

PRINTING STATE OF MARYLAND BUDGET BOOKS CONTRACT

THIS CONTRACT (the "Contract") is made this 13th day of November, 2017 by and between **PORT CITY PRESS, INC.** and the **MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT.**

IN CONSIDERATION of the premises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Business Day(s)"** means the official working days of the week to include Monday through Friday.
- 1.2 "COMAR"** means Code of Maryland Regulations
- 1.3 "Contract"** means this Contract for printing State of Maryland budget books.
- 1.4 "Contract Monitor"** means the monitor designated by the Department, who is Kimberly Grandy. The Department may change the Contract Monitor at any time by written notice.
- 1.5 "Contractor"** means Port City Press, Inc., whose principal business address is 1323 Greenwood Road, Baltimore, MD 21208.
- 1.6 "Day"** means...

	2018	2019	2020	2021	2022
Day 1 means:	the day during the second week of January that Contractor receives Volume 1 and Volume 2 from DBM's Office of Budget Analysis (OBA)	the day during the second week of January that Contractor receives Volume 1 and Volume 2 from OBA	the day during the second week of January that Contractor receives Volume 1 and Volume 2 from OBA	the day during the second week of January that Contractor receives Volume 1 and Volume 2 from OBA	the day during the second week of January that Contractor receives Volume 1 and Volume 2 from OBA
Day 2 means:	the day immediately following Day 1	the day immediately following Day 1	the day immediately following Day 1	the day immediately following Day 1	the day immediately following Day 1
Day 3 means:	Thu, Jan 11, 2018	Thu, Jan 10, 2019	Thu, Jan 9, 2020	Thu, Jan 14, 2021	Thu, Jan 13, 2022
Day 4 means:	Fri, Jan 12, 2018	Fri, Jan 11, 2019	Fri, Jan 10, 2020	Fri, Jan 15, 2021	Fri, Jan 14, 2022
Day 5 means:	Sat, Jan 13, 2018	Sat, Jan 12, 2019	Sat, Jan 11, 2020	Sat, Jan 16, 2021	Sat, Jan 15, 2022

Delivery Day means:	Mon, Jan 15, 2018	Mon, Jan 14, 2019 or such later date consistent with Md. Code Ann. State Fin & Proc § 7-106	Mon, Jan 13, 2020	Mon, Jan 18, 2021	Mon, Jan 17, 2022
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1.7 **“Department”** means the Maryland Department of Budget and Management.

1.8 **“Procurement Officer”** means the officer designated by the Department, who is Patrisha Robinson. The Department may change the Procurement Officer at any time by written notice.

1.9 **“State”** means the State of Maryland.

2. **Scope of Work**

2.1 The Contractor shall, within the timeframe specified below:

- a. Print, process, image, and deliver as specified below, the Maryland budget books which include:
 - 1. Highlights;
 - 2. Capital Budget for the Office of Capital Budgeting;
 - 3. Volume 1 for the Office of Budget Analysis;
 - 4. Volume 2 for the Office of Budget Analysis; and
 - 5. Volume 3 for the Office of Budget Analysis.

Volumes 1, 2 and 3 shall include budget, personnel and Managing for Results (MFR) information by agency, unit and program.

- b. Print 750 copies of each of the five books. The 750 copies shall include 500 individually packaged sets. The printing will consist of:
 - 1. Output from portable document format, per page;
 - 2. Re-output pages with corrections, per page;
 - 3. Paste up divider pages with supplied copy, per page;
 - 4. Alterations, modifications relating to electronic files/per page;
 - 5. Collate and check pagination of book, per page;
 - 6. Create bleed tabs with overlays, per each;
 - 7. Additional: To print budget book cover 4-0-0-4
 - 8. Additional: To create an electronic file of a different cover version;
 - 9. Additional: To print budget books above 750 copies;
 - 10. Trim Size: 8.5” X 11”;
 - 11. Text Prints: 1/1, Black;
 - 12. Text Stock: 40# Recycled;
 - 13. Cover Prints 3/0; and
 - 14. Cover Stock: 80# Howard Lincn.

- c. Provide within the completed budget books, each section (Highlights, Capital Budget, and Volumes 1, 2 & 3) to include the five processes listed below:
1. Prepress;
 2. Press;
 3. Bindery;
 4. Paper; and
 5. Print cover.
- d. The Office of Capital Budgeting (OCB) works with the Contractor to develop a map that lists all of the capital projects by county and will send the Contractor a Microsoft Excel spreadsheet that lists each county, all of the projects within each county, and the amount of funding each project is going to receive. The Contractor shall list the projects and amounts under county titles displayed under a map of Maryland that breaks the State out by county and lists each county seat. All maps (small and large) shall be titled "State of Maryland FY XXXX Capital Budget [current fiscal year for budget books]".
1. The Contractor shall print 100 small maps {18 in. L x 28 in. W} printed on white paper in black & white, for capital projects by county.
 2. The Contractor shall create two PDF files, one in black & white, the other in color, to enable OCB to print the large maps {3ft L x 4ft. W}.
- e. Receive test files, a list of contacts, and a planned schedule of deliverables from the Contract Monitor in September.
- f. Print and deliver the books and maps by no later than Day 5. The Office of Budget Analysis (OBA) will provide Volume 1 and Volume 2 to the Contractor on Day 1. The Contractor shall provide proof edits by 10:00 a.m. of Day 2, for OBA review and approval. OBA will provide any edits and approvals by 6 p.m. of Day 2. The OCB will provide Capital Budget to the Contractor by 6:00 p.m. on Day 3. The information to be incorporated into the maps will be provided to the Contractor on Day 3. The printing process will begin no later than Day 4. OBA will have the necessary Highlights information to the Contractor by 6:00 p.m. on Day 4. The Contractor shall submit drafts of the Highlights to the OBA for OBA review no later than 8:00 a.m. on Day 5. OBA will review for edits and provide final approval by 12:00 p.m. of Day 5, at which time all books and maps shall be ready for printing. In addition to printing, the Contractor shall send all printing data through a File Transfer Protocol (FTP) site to OBA. OBA will provide complete PDF page-ready files to Contractor for printing.
- g. Place the 500 individually packaged sets in boxes, one set per labeled box, approximately the size of 11-1/4 in. L x 9 in. W x 7-1/2 in. H {SFC carton}. The remaining 250 books will be packaged per book type in labeled cardboard boxes approximately 17-1/4 in. L x 11-1/2 in. W x 8-1/2 in. H {#205 cartons}. The small maps {18 in. L x 28 in. W} will be packaged in labeled cardboard boxes. The pdf files containing the large maps {3ft L x 4ft. W} will be delivered via email or file sharing program no later than 3:00 p.m. of Delivery Day. The Contractor shall deliver all printed material to the Contract Monitor at the destination of 45 Calvert Street, Room 242, Annapolis, MD, 21401 no later than 3:00 p.m. of Delivery Day.

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor shall assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

The Contractor shall begin providing Services (as defined in section 2.1, above) under this Contract on or about October 1, 2017 following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required and shall continue to provide Services until September 30, 2022, unless terminated earlier as provided in this Contract. Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration of the Contract.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified below:

A. Highlights (Quantity: 750)

Total for PrePress	\$565.09
Total Press	\$1,450.23
Total Bindery	\$1,135.86
Total Paper	\$1,449.96
Price	\$4,601.14
Price per additional 100	\$256.27

Additional Charges

Create bleed tabs, each	\$0.93
Print cover 4-0-0-4 in lieu of 3-0-0-3	\$330.00
Posting final production files to web	\$75.00

B. <u>Capital Budget (Quantity: 750)</u>	
Total for PrePress	\$911.52
Total Press	\$2,191.86
Total Bindery	\$1,774.56
Total Paper	\$1,369.48
Price	\$6,247.42
Price per additional 100	\$337.88

Additional Charges

Create bleed tabs, each	\$0.93
Print cover 4-0-0-4 in lieu of 3-0-0-3	\$330.00
Posting final production files to web	\$75.00

C. <u>Volume I (Quantity: 750)</u>	
Total for PrePress	\$1,471.66
Total Press	\$2,782.84
Total Bindery	\$2,228.26
Total Paper	\$3,104.15
Price	\$9,586.91
Price per additional 100	\$492.35

Additional Charges

Create bleed tabs, each	\$0.93
Print cover 4-0-0-4 in lieu of 3-0-0-3	\$330.00
Posting final production files to web	\$75.00
Insert Set into individual carton, each set	\$0.97

D. <u>Volume 2 (Quantity: 750)</u>	
Total for PrePress	\$1,748.00
Total Press	\$2,896.15
Total Bindery	\$2,348.99
Total Paper	\$3,593.75
Price	\$10,586.89
Price per additional 100	\$549.43

Additional Charges

Create bleed tabs, each	\$0.93
Print cover 4-0-0-4 in lieu of 3-0-0-3	\$330.00
Posting final production files to web	\$75.00

E. <u>Volume 3 (Quantity: 750)</u>	
Total for Prepress	\$2,147.46
Total Press	\$4,076.60
Total Bindery	\$2,537.62
Total Paper	\$4,107.43
Price	\$12,869.11
Price per additional 100	\$646.02

Additional Charges

Create bleed tabs, each	\$0.93
Print cover 4-0-0-4 in lieu of 3-0-0-3	\$330.00
Posting final production files to web	\$75.00

F. State of Maryland Map (Quantity: 100 small maps (18 in x 28 in))

Composition	\$1,540.84
Price	\$1,678.91
Additional Copies, each	\$1.37

No charge for pdf files of large maps (3ft L x 4ft W) \$0.00

Payment to the Contractor for all Services pursuant to this Contract shall not exceed the sum of \$400,000. The Contractor shall not receive any other payment for the Services. The Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach \$400,000. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

4.2 Unless a payment is unauthorized, deferred, delayed, or setoff under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if: (1) the Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and (2) a Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one year after the 31st day after the Department receives the proper invoice; or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Contractor shall submit invoices to the Contract Monitor. Each invoice for Services rendered shall include the Contractor's Federal Tax Identification Number, which is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse

or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Department is not evidence that Services were rendered as required under this Contract.

4.5 Contractor's eMaryland Marketplace vendor ID number is 00042685.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

7. Patents, Copyrights, Intellectual Property

7.1 If the Contractor furnishes works created as a deliverable under this Contract that contain any design, device, material, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such works created as a deliverable under this Contract furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

8.1 Subject to the Maryland Public Information Act and any other applicable laws, including, without limitation, the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party

lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this contract.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Non-Hiring of Employees

No official or employee of the State as defined under General Provisions Article section 5-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

11. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

12. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

12.1 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.

12.2 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

13. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

14. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this Contract.

15. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

16. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages.

Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

17. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

18. Delays and Extensions of Time

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers, COMAR 21.07.01.13.

19. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

20. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

21. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the

Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

22. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

23. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of three (3) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 23 shall survive expiration or termination of the Contract.

24. Right to Audit

- 24.1** The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.
- 24.2** Upon three Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the

Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.

- 24.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 24.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 24.5 This Section shall survive expiration or termination of the Contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of as of the date of this Contract.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of this Contract, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor

assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. Indemnification

- 28.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 28.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 28.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 28.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 28.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 28.6 This Section 28 shall survive termination of this Contract.

29. Liability

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, the Contractor shall be liable as follows:

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under Section 28 of this Contract (Indemnification) shall be unlimited if the State is not immune from liability for claims arising under Section 28.

30. Living Wage - Intentionally Omitted

31. Commercial Non-Discrimination

31.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

31.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

31.3 As a condition of entering into this Contract, upon the request of the Maryland Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

32. Prompt Pay Requirements

32.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

- A. Not process further payments to the Contractor until payment to the subcontractor is verified;
- B. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- C. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- D. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- E. Take other or further actions as appropriate to resolve the withheld payment.

32.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

32.3 An act, failure to act, or decision of a procurement officer or a representative of the Department or the State, concerning a withheld payment between the Contractor and subcontractor under this Contract, may not:

- A. Affect the rights of the contracting parties under any other provision of law;
- B. Be used as evidence on the merits of a dispute between the State and the Contractor in any other proceeding; or
- C. Result in liability against or prejudice the rights of the State.

32.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

32.5 To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR 21.11.03.13, take the following measures:

- A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- B. This verification may include, as appropriate:
 - (1) Inspecting any relevant records of the Contractor;
 - (2) Inspecting the jobsite; and
 - (3) Interviewing subcontractors and workers.
 - (4) Verification shall include a review of:
 - (a) The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

- (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- C. If the State determines that the Contractor is in noncompliance with certified MBE participation goals, then the State will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action.
 - (1) Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- D. If the State determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the State requires, then the State may:
 - (1) Terminate the Contract;
 - (2) Refer the matter to the Office of the Attorney General for appropriate action; or
 - (3) Initiate any other specific remedy identified by the Contract, including the contractual remedies regarding the payment of undisputed amounts.
- E. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

33. Electronic Procurement Transactions Authorized

- 33.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- 33.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Contractor to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the Contract.
- 33.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- 33.4 In addition to specific electronic transactions specifically authorized in other sections of the Contract (e.g. §4.2 related to EFT) and subject to the exclusions noted in section 33.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described: The Procurement Officer, the State's Contract Monitor and the Contractor may conduct day-to-day Contract administration, except as outlined in section

33.5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Monitor.

33.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

1. filing of protests;
2. filing of Contract claims;
3. submission of documents determined by the Department to require original signatures (e.g. Contract execution, Contract modifications, etc); or
4. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, be provided in writing or hard copy.

33.6 Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the Contract or in the direction from the Procurement Officer or Contract Monitor.

34. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

35. Administrative

35.1 **Contract Monitor and Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

35.2 **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Patrisha Robinson, Procurement Officer
State of Maryland
Department of Budget and Management
Procurement Policy & Administration
45 Calvert Street, Room 142
Annapolis, MD 21401
410-260-7570

Kimberly Grandy, Contract Monitor
State of Maryland
Department of Budget and Management

Office of Budget Analysis
45 Calvert Street, Room 242
Annapolis, MD 21401
410-260-7277

If to the Contractor:

Charles R. Bosley Jr.
Account Manager & Shareholder
Port City Press, Inc.
1323 Greenwood Road
Baltimore, Maryland 21208
410-602-8606


36. Miscellaneous

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR:
PORT CITY PRESS, INC.

STATE OF MARYLAND:
DEPARTMENT OF BUDGET
AND MANAGEMENT

 (SEAL)
By: _____


By: Marc Nicole, Deputy Secretary

November 7, 2017
Date

11/13/17
Date


Attest


Witness

Approved for form and legal
sufficiency this 13th day
of November 2017.


Assistant Attorney General

APPROVED BY BPW: N/A
(Date)

N/A
(BPW Item #)