DEPARTMENT OF
GENERAL SERVICES

Central Procurement Unit
1100 Bank Street ~ Suite 724
Richmond, Virginia 23219
Email: procurement@dgs.virginia.gov

MODIFICATION #4
TO
CONTRACT DGS-131031-DIV
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
DIVARIS REAL ESTATE, INC.

This Modification #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DGS" (Department of General Services) and Divaris Real Estate, Inc., hereinafter referred to as "Contractor," relating to the modification of Contract DGS-131031-DIV dated December 3, 2013, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #4 is hereby incorporated into and made an integral part of Contract DGS-131031-DIV.

This purpose of this Modification #4 is to I) Document both parties' agreement to renew the Contract for an additional one (1) year term and II) revisions to Terms and Conditions as required by regulatory changes. These changes are effective immediately upon final signature, unless otherwise denoted herein.

I. **Reference:** Contract DGS-131031-DIV, Paragraph 35, entitled "Renewal of Contract."

The Commonwealth elects to exercise its option to renew the second (2nd) of seven (7) successive one (1) year renewal periods under the terms and conditions of the original Contract beginning December 3, 2017 and continuing through December 2, 2018.

Pricing shall remain unchanged from prior period of performance.

II. **Reference:** Contract #DGS-131031-DIV, Paragraph 15, entitled "Changes to the Contract", sub-paragraph 2.a, which allows changes to be made to the Contract by mutual agreement of both parties.

a) Revise Paragraph 4, entitled "Applicable Laws and Courts" to read:

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the Contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

b) Revise Paragraph 5, entitled "Anti-Discrimination" to read:

Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over $10,000 the provisions in a. and b. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

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

4. The requirements of these provisions i. and ii. are a material part of the Contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this Contract for breach, or at its option, the whole Contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific Contract is terminated.

5. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the Contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Contract.

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

c) Revise Paragraph 7, entitled "Immigration Reform and Control Act of 1986" to read:

By entering into a written Contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

d) Revise Paragraph 8, entitled "Debarment Status" to read:

The Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Contractor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a Contractor is created or used for the purpose of circumventing a debarment decision against another Contractor, the non-debarred Contractor will be debarred for the same time period as the debarred Contractor.

e) Revise Paragraph 10, entitled "Payment" to read:

A. To Prime Contractor:

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) Unreasonable Charges. Under certain emergency procurements and for most

time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with Code of Virginia, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the Contractor of defects or improprieties in invoices within fifteen (15) days as required in Code of Virginia, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

B. To Subcontractors:

1) Within seven (7) days of the Contractor's receipt of payment from the Commonwealth, a Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the Subcontractor(s) under the Contract; or

(b) To notify the agency and the Subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a Subcontractor may not be construed to be an obligation of the Commonwealth.

C. The Commonwealth of Virginia encourages Contractors and Subcontractors to accept electronic and credit card payments.

f) Revise Paragraph 17, entitled "Insurance" to read:

The Contractor certifies it will have the following insurance coverage during the time of the Contract. For construction Contracts, if any Subcontractors are involved, the Subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The Contractor further certifies that the Contractor and any subcontractors will maintain this insurance coverage during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

A. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the Contract shall be in noncompliance with the Contract.

B. Employer's Liability - $100,000.

C. Commercial General Liability - $1,000,000 per occurrence and $2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage.

D. General and Products & Completed Operations Aggregate -- $2,000,000

E. Automobile Liability - $1,000,000 combined single limit.

The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

g) Revise Paragraph 19, entitled "Drug-Free Workplace" to read:

During the performance of this Contract, the Contractor agrees to:

A. provide a drug-free workplace for the Contractor's employees;

B. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

C. state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and

D. include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, 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.

h) Revise Paragraph 37, entitled "Cancellation of Contract" to read:

The purchasing agency reserves the right to cancel and terminate any resulting Contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial Contract period is for more than 12 months, the resulting Contract may also be terminated by the Contractor, without penalty, after the initial 12 months of the Contract period upon 60 days written notice to the other party. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

i) Revise Paragraph 50 to read:

CONTRACTOR
Michael Divaris
President/COO
Divaris Real Estate, Inc.
4525 Main Street, Suite 900
Virginia Beach, VA 23462
mdivaris@divaris.com

And

Replace any references of Mr. John Wingfield with
Ms. Debbie Wake
Senior Vice President
Divaris Real Estate, Inc.
200 South 10th St, Suite 1010
Richmond, VA 23219
dwake@divaris.com

j) Revise Paragraph 51, entitled "eVA Orders and Contracts" to read:

The Contract will result in multiple purchase orders with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution.

k) Add Paragraph 57, entitled "Availability of Funds" to read:

It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

Notwithstanding the above, this Modification #4 is effective immediately upon its final execution

unless otherwise stated herein.

The foregoing is the complete and final expression of the parties' agreement to modify Contract DGS-131031-DIV and cannot be modified, except by a writing signed by the duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

DIVARIS REAL ESTATE, INC.	**COMMONWEALTH OF VIRGINIA** **DEPARTMENT OF GENERAL SERVICES**
BY:	BY:
NAME: Michael Divaris Printed	NAME: Nezette C. Howard Printed
TITLE: President / COO	TITLE: Sr. Contracting Officer
DATE: 10/27/17	DATE: 10/27/17