



# **VIRGINIA BEACH CITY PUBLIC SCHOOLS**

A H E A D O F T H E C U R V E

## **PORTABLE RADIOS AND NARROWBANDING SERVICES**

**Contract No. 4692**

In consideration of the mutual covenants, provisions and agreements set forth herein, this Agreement (the "Contract") is entered into on **July 1, 2012** between **The School Board of the City of Virginia Beach (The Virginia Beach City Public Schools** or "VBCPS" also known as the "**Purchasing Agency**"), and **Gately Communication Company** (also known as the "**Contractor**") a **Commonwealth of Virginia Corporation** whose address is **501 Industry Drive, Hampton, V 23661** for the purpose of providing the services set forth herein.

### **1. SCOPE OF WORK**

Contractor shall perform Narrowbanding Services to be completed by no later than January 30, 2013; and provide portable UHF radios on an as-needed basis.

### **2. COMPENSATION AND METHOD OF PAYMENT**

In consideration of the work to be performed by Contractor, as set forth under the Scope of Work, the Purchasing Agency shall order goods and services as needed and pay Contractor after such goods and services are delivered per the pricing schedules and discounts as follows:

Narrowbanding: \$12.00 per radio (based on a quantity of 2,220 units.)

<b><u>DESCRIPTION</u></b>	<b><u>UNIT PRICE</u></b>
<b>HYT 16-Channel VHF Model TC-508-U(2), with 2 year warranty, Lithium-Ion battery, desktop charger, antenna, 3" belt clip and initial programming with PL Code (or equal)</b>	<b>\$130.25</b>
<b>HYT 16-Channel VHF Model TC-508-V(2), with 2 year warranty, Lithium-Ion battery, desktop charger, antenna, 3" belt clip and initial programming with PL Code (or equal)</b>	<b>\$130.25</b>

<b><u>DESCRIPTION</u></b>	<b><u>UNIT PRICE</u></b>
<b>OPTIONAL HYT COMPATIBLE ITEMS:</b>	
Spare Battery      BL1203 LI-Ion	\$30.05
Belt Clip            BC11	\$4.00
TC-600 Remote Speaker Microphone SM08M2	\$24.00
TC-600 Single-unit Charger CH10L03-PS1014	\$25.00
TC600 UHF Whip Antenna AN0455W02	\$8.00
TC600 UHF Stubby Antenna AN0455H03	\$8.00
Earset with in-line mic EHM04	\$6.00
Earbud w/on-mic PTT and Vol Control ESM08	\$14.00
Surveillance Kit w/PTT mic and Acoustic Tube EAM08	\$18.00
Lightweight headset w/boom mic ECM08	\$20.75

<b><u>DESCRIPTION</u></b>	<b><u>UNIT PRICE</u></b>
<b>OPTIONAL MOTOROLA COMPATIBLE ITEMS:</b>	
Spare Battery                      #NNTN4496	\$40.25
Spare Battery – Alternative #WAU4496 (includes belt clip) Belt Clip                      #HLN8255	\$35.00
Earpiece                              #BDN6720	\$4.55
Earbud w/Mic & PTT                #HMN9036	\$28.40
120V 90 Min. Charger            #WPLN4138	\$31.85
	\$46.60

DESCRIPTION	UNIT PRICE
<b>OPTIONAL VERTEX COMPATIBLE ITEMS:</b>	
Belt Clip #Clip-18	\$6.85
Leather case #LCC-230	\$21.85
VOX Headset #VC-25	\$57.25
Earpiece Microphone #MH-37A4B	\$27.30
Spare Battery, 7.4v, 1150 mAh #FNB-V103LI	\$29.30
Spare Battery, 7.4v, 2000 mAh #FNB-V104LI	\$43.90
Speaker/Microphone #MH-360S	\$14.35
Medium-Duty Speaker #MH-450S	\$18.50
Microphone w/ Lapel Clip and 3.5mm Ear Phone Jack	
Desktop Charger Bracket #DCM-1	\$40.95
Desktop Rapid Charger #VAC-300	\$28.65
6-Unit Multi-Charger #VAC-6300	\$306.85

#### **Flat Labor Rate and Material Maintenance:**

1. Non-Warranty Repair rate is **\$65.00** per radio plus parts.
2. Pick up of defective radios and delivery of repaired radios will be performed once a week at a mutually agreed upon location (Supply Warehouse) **at no charge**.

**Volume Pricing:** VBCPS reserves the right to request discounted pricing for radios on large volume orders from the Contractor; or to seek outside bids if determined to be in its best interest.

### **3. TERM OF CONTRACT**

This Contract shall commence on the date set forth in Paragraph I herein, and shall continue in force for the term of (put in contract terms) and shall terminate on June 30, 2013; with the option to renew for four (4) additional one-year periods.

Contractor expressly acknowledges that in the performance of its obligations, the VBCPS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

### **4. CONTRACT ADMINISTRATOR**

The Contract Administrator for this project shall be **Mr. Richard Ponti, Director, Office of Safety and Loss Control**. Contact can be made with **Mr. Ponti** at **757-263-2450**.



## **5. PRICE ESCALATION FOR RENEWABLE TERMS**

If the Contract is renewed beyond the initial Contract period, the first option year, and each additional option year may be subject to a price increase. This increase will be determined by using the Consumer Price Index - All Urban Consumers (CPI-U from December to December) as reported Annually by the Bureau of Labor Statistics. The current rates may be increased by the same percentage of the CPI-U for the renewal period with the increase not to exceed three percent (3%). This price increase will not be automatic and must be mutually agreed upon.

## **6. DOCUMENTS**

This Contract and any exhibits or attachments thereto will constitute the final Contract document ("Contract Document"). The Contract Document will be incorporated by reference into all purchase orders processed as part of this Contract.

In the event of a conflict in interpretation between any of the applicable Contract Document and this Contract, any such conflict will be resolved by giving precedence in the following order, most recently dated document first:

- a) Amendments and Change Orders to this Contract;
- b) The Contract and any Exhibits or Attachments thereto;
- c) The Bid submitted by the Contractor;
- d) The Invitation For Bids and Subsequent Addenda.

## **7. CONTRACTUAL DISPUTES**

All contractual disputes will be disposed of consistent with Virginia Public Procurement Code § 2.2-4363.

## **8. VENUE**

Any and all suits for any claim(s) or for any and every breach or dispute arising out of this Contract shall be maintained in the Commonwealth of Virginia. Venue shall be the appropriate court of competent jurisdiction in the City of Virginia Beach, Virginia or the United States District Court for the Eastern District of Virginia, Norfolk Division.

## **9. APPLICABLE LAW**

This Contract shall be deemed to be a Virginia Contract and shall be governed as to all matters, whether of validity, interpretations, obligations, performance or otherwise, exclusively by the laws of the Commonwealth of Virginia. All questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Sales to schools are not affected by any fair trade agreements.

## **10. COMPLIANCE WITH ALL LAWS**

Contractor's attention is directed to the fact that all applicable federal, state, local laws and ordinances, including all rules and regulations of all authorities having jurisdiction over the project shall apply to the Contract. They will be deemed to be included in the Contract the same as though herein written out in full. Contractor must possess all necessary licenses and permits required to legally conduct its business and will acquire any additional licenses and permits necessary for performance of this Contract prior to the initiation of



work. Contractor further expressly represents that it is either a corporation, partnership, or limited liability company, as identified on the first page of this contract, in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Contract and any extensions thereof.

#### **11. GOOD STANDING WITH THE VIRGINIA STATE CORPORATION COMMISSION**

If the Contractor is a Corporation, Limited Liability Company, General Partnership, Limited Partnership or a Business Trust and is organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia, 1950, as amended, then the Contractor will remain in good standing with the Virginia State Corporation Commission throughout the term of this contract.

#### **12. DRUG-FREE WORKPLACE**

During the performance of this Contract, Contractor agrees to:

Provide a drug-free workplace for Contractor's employees.

Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. State in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.

Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, pertaining to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

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

- The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs.
- Any impairment from the use of alcohol or other drugs, except for legitimate medical purposes.
- Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the Purchasing Agency in addition to any criminal penalties that may result from such conduct.

#### **13. CONTRACTOR/EMPLOYEE BACKGROUND CERTIFICATION**

All Contractors must comply with the *Code of Virginia § 22.1-296.1*. During the contract period, the Contractor must keep current its certification that the Contractor, its employees, its future employees, its subcontractor and the employees of its subcontractor who will be on Virginia Beach City Public School (VBCPS) Property or in the presence of VBCPS students during school sponsored activities **have not been convicted** of a felony, or any offense involving the sexual molestation of a child, or any offense involving physical or sexual abuse of a child, or rape of a child, or convicted of a crime of moral turpitude.

Contractor must submit the appropriate **CONTRACTOR BACKGROUND CERTIFICATION FORM** as necessary to remain compliant.



#### **14. EMPLOYMENT OF UNAUTHORIZED ALIENS**

Contractor agrees that it does not currently, and shall not during the performance of this contract, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986."

#### **15. THE SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS**

#### **16. NONDISCRIMINATION**

Employment discrimination by Contractor shall be prohibited. During the performance of this Contract, Contractor agrees as follows:

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

#### **17. ANTI-COLLUSION CLAUSE**

Contractor hereby certifies that this Contract, or any claims resulting there from, is not the result of, or affected by, any act of collusion with, or any act of, another person or persons, firm or corporation engaged in the same line of business or commerce; and, that no person acting for, or employed by, the Purchasing Agency has an interest in, or is concerned with, this Contract, and, that no person or persons, firm or corporation other than Contractor, have, or are, interested in this Contract.

#### **18. FAILURE TO PERFORM**

Contractor shall be liable to the Purchasing Agency for all costs the Purchasing Agency incurs as a result of Contractor's failure to perform this Contract in accordance with its terms. Contractor's liability shall include, but not limited to: Damages and other delay costs incurred resulting in improper Contractor work.

Purchasing Agency increased costs of performance, such as extended overhead and increased performance costs resulting from Contractor-caused delays or improper Contractor work.

Warranty and rework costs, liability to third party, excess costs, reasonable attorney's fees and related costs.

#### **19. FORCE MAJEURE**

Contractor shall not be in breach of this Contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both Contractor and its



subcontractors. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of the Purchasing Agency in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes and floods.

## **20. TERMINATION WITHOUT CAUSE**

The Purchasing Agency may at any time, and for any reason, terminate this Contract by written notice to the Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to the Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract.

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

If the Purchasing Agency terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to the Purchasing Agency any work completed or in process for which payment has been made.

## **21. TERMINATION WITH CAUSE/DEFAULT/CANCELLATION**

In the event that the Contractor shall for any reason or through any cause be in default of the terms of this Contract, the Purchasing Agency may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Contractor to cure the default, the Purchasing Agency may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, the Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to the Purchasing Agency any work in process for which payment has been made.

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

Cancellation of this Contract for any reason may result in the Contractor being placed in a non-responsible status for future contracts.

## **22. HOLD HARMLESS/INDEMNIFICATION**

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Contractor agrees to indemnify and hold harmless the Purchasing Agency and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the Purchasing Agency, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the Purchasing Agency, its agents, volunteers, servants, employees or officials.



## **23. ENVIRONMENTAL CONSIDERATIONS**

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any clean up activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on the VBCPS, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

## **24. CONTRACT WAIVER**

Any waiver of any provision of this Contract shall be in writing and shall be signed by the duly authorized agent of Contractor or the Purchasing Agency. The waiver by either party of any term or condition of this Contract shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Contract.

## **25. NOTICES**

All notices, requests, demands, and elections under this Contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals.

- To the Purchasing Agency: Director of Purchasing
- To Contractor: Account Manager as defined in proposal

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

## **26. RESPONSIVENESS**

If Contractor fails to deliver goods or services or fails to replace rejected articles immediately or within a reasonable time as interpreted by the Purchasing Agency, when so requested, the right is reserved to procure these goods or services from other sources. The Purchasing Agency reserves the right to authorize immediate purchase from other sources against rejections on any contract when necessary. On such purchases, Contractor agrees to reimburse the Purchasing Agency promptly for excess costs occurred by such purchases. Such purchases will be deducted from Contract amount. Should the cost be less, Contractor shall have no claim to the difference. Contractor shall remove all rejected materials, equipment or supplies from the premises of the Purchasing Agency within ten (10) days of notification. Rejected items left longer than ten (10) days will be regarded as abandoned and the Purchasing Agency shall have the right to dispose of them as its own property. Purchasing Agency reserves the right to procure these services from another firm if the Contractor does not respond to the needs of the Purchasing Agency in accordance with any schedules dictated by the Purchasing Agency.



## **27. SEVERABILITY**

If any provision of this Contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Contract, and all other provisions of this Contract shall remain in full force and effect.

## **28. AUDITS**

The Purchasing Agency shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three (3) years following the completion of this Contract including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the Purchasing Agency, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the Purchasing Agency. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Purchasing Agency may have by State, Purchasing Agency, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are expressed or implied.

## **29. PERMITS AND LICENSING**

Contractor shall be responsible for obtaining and the cost of any and all permits, inspections, consents, authorizations and impact fees as may be required to perform its obligation. All applicable licensing requirements are to be in compliance with any and all rules of the Purchasing Agency.

## **30. COPYRIGHT / PATENT INDEMNITY**

Contractor shall pay all royalty and license fees relating to the items covered by this Contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this Contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify the Purchasing Agency and hold the Purchasing Agency harmless from any cost, expense, damage or loss incurred in any manner by the Purchasing Agency on account of any such alleged or actual infringement.

## **31. CONTRACTOR IS NOT AN AGENT**

Contractor will be considered an independent Contractor and shall not be deemed to be an agent, servant, employee or representative of the Purchasing Agency. Additionally, Contractor certifies that it does not have any relationship (ownership, contractual or otherwise) with any person or entity, which could have an effect on the Contractor's ability to fairly and effectively provide services pursuant to this Contract. **If any such relationship does exist, Contractor must disclose such information.**



### **32. VANDALISM**

The Purchasing Agency will not reimburse Contractor for the cost of repairs for any damages to Contractor's equipment caused by students, other acts of vandalism or other occurrences.

### **33. MILITANCY**

If by reason of any acts of God, fires, strikes, present or future laws, ordinances, government orders, rules or regulations, the Contractor is prevented from carrying out this Contract, the Contract shall not terminate, but the Purchasing Agency shall have the right to utilize the contracted equipment and supplies in which case the operating expenses incurred by the Purchasing Agency shall be deducted from the payments which the Purchasing Agency will make to Contractor for the period involved as if Contractor rendered the service directly. However, should such action result in loss or damages to equipment, such loss or damage will be recovered by Contractor from the Purchasing Agency.

### **34. ASSIGNMENT/CHANGES IN PERSONNEL**

The Purchasing Agency reserves the right to disqualify specific personnel from working under this Contract at its sole discretion. The Purchasing Agency reserves the right to cancel the Contract if any personnel of the Contractor change during the course of the Contract. If contracted personnel change, the Purchasing Agency reserves the right to accept or reject the person or person(s) offered as a replacement.

### **35. ADDITIONAL SERVICES**

Additional services not covered by this Contract shall be negotiated in advance, as necessary. These services will be dependent on the parties reaching mutual agreement as to adjustments in the service to be provided and the applicable rates. All rates for services not covered by this Contract must be approved in writing by the Purchasing Agency, in advance, or payment for services will not be authorized.

The Purchasing Agency reserves the right to obtain these services by other methods at any time.

### **36. TITLE TO EQUIPMENT**

Contractor shall pass to the Purchasing Agency clear and unrestricted title to all equipment purchased under this Contract upon payment of the purchase price. All equipment must be approved by Underwriters Laboratories or a recognized equivalent certification agency.

### **37. EQUIPMENT CONDITION**

Equipment for trade-in shall be dismantled by Contractor and removed at its expense. The condition of the trade-in equipment at the time it is turned over Contractor shall be the same as covered in the specifications, except as affected by normal wear and tear from use up to the time of trade-in. All equipment is represented simply, "as is". Equipment is available for inspection only at the delivery point listed for new equipment, unless otherwise specified.

### **38. INVOICES**

Contractor shall submit to the Purchasing Agency all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this Contract.

Invoices shall not include any costs other than those identified in the executed Purchasing Agency purchase



order processed under this Contract or any subsequent change orders issued by the Purchasing Agency's Purchasing Division.

All shipping costs are Contractor's responsibility, except to the extent such charges are identified in the executed Purchasing Agency purchase order or change orders.

Contractor's invoices shall provide at a minimum:

- Type and description of the Product or Service installed, delivered and accepted;
- The Contract number and/or the Purchasing Agency Purchase Order number.

#### **39. TAXES**

The Purchasing Agency is exempt from Federal, State and excise taxes. Contractor shall not include such taxes in any invoices under this Contract. Exemption certificates, if required, will be provided upon request. Contractor shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by Contractor which are legally enacted at the time bids are received, whether or not yet effective. All taxes: City of Virginia Beach business license, personal property, real estate and all other applicable tax requirements are the responsibility of Contractor. The Purchasing Agency assumes no tax liability under this Contract.

#### **40. PAYMENTS**

Any costs related to the performance of the Contract must be included in the original bid response. Payment terms offering a "**prompt payment discount**" will **not** be considered in the evaluation of bids. All **other** payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by the Bidder shall be Net 45 days. Payment of invoices will be certified promptly by the VBCPS for any item or service received in accordance with the specifications of this bid.

Payment shall not preclude the VBCPS from making a claim for adjustment on any item or service received later found not to have been in accordance with the conditions of this bid. Payment will be made on an adjusted price basis for any item or service received later found to be inferior. Partial payments on a total order will be made only by a special arrangement with the VBCPS.

#### **41. PAYMENTS TO SUBCONTRACTORS**

Pursuant to the Virginia Procurement Act, the Contractor shall make payments to all subcontractors within seven (7) days after receipt of payment from VBCPS; or shall notify the VBCPS and subcontractor in writing of the intention to withhold all or part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, the Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the contract, to the subcontractor on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

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

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



#### **42. NON-APPROPRIATION AVAILABILITY OF FUNDS**

It is understood and agreed between the parties hereto that the Purchasing Agency shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the Purchasing Agency shall immediately notify Contractor of such occurrence and this Contract shall terminate on the last day of the fiscal year for which an appropriation(s) was (were) received without penalty or expense to the Purchasing Agency of any kind whatsoever.

#### **43. MODIFICATION**

Any and all modifications to this Contract shall be mutually agreed to by both parties, in writing, and authorized by the Purchasing Agency's Director of Purchasing or his designee. The Purchasing Agency standard method to modify contracts is issuance of an amendment to the contract or a change order (purchase order).

#### **44. NON-ASSIGNMENT**

Contractor shall not, under any circumstances, assign the whole or any part of this Contract or any monies due or to become due hereunder without prior written consent of the Purchasing Agency. In case the Contractor assigns all or any part of any monies due to or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any monies due to or to come due to the Contractor shall be subject to prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of work called for in this Contract.

#### **45. WARRANTY**

Contractor guarantees:

- Against defective or faulty material or workmanship for at least one (1) year from date of acceptance.
- To furnish adequate protection from damage for all work and to repair damages of any kind for which it or its workers are responsible, to the building or equipment, to its own work, or to the work of others.
- Any merchandise or service provided under this Contract which is or becomes defective during the warranty period shall be replaced by Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the Purchasing Agency.

#### **46. INSURANCE**

Contractor shall have and maintain in force, such insurance as will protect it and the Purchasing Agency from claims which may arise out of or result from the execution of work, whether such execution be by itself, its employees, agents, subcontractors, or by anyone for whose acts any of them may be liable.

Contractor will submit evidence of adequate insurance to protect the Purchasing Agency from loss in case of accident, fire, theft, etc., prior to acceptance by a responsible person representing the Purchasing Agency.

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.

All liability insurance policies required under these specifications shall be an "occurrence" form versus "claims made" with no "sunset" provisions. Exceptions to this requirement may be made if the Contractor presents



evidence acceptable to the Purchasing Agency that "occurrence" coverage is unavailable or not feasible in regards to the Purchasing Agency's economic and legal interests.

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

- a. Workers' Compensation Insurance as required under the Code of Virginia. Title 65.2.
- b. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverage, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the Purchasing Agency as an additional insured.
- c. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).

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

#### **47. INSPECTIONS**

All work must be inspected to ensure conformity with the specifications and requirements surrounding the work. Inspections should be arranged by contacting the Contract Administrator.

**NO PAYMENT WILL BE MADE UNTIL THE WORK IS INSPECTED AND APPROVED.**

#### **48. QUALITY CONTROL**

- Contractor shall notify the VBCPS of any omissions, contradictions or conflicts in the specifications prior to acceptance of work. If the Contractor does not notify the VBCPS of any such conditions, it will be assumed that the Contractor has included all necessary items in his bid to complete the project.
- It is the intent that this be a completed project as far as the Contract documents set forth. The Contractor shall make his own Contracts with Subcontractors and be responsible for obtaining any required permits. The Contractor alone shall be held responsible by the VBCPS for the completed project.
- Contractor shall assume full responsibility for the protection and safekeeping of project materials stored on premises.
- Contractor shall take precautions to ensure that dust and debris associated with the project is contained within the work area and not allowed to spread into other areas of the school. Equipment or materials, which cannot be moved, shall be covered by the Contractor to prevent contamination or damage.
- All materials used by the Contractor shall be certified asbestos-free by the manufacturer. There will be no exceptions. A letter from the Contractor certifying that no asbestos-containing materials were used shall be provided upon completion of the project.
- The Contractor shall provide on site supervision at all times while work is in progress. All Subcontractors and/or workers shall report to a single supervisor who shall be on site to answer questions and coordinate work. The supervisor shall carry a copy of this specification and any amendments.



#### **49. SAFETY REQUIREMENTS**

- Contractor shall assure that all application, material handling, and associated equipment will be handled and operated in conformance with OSHA safety requirements. Where applicable, provide Material Safety Data Sheets for materials to be used on the project.
- Contractor shall comply with federal, state, and local fire and safety codes and requirements.
- Contractor shall advise the VBCPS whenever work is expected to be hazardous to VBCPS employees, students or other building occupants.
- Contractor shall maintain fire extinguisher within easy access whenever power tools; flammable materials or heat producing devices are being used.
- Contractor shall advise the VBCPS when volatile materials are to be used near air ventilation intakes or near occupied spaces so that action may be taken to prevent degradation of indoor air quality.
- Contractor shall dispose of all asbestos containing materials into an EPA approved sanitary landfill.
- Contractors performing work, that disturbs paint in housing and child-occupied facilities including schools built before 1978, must be EPA-certified and their employees must be trained in the use of lead-safe work practices. Contractor must follow Lead-safe work practices that minimize occupants' exposure to lead hazards. Information about these requirements can be found at [www.epa.gov/lead](http://www.epa.gov/lead) or by calling 1-800-424-5323.

#### **50. WORK PERFORMANCE**

- Contractor is to supply a dumpster or other devices necessary for the disposal of demolished materials.
- Materials or equipment owned by the VBCPS shall not be used by the Contractor.
- Any VBCPS equipment (brooms, mops, trashcans, etc.) used by the Contractor shall become the property of the Contractor. An amount equal to the replacement cost of the materials shall be deducted from the Contract price before final payment is rendered.
- Contractor shall clean the work area at the end of each workday. All materials shall be secured in a safe and neat manner. No trash or debris is to be left overnight at the work site.
- Upon completion of the project, the Contractor shall thoroughly clean all finished work, the work site and adjacent areas returning it to a level of cleanliness equal to that existing prior to commencement of work.
- Contractor shall perform all work in a professional manner by personnel experienced in their trade.
- Work shall progress in such manner as to cause the least inconvenience to the VBCPS and with proper consideration for the rights of other Contractors or workmen. The Contractor shall keep in touch with the entire operation and perform all installations promptly and professionally.



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

**CONTRACTOR:**

**GATELY COMMUNICATIONS CO.**

BY: Cg Clemmons

TITLE: CFO

DATE: 6/27/12

**PURCHASING AGENCY:**

**THE SCHOOL BOARD OF THE  
CITY OF VIRGINIA BEACH**

BY: [Signature]

TITLE: Superintendent

DATE: 7/6/12

**APPROVED AS TO LEGAL SUFFICIENCY:**

BY: [Signature]

TITLE: Deputy City Attorney

DATE: 11/29/12

**APPROVED BY CABINET MEMBER:**

BY: [Signature]

TITLE: Assistant Superintendent DASS

DATE: 6-22-12

**APPROVED AS TO AVAILABILITY OF FUNDS:**

Subject to Section 2-42  
BY: [Signature]

TITLE: Director of Business Services

DATE: 6/28/12

**APPROVED AS TO CONTENT:**

BY: [Signature]

TITLE: Director, Safety and Loss Control

DATE: 6/21/12