is a drug-free workplace, and as a condition of continued service on the contract, any Contractor personnel assigned to this project may be required to submit, to an alcohol/drug test at any time.

The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees or agents performing services on City property are prohibited:

1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
2. Impairment from the use of alcohol or drugs (except the use of drugs for legitimate medical purposes as directed by a physician).

23) COMPLIANCE WITH FEDERAL IMMIGRATION LAW

The Contractor shall certify that, at all times during which any term of an agreement resulting from this solicitation is in effect, it does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

24) AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH

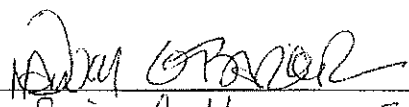
Contractor hereby represents that it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

25) FEDERAL REGULATORY REQUIREMENTS

It is the responsibility of the Contractor to ensure that it is in compliance with all federal regulatory requirements, including, but not limited to CDBG/NDR requirements.

IN WITNESS WHEREOF, the City and Contractor have caused their duly authorized officials to execute this Agreement.

VANASSE HANGEN BRUSTLIN, INC.

By 
Title: Regional Manager 4/7/17

CITY OF NORFOLK

By Douglas A. Smith
Interim City Manager

ATTEST:

[Signature]
City Clerk

CONTENTS APPROVED:

[Signature]
Chief Resilience Officer

CONTENTS APPROVED:

[Signature]
Director of Public Works

FORM AND CORRECTNESS APPROVED: JUPM

[Signature]
Deputy City Attorney

CERTIFICATE OF FUNDING

I hereby certify that the money required for work performed for City of Norfolk under this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

AMOUNT: 1,000,000
ACCOUNT: 2500-41-9229-5307 (FY17)
VENDOR: VC0000101900
CONTRACT NO.: 26369

[Signature] 4/4/17
Director of Finance Date
SCM