

**CITY OF ALEXANDRIA, VIRGINIA**

in conjunction with and as the lead Agency for

**Arlington County, VA; Fairfax County, VA; District of Columbia  
Department of Transportation; and Montgomery County, MD**

Hereafter referred to as the 'Member Jurisdictions'  
issue this

**REQUEST FOR PROPOSALS (RFP) NO. 00000584**

for

**COOPERATIVE PROCUREMENT:  
CAPITAL BIKESHARE EQUIPMENT**

**Issue Date: June 6, 2016**



**Non-Mandatory pre-proposal conference will be held:**

**June 20, 2016, 9 a.m. prevailing local time at:**

**100 North Pitt Street, Suite 301**

**Alexandria, Virginia 22314**

**RFP Closing Date and Time:**

**July 15, 2016, 4 p.m., prevailing local time**

**Issued by: Randy Burns, CPPB, Purchasing Agent**

**In accordance with Code of Virginia § 2.2-4343.1, the City of Alexandria does not  
discriminate against faith based organizations in the performance of its purchasing activity.**

## PROPOSAL SUBMISSION

**Proposal Due Date:** July 15, 2016, 4 p.m., prevailing local time

**Submit Proposal To:** City of Alexandria  
Purchasing Division  
100 North Pitt Street, Suite 301  
Alexandria, Virginia 22314  
<http://eprocure.alexandriava.gov/bsa>

**Submit:** **For hard copy Proposals:**  
Deliver, One (1) **PRINTED, SIGNED ORIGINAL** of the Proposal (including all completed and signed required submittals and addenda); *and* One (1) **EXACT COPY** of the **SIGNED ORIGINAL PROPOSAL** (including all completed and signed required submittals and addenda) on Compact Disc (CD) or USB Flash Drive in PDF format to the address listed above.

### **OR**

**For electronic Proposals:**  
Submit the Proposal through the City's eProcure system at:  
<http://eprocure.alexandriava.gov/bsa>

**All submissions must be received by the RFP deadline stated above unless otherwise modified by posted addendum.**

**Important Notice:** Effective immediately upon release of this Request for Proposals (RFP) and until notice of contract issuance, all official communications from Proposers regarding the requirements of the RFP shall be directed in writing to:

Randy Burns, CPPB  
Purchasing Division  
100 North Pitt Street, Suite 301  
Alexandria, Virginia 22314  
[randy.burns@alexandriava.gov](mailto:randy.burns@alexandriava.gov)

The City of Alexandria (City) shall distribute in writing all official changes, modifications, responses to questions, or notices relating to the requirements of this RFP via addenda. Unauthorized contact with any employee of any agency or department of the Member Jurisdictions, other than the employee listed above, may result in disqualification from the solicitation process. Any other information of any kind from any other source, or any oral communication, shall be considered unofficial and non-binding on the Member Jurisdictions. A Proposer relying on unofficial information shall do so at the Proposer's own risk.

## **TABLE OF CONTENTS**

<b>Section Number</b>	<b>Description</b>	<b>Page Number</b>
	Anticipated Timeline	5
	<b>PART I - SCOPE OF WORK</b>	
1.1	Introduction/Overview	6
1.2	Background	6
1.3	Purpose/Objective	6
1.4	Contemplated Term of Any Contract Awarded	7
1.5	Method of Source Selection	7
1.6	Scope of Work	8
1.7	Constraints on the Contractor	11
1.8	Contractor's Responsibilities	12
1.9	Member Jurisdictions' Responsibilities Under Contract	13
1.10	Delivery requirements	13
	<b>PART II– INSTRUCTIONS AND OTHER INFORMATION FOR PROPOSAL</b>	
2.1	Submission Deadline; Delivery Methods; Delivery Instructions	14
2.2	General Inquiries Related to the City's Procurement Process	14
2.3	Deadline for Questions and Inquiries	14
2.4	Compliance with the RFP	15
2.5	Award(s); Waiver of Informalities, Defects or Omissions in Proposals; Rejection of Proposals	15
2.6	Minimum Criteria for Responsibility	15
2.7	Proposal Evaluation Panel and Evaluation Factors	16
2.8	Ambiguity, Conflict or Other Errors in the RFP	17
2.9	Amendments to this RFP	17
2.10	Proposal and Presentation Costs	17
2.11	Requests for Clarification of Proposal	17
2.12	Response Format	17
2.13	Examination of Solicitation/Contract Documents	22
2.14	Validity of Proposals Submitted in Response to this RFP	22
	<b>PART III – GENERAL TERMS AND CONDITIONS</b>	
3.1	Definitions	22
3.2	Applicability	24
	<b>ATTACHMENTS</b>	
A	Offer and Award Form	25
B	Bidder's Pricing Schedule	26
C	Required Information Form	29

D	Certified Statement of Non-Collusion	30
E	Equal Employment Opportunity Agreement	31
F	W-9 – Request For Taxpayer Identification Number and Certification	33
G	<b>S102CF2-0813 VIRGINIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL</b>	34
H	City of Alexandria, VA Terms & Conditions	37
I	District of Columbia Department of Transportation Terms & Conditions	61
J	Montgomery County, MD General Terms & Conditions	89
K	Fairfax County, VA Terms & Conditions	106
L	Arlington County, VA Terms & Conditions	119

### **Anticipated Timeline**

Listed below are the tentative timeframes for events related to the RFP and the Member Jurisdictions' due diligence process. The activities with specific dates must be completed as indicated unless otherwise changed by addendum posted on eProcure.

<b>Event</b>	<b>Timeframe</b>
RFP Issuance	<b>June 6, 2016</b>
Pre-Proposal Conference	<b>June 20, 2016, 9:00 a.m., prevailing local time</b>
Deadline for Receipt of Vendor Clarification Questions	<b>June 23, 2016, 4 p.m., prevailing local time</b>
City Issues Responses to Vendor Clarification Questions via Addendum	<b>June 30, 2016</b>
Proposal Due Date	<b>July 15, 2016, 4 p.m., prevailing local time</b>
Contract Negotiation and Award	<b>TBD</b>

## **PART I -- SCOPE OF WORK**

### **1.1 INTRODUCTION/OVERVIEW**

The City, Arlington County and Fairfax County, Virginia; the District of Columbia Department of Transportation (DDOT); and Montgomery County, Maryland are seeking responses from qualified firms from which to purchase compatible stations and bicycles for the existing Capital Bikeshare system.

### **1.2 BACKGROUND**

Capital Bikeshare is a bike transit service owned by the Member Jurisdictions and operated by a contractor that the Member Jurisdictions select. The Capital Bikeshare system is comprised of the Bicycles, Stations, proprietary Station Software and Back-end Software, and related equipment. Capital Bikeshare has Stations and Bicycles from PBSC Urban Solutions with the Station and Back-end Software from 8D Technologies.

DDOT and Arlington County launched Capital Bikeshare in 2010 with 114 Stations and about 1,100 Bicycles. In 2012, the City joined the regional service and was followed in 2013 by Montgomery County. The service presently has over 360 Stations and 3,100 Bicycles with plans to expand to Fairfax County. Capital Bikeshare operates continuously within and between the Member Jurisdictions 24 hours a day, 7 days a week.

Patrons of the service sign up for memberships. Members can check out a Bicycle from a Bikeshare Station in any of the Member Jurisdictions and return it at any Station in the Member Jurisdictions. Capital Bikeshare is designed to provide point-to-point short trips, and trips under 30 minutes are included in the membership cost. Escalating usage fees apply for trips of 30 minutes or greater.

Each year, Capital Bikeshare serves approximately 29,000 annual and 30-day members and about 200,000 24-hour and 3-day members. Since its inception in 2010, members have completed over 12 million trips.

### **1.3 PURPOSE/OBJECTIVE**

The City has issued this RFP, on behalf of the Member Jurisdictions, in order to solicit proposals from firms that are qualified to provide Stations and Bicycles.

The successful Proposer must strictly adhere to the guidelines presented in this document.

The Scope of Work as detailed in section 1.6 of this RFP (the “Work”) shall be performed under: the Member Jurisdictions’ terms and conditions as contained in and attached to this RFP (Attachments H-L); the provisions of Attachment G; Agreement for the Use of Funds under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program under the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21); the Fixing America’s Surface Transportation Act (FAST Act); Transportation Alternative (TA) program; and Agreement for Use of Virginia Department of Transportation (VDOT).

## **Fleet Size by Member Jurisdiction**

Data related to the size and scope of the Bikeshare system within each Member Jurisdiction is available on CapitalBikeshare.com. Station, Dock, and Bicycle fleet sizes as of March 2016 are listed below. Fairfax County likely will be joining Capital Bikeshare in late 2016.

### Number of Capital Bikeshare Stations:

Washington, D.C.:	211
Arlington County:	84
City of Alexandria:	19
Montgomery County:	54
TOTAL:	368

### Number of Capital Bikeshare Docks:

Washington, D.C.:	3,979
Arlington County:	1,155
City of Alexandria:	299
Montgomery County:	830
TOTAL:	6,263

### Bicycles by Member Jurisdiction:

Washington, D.C.:	1,990
Arlington County:	578
City of Alexandria:	150
Montgomery County:	415
TOTAL:	3,132

The Member Jurisdictions anticipate expanding the existing system as funding allows and replacing existing equipment as its useful life expires.

## **1.4 CONTEMPLATED TERM OF ANY CONTRACT AWARDED**

This is an on-going request for goods to complete the Work described in this RFP. The Member Jurisdictions reserve the right to award one or more contract(s) in response to this RFP. If an award(s) is made pursuant to the RFP, each Member Jurisdiction will issue a contract(s) for an initial term of two (2) years, with up to three (3) one-year option periods. Each Member Jurisdiction reserves the right to exercise any option periods at the sole option and discretion of its Purchasing Agent.

## **1.5 METHOD OF SOURCE SELECTION**

The Member Jurisdictions are using the competitive negotiation method of source selection for this solicitation, as authorized by the Alexandria City Code. During the review of Proposals submitted in response to the RFP, and as it deems necessary, the Member

Jurisdictions may conduct discussions with responsible Proposers determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the RFP requirements.

An award(s), if made, will be made to the responsive and responsible Proposer(s) whose Proposal(s) falls within the competitive range and is/are determined to be the most advantageous to the Member Jurisdictions, taking into consideration the evaluation factors set forth in the RFP. The Member Jurisdictions reserve the right to make partial awards, multiple awards, an aggregate award, or reject any or all Proposals in response to this RFP.

## **1.6 SCOPE OF WORK**

- A. The successful Proposer(s) shall provide all goods, labor, and insurance necessary to meet or exceed the requirements and specifications contained herein.
- B. General Requirements:
  - 1. All existing Bikeshare Equipment was purchased from PBSC Urban Solutions (“PBSC”) and 8D Technologies and runs on 8D Technologies’ Station Software and Back-end Software. The Proposer shall ensure that all Equipment purchased through this Contract shall be fully compatible with the existing Equipment and Back-end Software of Capital Bikeshare. If requested, the Proposer shall bring certain Equipment, selected by the Member Jurisdictions, to the Washington, D.C. region for testing and approval by the Member Jurisdictions following the evaluation of written proposals.
  - 2. Failure by the Proposer to explicitly agree in its offer to the conditions in this section may result in its offer being deemed non-responsive to the requirements of this RFP.
- C. Proposals shall meet or exceed the following specifications. If the Proposer’s response does not conform to the specifications, the Proposer must explain the differences and why its proposed specification is sufficient.

### **1. Complete Station**

A complete Station shall be fully compatible with the existing Equipment and Back-end Software of Capital Bikeshare. Bicycles are not included. A complete Station shall include the following:

- a. Solar-Powered Kiosk**
  - i. Screen display.
  - ii. Credit/debit card reader that is EMV (Europay, MasterCard, and Visa) compliant.
  - iii. Operate on four hours or less of direct sunlight in a 24-hour period.
  - iv. Printer capability.



**b. Technical Platform**

**c. Dock**

**d. Cables and Miscellaneous Supplies**

**e. Map Frame**

**2. Bicycle**

A Bicycle shall be fully compatible with the existing Equipment, Station Software, and Back-end Software of Capital Bikeshare. A Bicycle shall include the following:

- Pre-assembled prior to delivery.
- Drivetrain which allows for variable gearing, be intuitive to use, and require minimum maintenance.
- Frame that is rideable for a wide range of heights.
- Reflective sidewall tires.
- Front and rear lights which automatically illuminate upon bicycle use and continue running for at least 90 seconds after bicycle has come to a stop.
- Fenders and/or guards.
- Basket and method to secure one's belongings while in transit.
- Adjustable seat height with numbers on the seat post that match in height the numbers on the existing Capital Bikeshare bicycles.
- Built-in theft deterrence measure in seat post.
- Audible device, such as a bell.
- Front and rear handlebar brakes.
- Single-sided kickstand.
- Space for advertising and/or sponsorship
- Capability of docking to and releasing from all existing Capital Bikeshare stations.
- Equipped with radio-frequency identification (RFID) compatible with existing Capital Bikeshare Stations and Station and Back-end Software.
- Shall be fit for its intended use as a Bikeshare Bicycle.

**3. Innovation**

**Solar-Powered Kiosk**

- Bicycle check-out with an RFID target and card key combination.
- Bicycle check-out with a smartphone's Near-Field Communication (NFC) feature.
- Customer key dispenser.
- Compatible payment for both Capital Bikeshare and Washington Metropolitan Area Transit Authority services.

**Hard-Wired Kiosk**

- Connect to a power source in the event of a site with insufficient solar power.

**Technical Platform**

- Adjacent Docks to face in opposite directions.
- 90-degree change in direction of platforms.
- Docks placed at a 45-degree angle to the left or right from the perpendicular position.

**Dock**

- Bicycle check-out with an RFID target.
- Bicycle check-out with a smartphone Near-Field Communication (NFC) feature.
- Expansion Docks not physically connected to a station to provide additional capacity.

**Customer Key**

- Shape of a card with an RFID chip to allow access to bicycles.

**Map Frame – Dynamic Display**

- Solar-powered two-sided informational display unit, with at least one side having a screen in which moving images are displayed and which includes any necessary cables to connect to a Station.

**Bicycle**

- Ability to be locked and released by a customer to an adjacent bike rack when the nearest station is full.
- Onboard lock for mid-trip stops.
- Additional speeds above 3.
- Automatic gear shifting.
- GPS-enabled for tracking user routes and/or setting up a geo-fence for overflow check-in.
- Alternative front or rear rack configurations.
- Lighter-weight in the 30 – 40 pound range.
- Electric-assist (pedelec).
- Projected on-ground laser light.
- Tricycle

**D. Warranty**

1. Station components must be warranted by the manufacturer for a minimum of five (5) years from the date of acceptance by a Member Jurisdiction.
2. Bicycles must be warranted by the manufacturer for a minimum of five (5) years from the date of acceptance by a Member Jurisdiction.
3. Contractor must promptly comply with all recalls of equipment, whether issued by a manufacturer, government agency, or other entity.

4. In the event of a recall, Contractor must supply replacement equipment at its own cost until the recall issue is resolved.
5. The replacement of defective Equipment during the term of the Contract shall be the sole responsibility of the Contractor. The Contractor shall absorb all costs associated with storage of Equipment to be replaced as a result of any defect.
6. Contractor must provide all maintenance documentation necessary to maintain warranty coverage to the Member Jurisdictions upon delivery.
7. Contractor is responsible for all return shipping costs of defective equipment while under warranty.

**E. Useful Life**

1. Station components must have a useful life of at least ten (10) years from the date of acceptance by a Member Jurisdiction.
2. Bicycles must have a useful life of at least six (6) years from the date of acceptance by a Member Jurisdiction.

**1.7 CONSTRAINTS ON THE CONTRACTOR**

The Contractor shall have the following constraints:

- A. The Contractor shall comply with all local, state, and federal laws, rules, regulations, and other legal requirements applicable to the Work performed under the Contract;
- B. In order to avoid disruption of Work or other undesirable or unacceptable consequences, the Contractor shall plan, schedule, and provide services under the Contract in conformance to the operational needs of the Member Jurisdictions. The Contractor shall coordinate with each Member Jurisdiction's Contracting Officer's Technical Representative (COTR) and other officials and representatives in order to assure efficient, effective, and cost-effective operations, and to minimize any adverse impact on Member Jurisdictions' programs and services, businesses, or the general public;
- C. The Contractor(s) shall accept credit cards or procurement card (p-card) method of payment, if required by a Member Jurisdiction. The Contractor(s) is prohibited from charging any additional costs/fees above and beyond the established Contract prices or fees to process orders or payments with a credit card/p-card;
- D. If and when Work is required at locations that require security clearances, the Contractor's personnel and property may be subject to searches or other required security measures such as criminal background checks.

## **1.8 CONTRACTOR'S RESPONSIBILITIES**

- A. Comply with all Contract requirements;
- B. Furnish through its workforce, or sub-workforce, the appropriate and necessary insurance, supervision, coordination, labor, and other services, including any relevant licenses or patent rights, necessary to deliver the goods required by the RFP;
- C. Designate a specific person as the point of contact for each Member Jurisdiction's COTR;
- D. Promptly notify the Member Jurisdiction's COTR should the point of contact change;
- E. Work with each Member Jurisdiction's COTR to avoid problems, and when that is not possible, to resolve problems promptly and at the lowest possible level;
- F. Establish formal evaluation and quality control procedures, which allow the Member Jurisdictions to monitor the performance of the Equipment. The Contractor shall submit a quality control report to each Member Jurisdiction's COTR not later than the last day of each month.
- G. Maintain project records of expenditures, deliverables, and progress;
- H. Notify the relevant Member Jurisdiction's COTR if a properly submitted invoice is not paid in a timely manner;
- I. Provide any and all reports required by the Member Jurisdiction's COTR;
- J. Perform all work in accordance with current and applicable standards published by national and international standards organizations;
- K. Enter into written agreements with subcontractors and material suppliers, and provide such written agreements to the Member Jurisdictions upon request;
- L. Provide access for all authorized Member Jurisdictions' personnel and representatives to any and all sites where services related to the Work are performed or supported;
- M. Be responsible at all times for the actions and work of its personnel;
- N. Employ suitably trained and skilled professional personnel to perform all Work under the Contract;
- O. Share information, data, technical knowledge, expertise, and/or resources that are essential to the integration of Capital Bikeshare with the Member Jurisdictions' designated contractors to ensure the greatest degree of cooperation for the operation, maintenance, and expansion of the Capital Bikeshare system; and

- P. In the event that a new piece(s) of Equipment is/are developed and manufactured Contractor shall provide the COTR with written and photographic description(s) of the piece(s) of Equipment and an accompanying price at which Member Jurisdictions may order the equipment. All Equipment prices are to remain constant throughout the contract term. In the event a piece of Equipment will no longer be available for purchase, Contractor must provide the COTR with at least six (6) months' notice.

## **1.9 MEMBER JURISDICTION'S RESPONSIBILITIES UNDER A CONTRACT**

- A. Provide access to its respective Member Jurisdiction-owned or Member Jurisdiction-controlled facilities for the Contractor's employees and agents, as necessary for them to perform the Work.
- B. Render decisions pertaining to information submitted by the Contractor within a reasonable time as determined by the each Member Jurisdiction.
- C. Work with the Contractor to reduce the risk of changes, claims, and extra costs.
- D. Submit payments to the Contractor in the timeframes prescribed by that Member Jurisdiction.
- E. Each Member Jurisdiction will assign a COTR, who will serve as a technical representative for contract administration. The COTR for each Member Jurisdiction and their contact information shall be specified at time of award.

## **1.10 DELIVERY REQUIREMENTS**

- A. Shipments shall be FOB Destination, delivered and unloaded to one or more warehouses within the metropolitan Washington, D.C. region. The delivery location(s) will be specified at the time of order.
- B. The proposed costs shall include all charges for delivery and unloading of the Equipment and materials.
- C. The Contractor shall notify Member Jurisdictions' designated Operations Management Contractor of all deliveries at least three (3) business days in advance of the delivery by contacting the COTR for the applicable Member Jurisdiction. Deliveries will be accepted between 9am – 5pm, Monday through Friday.
- D. Each Member Jurisdiction's COTR reserves the right to refuse an entire shipment if the advance notice is not received.
- E. **The maximum allowable delivery time is one hundred fifty (150) calendar days from the receipt of the requesting Member Jurisdiction's order.**
- F. Time is of the essence under this Contract. It is essential that the deliveries of any item ordered by any Member Jurisdiction under this Contract are made within the above time limit.

- G. In the event of failure, interruption, or delay in manufacture or shipping, Liquidated Damages will apply as stated in each Membership Jurisdiction's separate terms and conditions (Attachments H-L).

## **PART II – INSTRUCTIONS AND OTHER INFORMATION FOR PROPOSAL**

### **2.1 SUBMISSION DEADLINE; DELIVERY METHODS; DELIVERY INSTRUCTIONS**

- A. Submission Deadline:** Sealed Proposals must be submitted to the City before **4:00 p.m.**, prevailing local time, July 15, 2016, pursuant to the delivery instructions set forth in paragraph 2.1.C. below. **The City shall not accept any Proposal received after the deadline, and shall return any late Proposal to the Proposer.**
- B. Delivery Methods:** The City encourages Proposers to submit Proposals through the City's eProcure system at: <http://eprocure.alexandriava.gov/bso/>. A Proposer also may submit a Proposal to the City by mail, common carrier, or hand-delivery. **The City does not accept Proposals by facsimile or by electronic mail.**

#### **C. Delivery Instructions:**

##### **For hard copy Proposals:**

Deliver, One (1) **PRINTED, SIGNED ORIGINAL** of the Proposal (including all completed and signed required submittals and addenda); *and* One (1) **EXACT COPY** of the **SIGNED ORIGINAL PROPOSAL** (including all completed and signed required submittals and addenda) on Compact Disc (CD) or USB Flash Drive in PDF format to:

City of Alexandria  
Purchasing Division  
100 North Pitt Street, Suite 301  
Alexandria, Virginia 22314

### **2.2 GENERAL INQUIRIES RELATED TO THE CITY PROCUREMENT PROCESS**

For general questions related to the City's procurement process, please contact the City's Purchasing Division at (703) 746-4946, or send an email to [procurement@alexandriava.gov](mailto:procurement@alexandriava.gov). For detailed information about the City's purchasing process, see "How to do business with the City of Alexandria, Virginia – A Guide for Vendors" available on the City's website at: <http://alexandriava.gov/2064>.

### **2.3 DEADLINE FOR QUESTIONS AND INQUIRIES**

It shall be the Proposer's responsibility to submit questions regarding this Request for Proposals to the Purchasing Division. In order to receive a formal response from the City, all questions must be submitted in writing and shall be received by the City no later than **4:00 p.m. prevailing local time, on June 23, 2016**. Questions shall be: (1) emailed to the attention

of Contract Specialist at: [randy.burns@alexandriava.gov](mailto:randy.burns@alexandriava.gov); (2) faxed to 703. 838.6493; or (3) mailed or delivered to: City of Alexandria, Purchasing Division; 100 North Pitt Street, Suite 301, Alexandria, VA 22314. Any submission of questions related to the RFP shall include the reference: “RFP No. 00000584, “Cooperative Procurement: Capital Bikeshare Equipment” and the name of the person submitting the question(s).

## **2.4 COMPLIANCE WITH THE RFP**

Proposals must comply with all the requirements of the RFP. A Proposal that is not in strict compliance with all provisions of the RFP may be disqualified.

## **2.5 AWARD(S); WAIVER OF INFORMALITIES, DEFECTS OR OMISSIONS IN PROPOSALS; REJECTION OF PROPOSALS**

An award, if made, will be made to the responsive and responsible Proposer(s) who's Proposal(s) falls within the competitive range and is determined to be the most advantageous to the Member Jurisdictions, taking into consideration the factors set forth in the RFP.

It shall be the sole discretion and judgment of the City Purchasing Agent to determine if a Proposal is responsive and whether an error in, or an omission of any RFP requirement from, a Proposal is material.

## **2.6 MINIMUM CRITERIA FOR RESPONSIBILITY**

The Member Jurisdictions will use the following minimum criteria to determine the responsibility of a Proposer:

- A. The Proposer must demonstrate in its Proposal and any subsequent discussions with the Member Jurisdictions that it has a clear understanding of the Member Jurisdictions' needs and proposed approach to the Work as set forth in the RFP;
- B. The Proposer must possess the ability, experience, capacity, skill, and financial resources to perform the Work and fulfill the requirements under a resulting Contract on a timely basis;
- C. The Proposer must have performed satisfactorily in previous contracts of similar size and scope with the a Bikeshare system;
- D. If the Proposer has not performed a contract of similar size and scope, the Proposer and/or its team members must demonstrate its capability to perform the Work set forth in the RFP and fulfill the requirements under a Contract resulting from the RFP;
- E. The Proposer, its employees, and its independent contractors are properly licensed under applicable federal, state, and local laws.
- F. If applicable, the qualifications, technical experience, and availability of the personnel who will be assigned to the Contract;

G. Demonstrated knowledge of all federal, state, and local laws, codes, and regulations of the Member Jurisdictions relating to or applicable to the scope of work set forth in this solicitation;

H. The Proposer has been manufacturing Bikeshare Equipment for 2 years or more; and

In addition to the requirements above, a Proposer shall be prepared to submit, within five (5) Business Days after a request is made by the Member Jurisdictions, detailed written evidence such as proof of licensing, current commitments and any other information as may be necessary to demonstrate the Proposer's qualifications to perform the Work.

## **2.7 PROPOSAL EVALUATION PANEL AND EVALUATION FACTORS**

A panel approved by the City Purchasing Agent will evaluate the Proposal(s) received by the City prior to the RFP due date. Other officials and consultants of the Member Jurisdictions also may review the Proposal(s).

**Round 1 Evaluation** (Minimum Criteria): Proposals must be submitted by the due date in this RFP and be signed by the Proposer's authorized signatory, comply with all RFP instructions, and provide a response to all Member Jurisdictions requirements. Failure to meet all of these criteria may disqualify the Proposer's response from further consideration.

**Round 2 Evaluation:** For those Proposers who pass the minimum criteria, the following categories of criteria will be used to further evaluate the proposals in the following order of preference from high to low:

- (1) Ability to Meet the Member Jurisdictions' Technical and Functional Requirements – **(45 points).**
- (2) Cost – **(25 points).**
- (3) General Vendor Background and Experience – **(15 points).**
- (4) Innovation – **(10 points).**
- (5) References for Past Performance – **(5 points).**

Total of 100 Possible Points

**Round 3 Evaluation:** The top scoring Proposer(s) in the Round 2 evaluation will proceed to additional evaluation that may include the following activities:

- Follow-up requests for information from the Member Jurisdictions.
- On-site demonstrations to include module/functionality demonstrations, technical demonstrations, service presentation and other due diligence.
- Reference checking with comparable entities using the Proposer's proposed product.
- Potential site visits to comparable entities using the Proposer's proposed product.

Note: The Round 3 activities will be performed at the Member Jurisdictions' discretion.



## **2.8 AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE RFP**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, it shall immediately notify the City Purchasing Agent of such error in writing and request modification or clarification of the RFP. The City Purchasing Agent shall make any necessary modification or clarification to the RFP by addendum pursuant to Section 2.9. The City may reject any Proposal that includes assumed clarifications or corrections to the RFP that have not been approved by the City Purchasing Agent.

## **2.9 AMENDMENTS TO THIS RFP**

Any revisions to the RFP shall be made only by written addendum issued by the City Purchasing Agent, which shall be made available to all prospective Proposers. All addenda to the RFP shall be available on the City's website at the following address: <http://eprocare.alexandriava.gov/bsa/>.

## **2.10 PROPOSAL AND PRESENTATION COSTS**

The Member Jurisdictions shall not be liable in any way for any costs incurred by any Proposer in the preparation or presentation of its Proposal in response to the RFP or the Proposer's participation in any discussion, presentation, negotiation, or any meeting regarding its Proposal or the RFP.

## **2.11 REQUESTS FOR CLARIFICATION OF PROPOSALS**

Requests by the Member Jurisdictions for clarification of Proposals shall be in writing and shall not be limited in obtaining any and all pertinent information required to fairly evaluate each Proposer's Proposal response.

## **2.12 RESPONSE FORMAT**

A Proposal submitted pursuant to the RFP shall include each of the following items in the order in which they appear below. Each item shall be clearly labeled, with pages numbered, and separated by tabs. Failure by a Proposer to include all listed items may result in the rejection of its Proposal by the City.

The following format and tabs serve as a guide for formatting responses to the RFP. In addition to complying with the response format requirements of this paragraph, a Proposer must consider and address all requirements set forth in the RFP when submitting a Proposal.

### **A. Title Page**

The title page shall include the following information:

1. Title and number of the Request for Proposals;

2. Name, address, telephone number, and facsimile number of the Proposer;
3. Name and email address of the authorized contact person of the Proposer with respect to the Proposal; and
4. Date of preparation of the Proposal.

**B. Table of Contents**

The Table of Contents shall indicate the material included in the Proposal by Tab and page number. The Table of Contents shall mirror the format set forth in this paragraph and shall include all the items set forth below.

**C. Tab I, Signed Offer and Award Form Attachment A**

The Proposer shall complete and sign the Offer and Award Form provided in Attachment A. The signatory must be an individual who is authorized to legally bind the Proposer.

**D. Tab II, Letter of Transmittal**

The Proposer shall provide a signed cover letter that includes the following information:

1. An executive summary of the Proposer's understanding of the goods and/or services sought through the RFP, and description of the underlying philosophy of the Proposer in providing the goods and/or services;
2. The name, position, address, telephone number, and email address of the individuals who are authorized to make representations on behalf of the Proposer; and
3. A statement that the signatory to the transmittal letter and the Offer and Award Form is authorized to bind the Proposer to contract with the Member Jurisdictions.

**E. Tab III, Ability to Meet the Member Jurisdictions' Technical and Functional Requirements**

The Proposer shall discuss:

1. That its Equipment is fully compatible with existing Capital Bikeshare equipment.
2. Detailed technical specifications and drawings of the proposed equipment.
3. How the proposed equipment meets the functional requirements.
4. How the proposed equipment would integrate into the existing system.
5. If Stations are being offered, whether they may be connected to existing Stations.

6. If Stations are being offered, the Proposer's relationship with the Station and Back-end Software provider (8D Technologies).
7. Equipment has successfully undergone testing.
8. Durability of the equipment in terms of environmental factors and vandalism.
9. Recommended servicing of the equipment.
10. Warranty details.
11. Shipping details.
12. Calendar days required to manufacture and deliver equipment.
13. Where there is space on equipment for advertisement.

**F. Tab IV, Cost Proposal Attachment B**

The Proposer shall discuss:

Costs for components offered in the Proposal must be included in the Cost Proposal.

If the Proposer fails either to include in the price any component necessary to perform the functionality or to provide services as proposed in the RFP, the Proposer shall be required to provide the omitted components or services at its expense.

**G. Tab V, General Vendor Background and Experience**

The Proposer shall discuss:

1. Previous similar work and contracts held.
2. Management's experience and resumes.
3. In-house capabilities for design and manufacturing.
4. Municipalities where the proposed Equipment in use.
5. Relevant design awards.
6. Proposed subcontractors and their qualifications.
7. Manufacturing facility details (i.e. capabilities, location, maximum output, etc.)
8. Financial stability.

## **H. Tab VI, Innovation**

The Proposer shall discuss:

1. Proposer's present ability or projected timeline to provide the innovative features listed in the Station Innovation and Bicycle Innovation sections of Attachment B – Bidder's Pricing Schedule.
2. Manufacturing and supply methods that are used to reduce waste, use recycled or renewable materials, shorten delivery time, etc.

## **I. Tab VII, References for Past Performance**

1. The Proposer shall provide the following information for each contract or project of similar size and scope to the work requested in the RFP that the Proposer performed within the past three years (at least three (3) references must be included):
  - a. Contract/project name;
  - b. Name of the organization for which the contract or job was performed;
  - c. Dollar value of the contract or project;
  - d. Dates of the contract or project; and
  - e. Name, title, telephone number, address, and email address of the contract representative for the organization for which the contract or project was performed.
2. A Proposer's failure to provide in its Proposal the contract representative's contact information may result in the Proposer being deemed non-responsive and its Proposal being disqualified from consideration.
3. The Proposer shall indicate a minimum of three (3) client references where the Member Jurisdictions, at their discretion, may conduct a site visit as part of the Member Jurisdictions' evaluation process.
4. A uniform sample of references may be checked for each Proposer. If references are checked, Proposers will be scored on a scale of 1-10, with 10 being the highest possible score. The scores will then be used in evaluation of the Proposal pursuant to section 2.7. Client reference scores will be used by the Member Jurisdictions to determine the responsibility of a Proposer.
5. The Member Jurisdictions may ask a client reference any or all of the following questions, and any other question it deems appropriate:
  - a. How cooperative and easy to work with was the Proposer during the procurement process?
  - b. How satisfied were you with the Proposer's point of contact?
  - c. How promptly and effectively did the Proposer address your questions or concerns?

- d. How promptly, effectively, and efficiently did the Proposer mitigate or resolve performance or contractual issues that arose during the project?
- e. How would you rate the Proposer's operational and administrative practices (e.g., the timeliness, completeness, and accuracy of its invoices)?
- f. How would you rate the number and validity of Proposer-generated change order and contract modification requests, claims, disputes, and lawsuits, if any?
- g. How would you rate the timeliness, quality, responsiveness, and usefulness of the Proposer's delivery of goods and services in relation to your requirements?
- h. How would you rate the timeliness, quality, responsiveness, and usefulness of the Proposer's delivery of goods and services in relation to the amount you paid the Proposer and how much time your organization contributed in time and effort to the project?
- i. How well did the Proposer minimize the effect of its activities on the operations of your organization?
- j. Would you do business with the Proposer again in the future?

**J. Tab IX, Required Information Form Attachment C**

The Proposer shall provide a completed Required Information Form.

**K. Tab X, Certified Statement of Non-Collusion Form Attachment D**

The Proposer shall provide a completed and signed Certified Statement of Non-Collusion Form.

**L. Tab XII, Equal Employment Opportunity Agreement Form Attachment E**

The Proposer shall provide a completed and signed Equal Employment Opportunity Agreement Form.

**M. Tab XIII, W-9 Request for Taxpayer Identification Number and Certification Form Attachment F**

The Proposer shall provide a completed and signed W-9 Request for Taxpayer Identification Number and Certification Form.

**N. Tab XIV, Acceptance of Conditions**

The Proposer shall indicate its acceptance of the requirements and terms and conditions set forth in the RFP, including all addenda issued pursuant to the RFP. The Proposer shall indicate any exceptions it is taking to any requirements or terms and conditions set forth in the RFP, including all addenda issued pursuant to the RFP.

## **O. Tab XV, Appendices**

The content of this tab is left to the Proposer's discretion. However, the Proposer should limit materials included here to those that will be helpful to the Member Jurisdictions in understanding the services proposed.

### **2.13 EXAMINATION OF SOLICITATION/CONTRACT DOCUMENTS**

It is the responsibility of each Proposer to examine thoroughly the Solicitation/Contract Documents and other related information set forth in the RFP before submitting a Proposal.

### **2.14 VALIDITY OF PROPOSALS SUBMITTED IN RESPONSE TO RFP**

Proposals shall remain valid for a minimum of one hundred and twenty (120) Calendar Days following the RFP closing date.

## **PART III – TERMS AND CONDITIONS**

### **3.1 DEFINITIONS**

The following definitions shall apply to the entire RFP:

**Acceptance** means, in terms of goods, approval of the Contractor's invoice for such goods by the COTR after a reasonable opportunity to inspect, and in terms of services, approval of the Contractor's invoice for such services by the COTR.

**Back-end Software** means a program, not directly accessed by the user, which performs a specialized function on behalf of a main processor or software system, and accessible online from a remote location.

**Business Day** means any day other than Saturday, Sunday, holiday, or other day on which a Member Jurisdiction is closed.

**Calendar Day** means any day in a month, from midnight to midnight, including weekends and holidays.

**Change Order** means a written order to the Contractor, signed by the Purchasing Agent, which authorizes a change in the Work, an adjustment to the Contract Sum, and/or an adjustment to the Time(s) for Performance.

**Contract** means a mutually binding and legally enforceable agreement executed between the Member Jurisdiction and a Contractor after an award pursuant to the RFP, which obligates the Contractor to furnish goods and/or services to or on behalf of the Member Jurisdiction, and the Member Jurisdiction to pay for the goods and/or services furnished. A Contract shall specifically identify all other Contract Documents and includes, but is not limited to, the following documents:

A. RFP;

- B. Addenda issued related to the RFP;
- C. Proposer's signed Offer and Award Form and all other documents submitted by the Proposer to the Member Jurisdictions in response to the RFP;
- D. Notice of Award issued for the RFP;
- E. Schedule(s);
- F. Purchase order(s) issued for Work to be performed; and
- G. Change Order(s) issued pursuant to the Contract.

**Contract Documents.** See definition of Contract above.

**Customer Key means** a fob used to rent bicycles from Capital Bikeshare stations.

**Contract Sum** means the total amount payable to the Contractor for performance of the Work.

**Contracting Officer's Technical Representative (COTR)** means the Project Manager who serves as the Purchasing Agent's technical representative for purposes of administering the Contract.

**Contractor** means the Proposer or the Proposer's authorized representative that enters into a Contract with the Member Jurisdictions to perform the Work.

**Dock** means a locking mechanism contained on a Station designed to receive a Bicycle for locked storage;

**Equipment** means all physical components and includes, without limitation, a station, bicycle, Dock, technical platform, map frame, kiosk, cable, station battery, membership key, and bicycle and station spare parts.

**Kiosk** means an automated machine with wireless connectivity which allows customer access to docked bicycles via credit and debit card payment capabilities, and connects to technical platforms and system back-end software.

**Map Frame** means a two-sided, metal, static informational display unit, including translucent shatter-proof covering and lock.

**Member Jurisdiction** means, municipality which provides, or soon will provide, Capital Bikeshare service and includes Washington, D.C.; City of Alexandria, Arlington and Fairfax Counties, VA; and Montgomery County, MD.

**Proposal** means a submission put forth by a Proposer in response to a RFP which states something in exchange for consideration and may serve as the blueprint for a future Contract. A Proposal may be accepted or rejected by the Member Jurisdictions.

**Proposer** means any individual, company, firm, corporation, partnership, or other legal entity that submits a Proposal in response to the RFP offering to enter into a Contract with the Member Jurisdictions.

**Purchasing Agent** means the City's principal public purchasing official or designated representative responsible for the purchase of all goods, services, insurance, and construction needed by the City. The Purchasing Agent serves as the City's chief contracting officer.

**Request for Proposals (RFP)** means the request that is made to prospective Proposers for their proposal for the goods and/or services desired by the Member Jurisdictions.

**Station** means all physical components of an automated rental device and includes, without limitation, kiosk, Docks, technical platforms, map frame, cables, station batteries, and bicycle and station spare parts. Bicycles are excluded.

**Station Software** means the computer application that makes a station function.

**System** means the equipment, service's website, and Back-end Software and Station Software.

**Technical Platform** means a base component which rests on the ground and supports the Docks, Kiosk, and map frame.

**Time(s) for Performance** means the date(s) and time(s) by which goods are required to be delivered and/or services are required to be provided, in accordance with the Contract.

**Work** means the goods and/or services required to be delivered by the Contractor pursuant to the Contract.

### **3.2 APPLICABILITY**

The terms and conditions set forth in this Part III and each Member Jurisdictions specific terms and conditions (Attachments H-L) shall apply to Entity Contracts issued pursuant to this RFP.

## **NOTICE**

**Proposers are encouraged to read each Member Jurisdictions Terms & Conditions (Attachments H-L) as there may be REQUIRED SUBMITTALS included in them to be considered responsive and responsible for this RFP.**



**ATTACHMENT A  
(REQUIRED)-OFFER AND AWARD FORM**

NAME OF PROPOSER: _____
ADDRESS: _____
TELEPHONE NUMBER: (____) _____
FAX NUMBER: (____) _____
FEDERAL EMPLOYMENT IDENTIFICATION NO: _____
ALEXANDRIA BUSINESS LICENSE NO: _____
VIRGINIA CONTRACTOR'S REGISTRATION NO. _____

**THIS OFFER AND AWARD FORM SHALL BE SIGNED**

For and in consideration of the payment of the Contract Sum, as set forth in the Proposal, subject to modification by a final Contract mutually agreed upon by the City and Proposer, the Proposer offers to perform the Work set forth in Request for Proposals No.00000584, including any addenda, in accordance with the terms of the Proposer's Proposal, as modified by a final Contract by the City and the Proposer.

By signing this document, the Proposer agrees that, if its Proposal is accepted for the consideration mentioned, it will at its own expense do all of the Work and furnish all the materials, equipment, and labor necessary to carry out this agreement within the time specified in the Request for Proposals pursuant to the Contract Documents identified as:

	PART	DESCRIPTION
X	I	Scope of Work
X	II	Instructions and Information for Proposals
X	III	City of Alexandria: General Conditions of Contract for Goods and Services
X		Attachments
X		Addenda

\_\_\_\_\_  
Proposer's Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Authorized Signatory

Accepted by the City of Alexandria, Virginia,

\_\_\_\_\_  
Randy Burns, Purchasing Agent

This \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

**ATTACHMENT B  
(REQUIRED)-BIDDER'S PRICING SCHEDULE**

In the spaces below, the Bidder shall submit pricing for the goods set forth in the RFP and fill in the pricing schedules in U.S. Dollars. Bulk prices shall be available to one Member Jurisdiction or to two or more Member Jurisdictions making a coordinated purchase.

ITEM	UNIT PRICE	ANNUAL QUANTITY NEEDED FOR BULK PRICE BREAK(S)	BULK UNIT PRICE
<b>Complete Station (Not including bicycles)</b>			
Complete Station with 12 docks (linear)			
Complete Station with 13 docks (linear)			
Complete Station with 14 docks (linear)			
Complete Station with 15 docks (linear)			
Complete Station with 16 docks (linear)			
Complete Station with 17 docks (linear)			
Complete Station with 18 docks (linear)			
Complete Station with 19 docks (linear)			
Complete Station with 20 docks (linear)			
Complete Station with 21 docks (linear)			
Complete Station with 22 docks (linear)			
Complete Station with 23 docks (linear)			
Complete Station with 24 docks (linear)			
Complete Station with 25 docks (linear)			
Complete Station with 26 docks (linear)			
Complete Station with 27 docks (linear)			
Complete Station with 28 docks (linear)			
Complete Station with 29 docks (linear)			
Platform for kiosk and cable(s)			
Dock with associated cable(s)			
Platform for 1 dock (linear)			
Platform for 1 dock (linear) with complete dock and cable(s)			
Platform for 2 docks (linear)			
Platform for 2 docks (linear) with complete docks and cables			
Platform for 4 docks (linear)			
Platform for 4 docks (linear) with complete docks and cables			
Map frame (static display)			
Solar-powered kiosk (basic)			

Solar-powered kiosk with printer			
Cables – describe and include as many line items as needed			
Miscellaneous supplies – describe and include as many line items as needed			
Station battery			
Customer key			
Station spare parts – describe and include as many line items as needed			
Toolkit			
Station paper			
Platform hole cover			
<b>Bicycle</b>			
Bicycle			
Bicycle spare parts – describe and include as many line items as needed			
Miscellaneous – describe and include as many line items as needed			
<b>Innovation – Station</b>			
Solar-powered kiosk with RFID			
Solar-powered kiosk with NFC			
Solar-powered kiosk with customer key dispenser			
Solar-powered kiosk that accommodates a joint payment card for both Capital Bikeshare and Washington Metropolitan Area Transit Authority services.			
Solar-powered kiosk (other – describe)			
Hard-wired kiosk			
Complete Station with 12 docks (alternating docks)			
Complete Station with 12 docks (90 degree technical platform)			
Complete Station with 12 docks (45 degree docks left or right)			
Platform for 4 docks (alternating dock)			
Platform for 4 docks (alternating dock) with complete docks and cables			
Platform for 2 docks (45 degrees left or right)			
Platform for 2 docks (45 degrees left or right) with complete docks and cables			
Dock with RFID and cable(s)			
Dock with NFC and cable(s)			
Customer key in shape of a card with an RFID chip			
Map frame (dynamic display) with cable(s)			
<b>Innovation – Bicycle</b>			
Bicycle with ability to be locked and released by a customer to an adjacent bike rack when the nearest station is full			
Bicycle with an onboard lock for mid-trip stops			
Tricycle			

Bicycle with additional speeds above 3			
Bicycle with automatic gear shifting			
Bicycle with GPS-enabled for tracking user routes and/or setting up a geo-fence for overflow check-in			
Bicycle with alternative front or rear rack configurations			
Bicycle in the 30 – 40 pound range			
Bicycle with electric-assist (pedelec)			
Bicycle with projected on-ground laser light			

---

Bidder's Name

---

Bidder's Authorized Signatory

---

Date

---

Name and Title of Authorized Signatory

**ATTACHMENT C**  
**(REQUIRED)-REQUIRED INFORMATION FORM**

Each Proposer submitting a response to this Request for Proposal is to provide the following information:

- |    |                        |  |  |                                 |
|----|------------------------|--|--|---------------------------------|
| 1. | Minority Business Firm | Yes [ <input type="checkbox"/> ] No [ <input type="checkbox"/> ] | Partnership Yes [ <input type="checkbox"/> ] | No [ <input type="checkbox"/> ] |
|    | Small Business Firm    | Yes [ <input type="checkbox"/> ] No [ <input type="checkbox"/> ] | Corporation Yes [ <input type="checkbox"/> ] | No [ <input type="checkbox"/> ] |
|    | Sole Proprietorship    | Yes [ <input type="checkbox"/> ] No [ <input type="checkbox"/> ] |  |                                 |

A. Sole proprietorships and partnerships are to provide the following information:

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Partnerships are to provide this information for all partners.

B. If the Proposer is a corporation, provide the following:

State of Incorporation \_\_\_\_\_ Charter number of the Virginia Certificate of  
Authority \_\_\_\_\_ Date of Incorporation \_\_\_\_\_

Foreign corporations desiring to transact business in the State of Virginia shall register with the State Corporation Commission in accordance with Section 13.1-757 of the Code of Virginia, as amended.

C. Each corporation is to provide the names of the following officers:

President \_\_\_\_\_

Vice-President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Registered Agent \_\_\_\_\_

---

Proposer's Name

---

Proposer's Authorized Signatory

---

Date

---

Name and Title of Authorized Signatory

**ATTACHMENT D**  
**(REQUIRED)-CERTIFIED STATEMENT OF NON-COLLUSION**

- A. This is to certify that the undersigned is seeking, offering or agreeing to transact business or commerce with the City of Alexandria, a municipal corporation of Virginia, or seeking, offering or agreeing to receive any portion of the public funds or moneys, and that the offer or agreement or any claim resulting therefrom is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce; or any act of fraud punishable under Article 1.1 (Virginia Governmental Frauds Act), Chapter 12 (Miscellaneous), Title 18.2 (Crimes and Offenses Generally) of the Code of Virginia (1950), as amended.
- B. This is to further certify that the undersigned has read and understands the following:
- C. The City is authorized by Section 18.2-498.4 of the Code of Virginia (1950) as amended, to require this certified statement. That section also provides that any person that is required to submit this statement that knowingly makes a false statement shall be guilty of a Class 6 felony.

(2) Section 18.2-498.3 of the Code of Virginia (1950), as amended, provides that any person, in any commercial dealing in any matter within the jurisdiction of any local government or any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a Class 6 felony.

(3) Section 59.1-68.7 of the Code of Virginia (1950), as amended, provides that any combination, conspiracy or agreement to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated, any Proposal submitted to any governmental unit for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of goods or services, or excluding other persons from dealing with the state or any other governmental unit shall be unlawful. Any person violating the foregoing shall be guilty of a Class 6 felony.

---

Proposer's Name

---

Proposer's Authorized Signatory

---

Date

---

Name and Title of Proposer's Authorized Signatory

**ATTACHMENT E**  
**(REQUIRED)-EQUAL EMPLOYMENT OPPORTUNITY AGREEMENT**

The contractor hereby agrees:

- (1) Not to discriminate against any employee or applicant for employment on account of race, color, religion, sex, ancestry, national origin, marital status, age, sexual orientation, or handicap, except as is otherwise provided by law.
- (2) Implement an affirmative action employment program as defined in section 12-4-3 of the Code of the City of Alexandria, Virginia, 1981, as amended, to ensure non-discrimination in employment under guidelines to be developed by the commission and approved by the city council.
- (3) To include in all solicitations or advertisements for employees placed by or in behalf of the contractor the words "Equal Opportunity Employer" or a symbol, approved by the Alexandria Human Rights Commission, meaning the same.
- (4) To notify each labor organization or representative of employees with which said contractor is bound by a collective bargaining agreement or other contract of the contractor's obligations pursuant to this equal employment opportunity clause.
- (5) To submit to the city manager and the city's human rights administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the city manager.
- (6) To make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of the contractor's business, factors to be considered include but are not limited to, the following:
  - A. the overall size of the contractor's business with respect to the number of employees, the number and type of facilities and size of budget;
  - B. the type of the contractor's operation, including the composition and structure of the contractor's work force; and
  - C. the nature and cost of the accommodation needed.

Contractor may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

- (7) To include the provisions in paragraphs (1) through (6) hereof in every subcontract so that such provisions will be binding upon each subcontractor.
- (8) In the event of the contractor's non-compliance with any provision, upon a finding of such non-compliance by the city's human rights commission and certification of such finding by the city manager, the city council may terminate or suspend or not renew, in whole or in part, this contract.

---

Proposer's Name

---

Proposer's Authorized Signatory

Date

---

Name and Title of Proposer's Authorized Signatory



**ATTACHMENT F**  
**(REQUIRED)-W-9, Request for Taxpayer Identification**

<b>Form W-9</b> (Rev. November 2005) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer Identification Number and Certification</b>	<b>Give form to the requester. Do not send to the IRS.</b>					
<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)						
	Business name, if different from above						
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ ..... <input type="checkbox"/> Exempt from backup withholding						
	Address (number, street, and apt. or suite no.)						
	City, state, and ZIP code						
	Requester's name and address (optional)						
	List account number(s) here (optional)						
<b>Part I Taxpayer Identification Number (TIN)</b>							
<p>Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.</p> <p><b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.</p>							
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="text-align: center;">Social security number</td></tr><tr><td style="text-align: center;">+ + + + +</td></tr><tr><td style="text-align: center;">or</td></tr><tr><td style="text-align: center;">Employer identification number</td></tr><tr><td style="text-align: center;">+ + + + +</td></tr></table>			Social security number	+ + + + +	or	Employer identification number	+ + + + +
Social security number							
+ + + + +							
or							
Employer identification number							
+ + + + +							
<b>Part II Certification</b>							
<p>Under penalties of perjury, I certify that:</p> <ol style="list-style-type: none"><li>1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and</li><li>2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and</li><li>3. I am a U.S. person (including a U.S. resident alien).</li></ol> <p><b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)</p>							
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 30%;"><b>Sign Here</b></td><td style="width: 40%;">Signature of U.S. person ▶</td><td style="width: 30%;">Date ▶</td></tr></table>			<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶		
<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶					
<b>Purpose of Form</b> <p>A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.</p> <p><b>U.S. person.</b> Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:</p> <ol style="list-style-type: none"><li>1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),</li><li>2. Certify that you are not subject to backup withholding, or</li><li>3. Claim exemption from backup withholding if you are a U.S. exempt payee.</li></ol> <p>In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.</p> <p><b>Note.</b> If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.</p> <p>For federal tax purposes, you are considered a person if you are:</p> <ul style="list-style-type: none"><li>• An individual who is a citizen or resident of the United States,</li><li>• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or</li><li>• Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.</li></ul> <p><b>Special rules for partnerships.</b> Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.</p> <p>The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:</p> <ul style="list-style-type: none"><li>• The U.S. owner of a disregarded entity and not the entity,</li></ul>							

Cat. No. 10231X

Form **W-9** (Rev. 11-2005)

## ATTACHMENT G

### S102CF2-0813 VIRGINIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL

July 26, 2013

**SECTION 102.05 PREPARATION OF BID** of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as "Buy America", except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material) such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as "foreign" material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with "Buy America" requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the contract amount or \$2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth

of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

#### **Waivers:**

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated:

1. that the use of domestic steel or iron materials would be inconsistent with the public interest; or
2. materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and
2. Analysis of redesign of the project using alternative or approved equal domestic products.

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website: <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

#### **Alternative Bidding Procedures:**

An alternative bidding procedure may be employed to justify the use of foreign iron and/or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and/or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and/or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and/or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and/or steel materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign iron and/or steel items will be permanently installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total "Foreign" bid.

In the event the contract is awarded to the bidder furnishing foreign iron and/or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment For Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to

apply. In the event the contract is awarded to a bidder furnishing foreign iron and/or steel items and during the life of that contract the Contractor discovers he cannot furnish foreign iron and/or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and/or steel materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign" including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The "Foreign" bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor's "Domestic" bid. The Contractor shall write the word "Foreign" by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate "Foreign" paper bid.

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

#### **Certification of Compliance:**

Where domestic material is supplied, prior to incorporation into the Work, the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and/or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.

**ATTACHMENT H**  
**CITY of ALEXANDRIA, VA**  
**TERMS & CONDITIONS**

**H.1 APPLICABILITY**

The terms and conditions set forth in this Attachment shall apply to any Contract issued pursuant to the RFP.

**H.2 THE CITY**

- A. Authority of the Purchasing Agent:** The Purchasing Agent shall be the contracting officer for the City, who is authorized to execute this Contract and any Change Orders issued pursuant to paragraph 10 of Part III of the RFP. No Notice to the City shall be effective unless a copy is delivered to the Purchasing Agent in accordance with the terms of the Contract.
- B. Authority of the Contracting Officer's Technical Representative:** The Contract shall be administered by the Department of Transportation and Environmental Services, who shall be referred to in the Contract Documents as the Contracting Officer's Technical Representative.
- C. Additional City Representatives:** The COTR may designate one or more additional representatives to coordinate with the Contractor and/or to inspect the Work performed by the Contractor.

**H.3 THE CONTRACTOR**

- A. Licensure:** To the extent required by the Commonwealth of Virginia or the City of Alexandria, the Contractor shall be duly licensed to sell the Goods or to perform the Services required to be delivered pursuant to this Contract.
- B. Key Persons:** If any "Key Persons" are identified in Contractor's Proposal, those Key Persons shall be directly involved in the performance of Contractor's Work hereunder. No Key Person shall be changed without the written consent of City unless such Key Person becomes unavailable to perform his or her duties because of death, disability or termination of employment; provided however, that a Key Person shall be removed at City's request. If a Key Person is no longer capable of performing in the capacity described in the Proposal, or is removed by the City, the City and the Contractor shall agree on a mutually acceptable substitute.

**H.4 TERMS FOR PERFORMANCE**

- A. The Work.** The Goods and/or Services required to be delivered pursuant to this Contract shall be in strict accordance with the Specifications included as part of the Contract Documents. All Goods shall be in conformance with the requirements of the Contract Documents and shall be new and unused, unless otherwise specified. All persons performing Services pursuant to the Contract shall be duly qualified to perform those Services and shall hold any licenses required by law for persons performing such Services.

- B. Time for Performance:** Time is of the essence of this Contract. The Contractor shall deliver all Goods and perform all Services at the time(s) and in the manner(s) specified in the Contract Documents.
- C. Brand Name or Equal:** Unless otherwise indicated, all brand name references in the Specifications are intended to define a standard and a quality. Substitutions may be used with the written approval of the Purchasing Agent after the Contractor has demonstrated to the satisfaction of the City that the substituted item(s) is equivalent to the one specified. Individual item approvals do not relieve the Contractor of the responsibility to provide a total system that performs in a manner and of a quality intended by the Contract Documents.

## **H.5 INSPECTION, ACCEPTANCE AND REJECTION**

- A. Quality Assurance:** Contractor and its subcontractors shall provide and maintain a quality assurance system acceptable to the City covering Goods and Services under this Contract and will tender to the City only those Goods that have been inspected and found to conform to the Contract Documents. Contractor will keep records evidencing inspections and their results, and will make these records available to the City during Contract performance and for three years after Acceptance. Contractor shall permit the City to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Contract.
- B. Inspection by the City:** All Goods shall be subject to inspection and test by the City or its authorized representatives. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the City. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- C. Acceptance:** All Goods to be delivered hereunder shall be subject to final inspection, test and Acceptance by the City at destination, notwithstanding any payment or inspection at the source.
- D. Rejection:** The City shall give Notice of rejection of Goods delivered or Services performed hereunder within a reasonable time after receipt of such Goods or performance of such Services. Acceptance by the City shall not waive any rights that the City might otherwise have at law or by express reservation in this Contract with respect to any nonconformity.
- E. Waiver of Defects:** Failure of the COTR during the progress of the Work to discover or reject defective Work or Work not in accordance with the Contract Documents shall not be deemed an Acceptance thereof nor a waiver of the City's rights to a proper execution of the Work or any part of it. No progress payment shall be construed to be an Acceptance of the Work or materials which are not in accordance with the Contract Documents, nor a waiver of the City's rights.
- F. Acceptance of Defective or Nonconforming Work:** The City reserves the right to accept any defective Work or Work not in compliance with the Contract Documents; provided,

however, that in such event the Contract Sum shall be reduced by an appropriate and equitable amount to account for such defect or noncompliance.

## **H.6 SAMPLES**

- A. Samples:** Samples of items may be required by the City for inspection and specification testing and must be furnished free of expense to the City. The samples furnished must be identical in all respects to the products proposed and/or specified in the Contract.
- B. Return of Samples:** Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

## **H.7 WARRANTY**

- A. General Warranty:** Contractor warrants that the Goods and Services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part hereof), and such Goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the City, free from defects in design. The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- B. One Year Continuing Warranty; Equipment Warranties:** In addition to any specific warranty required by the Contract Documents, Contractor warrants all Work against defects in material or workmanship for a period of one year from the date of Acceptance, unless specified otherwise. Contractor shall secure and assign to the City all written warranties of equipment or materials furnished to Contractor or its subcontractors by any manufacturer or supplier.
- C. Commencement of Warranties:** All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter.
- D. Successors and Assigns:** All warranties, including special warranties specified elsewhere herein, shall inure to the City, its successors, assigns, customer agencies and users of the Goods or Services.

## **H.8 PACKING AND SHIPMENT**

- A. Containers:** All Goods shall be packed in suitable containers for protection in shipment and storage, and in accordance with applicable Specifications. Each container of a multiple container shipment shall be identified to: show the number of the container and the total number of containers in the shipment; and the number of the container in which the packing sheet has been enclosed.
- B. Packing Sheets:** All shipments by Contractor or its subcontractors must include packing sheets identifying: the City's Contract Number; item number; quantity and unit of measure;

part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

- C. Shipments:** Shipments must be made as specified in this Contract, as it may be amended, or as otherwise directed in writing by the Purchasing Agent.

## **H.9 TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES**

- A. Transportation Costs Included in Contract Sum:** No charge for delivery, demurrage, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the City unless expressly included and itemized in the Contract.
- B. F.O.B. Shipments:** Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The City may permit use of an alternate carrier at no additional cost to the City with advance written authorization of the COTR.
- C. Damage to Goods:** On “F.O.B. Shipping Point” transactions, should any shipments under the Contract be received by the City in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packaging or loading or some inherent defect in the equipment and/or material, Contractor, on request of the City, shall at Contractor’s own expense assist the City in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

## **H.10 CHANGES**

- A. Change Orders:** The City may order changes in the Work consisting of additions, deletions, or modifications, the Contract Sum and the Time for Performance being adjusted accordingly. Such changes in the Work shall be authorized only by written Change Order signed by the Purchasing Agent. The Contract Sum and the Time for Performance shall be changed only by Change Order signed by the Purchasing Agent.
- B. Ordering Option:** When an Invitation to Bid specifies a fixed quantity of Goods, the Contractor agrees to provide additional quantities in excess of those stated in the Invitation to Bid at the same unit prices stated in the Contractor’s Bid for a period of thirty (30) Calendar Days after the Contract Award. The amount of any such additional quantities shall be added to the Contract Sum by Change Order.
- C. Option Periods:** If the Contract Documents include one or more option periods, any Contract renewals shall be authorized by Change Order signed by the Purchasing Agent. The Contract Sum in the option period(s) will be based on firm fixed prices. Unless otherwise mutually agreed, in writing, changes in the Contract Sum for subsequent yearly contract renewals shall be equal may be adjusted by the percentage change in the Consumer Price Index, for all Urban



Consumers (CPI-U), for the Washington DC Metropolitan Area from the date of Contract award to the date of the Change Order authorizing the Contract renewal if approved by the Purchasing Agent.

#### **H.11 PAYMENTS TO CONTRACTOR:**

- A. Payment for Goods upon Delivery:** If the Contract requires the delivery of Goods at a specified time, the Contractor shall submit its invoice for the Goods, at the fixed price specified in the Contract, at or within a reasonable time after delivery. If the Goods are accepted, the COTR will approve the invoice and process it for payment.
- B. Payment for Services:** If the Contract requires the Contractor to perform Services, the Contractor shall submit its invoice for the Services performed during the previous month on or before the 15<sup>th</sup> day of the following month. The invoice shall bill for the Services at the fixed monthly rate specified in the Contract Documents or shall detail those Services provided and bill at the rates specified in the Contract Documents. The COTR shall verify that the Services have been performed in accordance with the Contract Documents and, if appropriate, will approve the invoice and process it for payment.
- C. Progress Payments:** If authorized by the terms of the Contract, the Contractor may submit requests for progress payments at such times or upon the occurrence of such events as the Contract Documents may provide.

Upon submission of the request for progress payment, the COTR shall verify the Contractor's entitlement thereto and, if appropriate, shall approve the invoice and process it for payment.

- D.** The Contractor shall submit original invoices to the COTR which clearly describe and itemize the equipment, supplies or Services provided. In addition, invoices shall contain, at a minimum, the following information:
  - 1. The date of the Contract;
  - 2. The Contract Number;
  - 3. The unit price in accordance with the firm fixed price stated in the Contract;
  - 4. The total extended price; and
  - 5. The total price to the City of the Goods or Services provided.

The City reserves the right to determine whether the invoice is clear or properly itemized. However, if abbreviations or jargon are used on the invoice, the Contractor shall provide a key printed directly on the invoice to explain the abbreviation or jargon.

- E. City's Right to Withhold Payment:** The City may withhold payment to such extent as may be necessary to protect the City due to loss because of:
  - 1. Defective Work not remedied;
  - 2. Third party claims filed or reasonable evidence indicating probable filing of such claims;

3. Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. Damage to the City or another contractor;
6. Reasonable evidence that the Work will not be completed on or before the Time(s) for Performance;
7. Persistent failure to carry out the Work in accordance with the Contract Documents;  
or
8. Liability, damage, or loss due to injury to persons or damages to the Work or property of other contractors, subcontractors or others, caused by the act or neglect of the Contractor or any of its subcontractors.

**F. Time for Payments.** In accordance with Paragraph 3-3-56 of the Code of the City of Alexandria, payments are due and payable forty-five (45) Calendar Days after: (a) the date of the City's receipt of Goods or Services; or (b) the COTR's receipt of the Contractor's valid invoice, whichever is later. Within thirty (30) Calendar Days after receipt of the invoice the City shall give the Contractor Notice of any defect or impropriety, which would prevent payment by the required payment date.

## **H.12 TERMINATION OR SUSPENSION**

**A. Non-Appropriation of Funds:** This Contract is conditioned upon an annual appropriation made by the City Council of the City of Alexandria of funds sufficient to pay the compensation due the Contractor under this Contract. If such an appropriation is not made in any fiscal year, and the City lacks funds from other sources to pay the compensation due under this Contract, the City will be entitled, at the beginning of or during such fiscal year, to terminate this Contract. In that event, the City will not be obligated to make any payments under this Contract beyond the amount properly appropriated for Contract payments in the immediately prior fiscal year. The City will provide the Contractor written Notice of termination of this Contract due to the non-appropriation of funds at least fifteen (15) Calendar Days before the effective date of the termination. However, the City's failure to provide such Notice will not extend this Contract into a fiscal year in which funds for Contract payments have not been appropriated.

**B. Termination for Convenience:** The City shall have the right to terminate this Contract at its own convenience for any reason by giving fifteen (15) Calendar Days prior written Notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work, labor or materials actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%, or (2) the pro rata percentage of completion based upon any schedule of payments set forth in the Contract Documents, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the Contractor and the City. The Contractor shall not be entitled to receive anticipated profits on unperformed portions of the Work. The City shall have the right to employ an independent accounting firm to verify any amounts claimed by the

Contractor to be due under this Paragraph. The City shall have the right of audit (and Contractor shall have the obligations) stated in Section 3.21, insofar as they pertain to amounts claimed to be due hereunder.

**C. Termination for Default.** The City of Alexandria may, by written Notice to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

1. If the Contractor fails to deliver the Goods or perform the Services within the Time(s) for Performance specified in this Contract, and does not cure such failure within a period of ten (10) Calendar Days after receipt of Notice from the Purchasing Agent or designee;
2. If the Contractor fails to perform any of the other provisions of this Contract, fails to make progress so as to endanger performance of this Contract in accordance with its terms, and does not cure such failure within a period of ten (10) Calendar Days after receipt of Notice from the Purchasing Agent or designee; or
3. Without further notice, if the Contractor defaults in the performance of its duties pursuant to paragraphs (1) and/or (2) above more than twice within any consecutive twelve (12) month period, whether or not the Contractor subsequently cures such earlier defaults.

In the event the City terminates this Contract in whole or in part as indicated above, the City may purchase from other vendors Goods or Services similar to those terminated. The defaulting Contractor shall be liable to the City for any excess costs for such similar Goods or Services.

**D. Force Majeure:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs of failure to perform if the failure to perform this Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Excusable causes include, but are not limited to, acts of God or of the public enemy and acts of the federal or state government in either their sovereign or contractual capacities. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Goods or Services were obtainable from other sources in sufficient time for the Contractor to meet the required Time(s) for Performance.

## **H.13 CLAIMS AND DISPUTES**

**A. Claims:** Contractual claims shall be submitted in writing not later than sixty (60) Calendar Days after the date of Final Payment. No claim shall be considered by the City (and will be deemed to have been waived), unless the Contractor gives written Notice of an intention to file such a claim at the time of the occurrence of the event giving rise to the claim or at the beginning of the Work upon which the claim is based. Written Notice of the Contractor's intention to file a claim pursuant to this Section shall not be sufficient unless Contractor complies with each of the following:

1. The Contractor shall, within five (5) Calendar Days after the occurrence of the event giving rise to such claim or the beginning of the Work upon which the claim is based, deliver to the Purchasing Agent and the COTR written Notice specifying that the Contractor has sustained or is sustaining injury, and detailing the basis of the claim against the City.
2. Within twenty (20) Calendar Days after delivering such Notice, the Contractor shall deliver to the Purchasing Agent and the COTR a sworn affidavit incorporating an itemized breakdown of the nature and amounts of any damages it has incurred or is incurring. This itemized breakdown shall be made to the fullest extent possible; otherwise the claim shall be deemed to be waived.
3. The Purchasing Agent or designee shall make a determination of the claim within fifteen (15) Calendar Days after receipt of the itemized breakdown described in Subparagraph A(2) above, which decision shall be the final determination of the City.

**B. No Claim Against City Officials:** The Contractor shall make no claim whatsoever against any elected official, appointed official, authorized representative or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

**C. Disputes:** Disputes shall be resolved in accordance with Sections 3-3-107 and 3-3-108 of the Code of the City of Alexandria, as it may be amended from time to time.

**D. Exhaustion of Administrative Procedures:** The City and the Contractor agree that no claim or controversy arising under this Contract at any time during or after the performance of the Work shall be brought before any court without first having been submitted to the procedures outlined above, and that failure to comply with such procedures shall be deemed a waiver of such claim.

**E. Contractor to Continue Work During Pendency of Dispute:** Unless ordered by the City to suspend all or a portion of its Services hereunder, the Contractor shall proceed with the performance of the Work without any interruption or delay during the pendency of any dispute resolution procedures.

## **H.14 INSURANCE**

Prior to beginning Work under this Contract, the Contractor shall furnish to the Purchasing Agent certificate or certificates of insurance, showing that the Contractor has obtained, at its own expense, all insurance coverage listed in the “City of Alexandria, Virginia, Insurance Checklist.” These certificates of insurance shall list the City of Alexandria as an additional insured in the amounts and types of insurance listed in the “City of Alexandria, Virginia, Insurance Checklist” and reference this RFP

## **H.15 INDEMNITY**

The Contractor hereby assumes all liability for and agrees to indemnify and hold harmless the City and its officers, authorized representatives and employees against any and all claims, losses, costs, damages, penalties, liabilities and fees (including reasonable attorneys' fees) and expenses resulting from any material breach of the representations, warranties and covenants of the Contractor contained in the Contract Documents or from any injuries to persons or property caused by the negligence or alleged negligence of the Contractor or its Subcontractors, employees, or authorized representatives, or in any other manner arising out of the performance of this Contract.

## **H.16 EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor hereby agrees:

- A. Discrimination Prohibited:** Not to discriminate against any employee or applicant for employment on account of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation, disability, when such person is a qualified person with a 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.
- B. Affirmative Action:** To implement an affirmative action employment program as defined in Section 12-4-3 of the Code of the City of Alexandria to ensure nondiscrimination in employment under guidelines to be developed by the Human Rights Commission of the City of Alexandria and approved by the City Council of the City of Alexandria.
- C. EOE Statement:** To include in all solicitations or advertisements for employees placed by or on behalf of the Contractor the words "Equal Opportunity Employer" or a symbol, approved by the commission, meaning same.
- D. Notice to Labor Unions:** To notify each labor organization or representative of employees with which the Contractor is bound by a collective bargaining agreement or other contract of the Contractor's obligations pursuant to this equal employment opportunity clause.
- E. Reports to the City:** To submit to the City Manager and the City's Human Rights Administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the City's Human Rights Administrator with the approval of the City Manager, except that the administrator may request more frequent special reports of particular employers provided the commission has found such employers to have violated any provision of Chapter 4, of Title 12 of the Code of the City of Alexandria.
- F. Compliance with Federal Requirements Sufficient:** 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 Paragraph.

**G. Accommodation of Disabled Workers:** To make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person with a disability who is an applicant or employee unless the Contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

**H. Reasonable Accommodations:** That for the purpose of this paragraph reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by persons with a disability and (ii) job restructuring, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters and other similar actions.

**I. Undue Hardship:** That in determining whether an accommodation would impose an undue hardship on the operation of the Contractor's business, factors to be considered include but are not limited to the following:

1. The overall size of the Contractor's business with respect to the number of employees, the number and type of facilities and size of budget;
2. The type of the Contractor's operation, including the composition and structure of the Contractor's work force; and
3. The nature and cost of the accommodation needed.

**J. Refusal to Employ:** That it may not deny any employment opportunity to a qualified person with a disability who is an employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

**K. Subcontracts:** To include the provisions in Paragraphs 16.01 through 16.10 of this Article in every subcontract so that such provisions will be binding upon each subcontractor.

**L. Non-compliance:** That in the event of the Contractor's noncompliance with any provision of this Equal Employment Opportunity clause, upon a finding of such noncompliance by the City's Human Rights Commission and certification of such finding by the City Manager, the City Council of the City of Alexandria may terminate or suspend or not renew, in whole or in part, this Contract.

#### **H.17 SMALL AND MINORITY AND WOMEN-OWNED BUSINESS OUTREACH**

The City of Alexandria is committed to increase the opportunity for utilization of small, minority and women owned business in all aspects of procurement and have adopted a policy for increasing that participation. This policy is set forth in Sections 3-3-111 and 12-4-6 of the Code of the City of Alexandria. The City reserves the right to make multiple awards if the Purchasing Agent determines that such awards are in the best interest of the City and its SDBE program.

## **H.18 ETHICS IN PUBLIC CONTRACTING**

The provisions of law set forth in Article IV of the Virginia Public Procurement Act, entitled “Ethics in Public Contracting,” Va. Code §§\_2.2-4367 et seq., the State and Local Government Conflict of Interest Act, Va. Code §§ 2.2-3100, et seq., the Virginia Governmental Frauds Act, Va. Code §§\_18.2-498.1 et seq., Articles 2 and 3 of Chapter 10, Title 18.2 of the Code of Virginia, as amended, and Article I of Chapter 3, Title 3 of the Code of the City of Alexandria, all as the same may be amended from time to time, are incorporated herein by reference. The Contractor shall incorporate the above clause in its contracts with each subcontractor.

## **H.19 DRUG-FREE WORKPLACE**

- A. Drug-Free Workplace:** During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor’s employees; (ii) 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; (iii) 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 (iv) 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.
- B. Definition:** For the purposes of this Paragraph, “drug-free workplace” means a site for the performance of work done in connection with this Contract awarded to Contractor, in accordance with Chapter 3, Title 3, of the Code of the City of Alexandria, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Contract.

## **H.20 NOTICE**

- A. Written Notice:** All Notices required by the terms of this Contract shall be in writing. For purposes of this Paragraph, “writing” shall include facsimile transmissions and electronic mail, provided that reasonable care is used to ensure that the Notice is received by its intended recipient.
- B. Notice to Contractor:** Written Notice may be served on the Contractor by mail, courier, facsimile transmission or electronic mail to the Contractor’s office or to the business address of the Contractor as stated in the Contract Documents.
- C. Notice to City:** Written Notice may be served on the City by mail, courier, facsimile transmission or electronic mail to the COTR, with a copy to the Purchasing Agent.

## **H.21 AUDIT AND PRICE ADJUSTMENT**

- A. Audit:** All records, reports and documents relating to this Contract shall be maintained by Contractor for a period of three (3) years following Final Payment (the “Audit Period”). Such records, reports and documents shall be subject to review and audit by City and the City’s consultants or auditors at mutually convenient times.
- B. Price Adjustment for Defective Cost and Pricing Data:** If any price, including profit or fee, negotiated in connection with this Contract or any Change Order or modification under this Contract, was increased by any significant amount because the Contractor furnished cost or pricing data that were not complete, accurate and current as of the date agreed upon between the City and Contractor, the price or cost shall be reduced accordingly, and this Contract shall be modified to reflect the reduction. This right to a price reduction is limited to increases resulting from defects in data under which the submission and certification of cost or pricing data were required.

## **H.22 SERVICE CONTRACT WAGES**

- A. Living Wage:** If applicable, the Contractor shall comply with provisions of Section 3-3-31.1 of the Code of the City of Alexandria during the performance of this Contract. All Contractor employees working on City-owned or City-occupied property shall be paid an hourly wage no less than the hourly wage rate published on the City’s world-wide web site at the time of Contract execution (the “Living Wage”).
- B. Option Periods:** For each option period for which the Contract is renewed, Contractor’s employees’ wages shall be adjusted to correspond to the Living Wage rate posted on the City’s World Wide Web site as of the date of the Change Order authorizing the option period. Prior to renewal, the Contractor shall submit, on a form acceptable to the Purchasing Agent, the names of all employees who will be affected by the Living Wage requirements of this Article, their positions, their wage rates prior to the renewal date, their wage rates in conformance with the Living Wage at renewal, and the change in total direct labor costs as a result of the Living Wage changes. No Contract shall be renewed until this information is submitted and approved by the Purchasing Agent. The cost of any such increase in wages, together with applicable labor burdens, shall, shall be added to the Contract Sum, in addition to any increase otherwise allowed pursuant to Paragraph 3.10C.
- C. Complaints by Aggrieved Employees:** Within six (6) months of the Contractor’s failure to comply with the Living Wage requirements of this provision, an aggrieved employee may file a complaint with the City’s Purchasing Agent. If the Purchasing Agent determines that the Contractor has paid its employees a wage rate less than that required by the Contract, the Contractor shall be liable to the employees for the amount of the unpaid wage, plus interest at the judgment rate. The Contractor shall not discharge, reduce the compensation of, or otherwise retaliate against any employee who files a complaint with the City’s Purchasing Agent, or takes any other action to enforce the requirements of this clause.
- D. Additional Compliance Requirements:** At all times during the term of the Contract, the Contractor shall:



1. Post the current wage rate in English and Spanish at a prominent place at its offices and each location where its employees perform Services under this Contract;
2. Provide, within five (5) Calendar Days of an employees' request, a written statement of the then current required wage rate;
3. Include the provisions of this clause in all subcontracts for work to be performed by subcontractors on City-owned or City-occupied property, so that provisions of this clause are binding upon subcontractors;
4. Comply with all applicable federal, state and City laws, rules and regulations, including, but not limited to the U.S. Fair Labor Standards Act of 1938, as amended, the U.S. Occupational Safety and Health Act of 1970, as amended, the U.S. Employee Retirement Income Security Act, as amended, and Chapter 3 of Title 40.1 of the Code of Virginia, 1950, as amended (for the purposes of this Contract, the annual schedule of City holidays published by the City Manager's Office shall be used); and
5. Submit, within five (5) Business Days of the end of each period, quarterly and annual payroll reports in a form approved by the Purchasing Agent to include copies of at least four (4) payroll reports for each quarter and two (2) copies of a payroll check for each employee working during the quarter.

**E. Contractor Record Keeping:** The Contractor shall keep and preserve records which show wages and benefits provided to each employee assigned to perform Services under this Contract for a period of three (3) years after the expiration or earlier termination of this Contract. The Contractor shall permit the City's Purchasing Agent, or authorized representative, to examine, and make copies of, such records at reasonable times and without unreasonable interference with the business of the Contractor.

**F. Violations:** Violation of any law, rule, regulation, or provision of this clause, as determined by the Purchasing Agent, shall be grounds for termination of this Contract and debarment of the Contractor.

## **H.23 COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986**

**Unauthorized Aliens:** During the performance of any Work under the Contract, the Contractor shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

## **H.24 STATE CORPORATION COMMISSION REQUIREMENT**

If the Contractor is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Contractor shall be authorized to transact business in the Commonwealth as a domestic

or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law.

## **H.25 MISCELLANEOUS PROVISIONS**

- A. Governing Law:** This Contract is governed by the applicable provisions of the Code of the City of Alexandria, and the laws of the Commonwealth of Virginia.
- B. Successors, Assigns and Legal Representatives:** This Contract shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Contract.
- C. Entire Agreement:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith.
- D. Royalties and Patents:** The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the City, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under this Contract, and shall indemnify the City, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.
- E. Severability:** Should any provision of this Contract be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Contract had been executed with the invalid provisions(s) eliminated, and it is hereby declared the intention of the parties that they would have executed the other provisions of this Contract without including therein such provision(s) which may for any reason hereafter be declared invalid.
- F. Survival:** Any provision of this Contract which contemplates performance subsequent to any termination or expiration of this Contract, including, without limitation, the provisions of Sections H.7 (Warranty); H.13 (Claims and Disputes); H.15 (Indemnity), and H.21 (Audit and Price Adjustment), shall survive any termination or expiration of this Contract and shall remain in full force and effect according to their terms.
- G. Non-Waiver:** The failure of Contractor or the City to exercise any right, power or option arising under this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by Contractor or City of their rights at any time thereafter to require exact and strict compliance with all the terms thereof.

**H. Headings:** Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Contract are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

## REQUIRED SUBMITTAL-KEY PERSONNEL FORM

KEY PERSONNEL: In the spaces provided below, Proposers shall identify a minimum of two (2) key persons who would be assigned to provide contract administration. One of these two (2) individuals shall be available during normal business hours.

KEY PERSON NAME:

TITLE:

LIST QUALIFICATIONS AND EXPERIENCE:

KEY PERSON NAME:

TITLE:

LIST QUALIFICATIONS AND EXPERIENCE:

## REQUIRED SUBMITTAL-CITY OF ALEXANDRIA INSURANCE CHECKLIST

I understand the Insurance Requirements and will submit a Certificate of Insurance to the City if awarded this contract in the amount and type as set forth below. See continuation sheets for explanation. Items marked “X” are required to be provided by Proposer, if contract award is made

		<b>REQUIRED COVERAGES</b>	<b>LIMITS</b> (figures denote minimum limits required)
<b>X</b>	1.	<b>Worker’s Compensation and Employer’s Liability</b> Required when Contractor has three (3) or more employees.	Statutory limits of Commonwealth of Virginia and the state of hire for workers’ compensation. \$500,000 each accident; \$500,000 each disease; \$500,000 policy limit for employer’s liability. USL&H and Jones Act coverage endorsements needed for work along and on the river.
<b>X</b>	2.	<b>Commercial General Liability</b> Required on all City contracts.	\$1,000,000 combined single limit for bodily injury and property damage each occurrence. \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, \$1,000,000 Personal injury and Advertising injury Aggregate. The General Aggregate should apply on a “per project” basis, if construction related. General Liability coverage should include: Premises/Operations, Independent Contractors, Contractual Liability, and Explosion, Collapse, and Underground damage (any type of construction work.) Products and Completed Operations coverage should be maintained for at least three years after the City’s final acceptance of the work.
<b>X</b>	3.	<b>Automobile Liability</b> Required on all City contracts. Sole proprietor contractors must provide evidence of business endorsement on their personal auto policy in lieu of a commercial auto liability policy.	\$1,000,000 combined single limit bodily injury and property damage each accident; \$1,000,000 Uninsured and Underinsured Motorists. Must include the following: Owned, Hired and Non-Owned. \$5,000,000 Motor Carrier Act Endorsement, where applicable.

<b>X</b>	4.	<b>Property Coverage</b> Required when Contractor: D. Uses their own personal property or equipment on City property and/or B. Stores or leaves equipment or personal property on City Property; and/or C. Uses materials for building NOT owned by City until installed.	<u>Commercial Property Policy/Builders Risk:</u> Provide replacement cost. Should include all perils (also known as “special” or “all risks”) including theft, flood, earthquake, and terrorism. <u>Contractor’s Equipment Floater:</u> Provide coverage for Contractor’s mobile equipment, including road building machinery, steam shovels, hoists, and derricks or any equipment to become part of the permanent structure used on the job by builders of structures, roads, bridges, and tunnels.
<b>X</b>	5.	<b>Crime Policy</b> <u>Required when Contractor:</u> A. Collects money, securities or other property on behalf of City, and/or B. Requires the use of City money, securities, or negotiable property to be in Contractor’s care, custody and control and/or C. Has access to computer systems that could involve extortion, theft of monies or securities or other negotiable property.	\$1,000,000 limit for employee theft of money, securities and other property owned by the contractor.  An endorsement should also be added to the policy to cover theft of the City’s money, securities, or other property (third party coverage).
<b>X</b>	6.	<b>Professional Liability/Errors &amp; Omissions</b> Required when: A. Contractor must maintain a license or special degree. B. services require high level of expertise or knowledge in a particular field to require certification or licensing. C. Law enforcement, contractors A and B services (above) typically include engineering and design services, architects, attorneys, physicians, insurance brokers and agents etc., as well as when access to any private information, electronic data or equipment owned by the City is part of the work.	\$2,000,000 each claim and aggregate.  C. Where applicable \$10M Law Enforcement contractors. Coverage may be provided in the General Liability policy in some cases. (e.g. wrongful detention or arrest, etc.).
<b>X</b>	7.	<b>Excess Liability/Umbrella</b>	\$1,000,000 Per Occurrence and Aggregate for bodily injury, property damage, personal and advertising injury and products and completed operations. Limits should include an aggregate per project for construction projects. Higher limits may be required in some cases.

	8.	<b>Garage Liability</b> Required when the contractor takes possession of the City's owned vehicles including buses in order to repair.	\$1,000,000 bodily injury and property damage each occurrence/accident.
<b>X</b>	9.	City of Alexandria must be named as an <b>additional insured</b> on all insurance policies other than Worker's Compensation and Professional Liability and must be stated on the certificate(s) of insurance (or the certified policy, if required.) The contractor's insurance will be primary and the City's insurance or self-insurance shall be non-contributory. The Contractor should waive and require their insurers to waive by endorsement subrogation rights against the City for losses and damages incurred under the insurance policies required by the agreement. No work should be performed by contractors or subcontractors until a certificate of insurance has been submitted and approved by City to insure compliance with all insurance requirements.	
	10.	<b>Pollution Liability</b> Coverage should be included with a \$1,000,000 limit for each occurrence, claim or pollution incident. This coverage is required of all contractors performing any type of hazardous material remediation, working with pollutants including asbestos and lead abatement, or performing underground work. Higher limits may be required in some circumstances.	
<b>X</b>	11.	Thirty (30) day notice of cancellation, non-renewal, material change or coverage reduction is required on all policies.	
<b>X</b>	12.	Best's Guide rating: "A-" VIII or better, or its equivalent. The insurance companies should be lawfully authorized to do business in the Commonwealth of Virginia.	
<b>X</b>	13.	The Certificate(s) of Insurance shall state the RFP/ITB/RFP/RFI Number and Title.	

---

Proposer's Name

---

Proposer's Authorized Signatory

---

Date

---

Name and Title of Authorized Signatory

## **CITY of ALEXANDRIA INSURANCE (continuation sheet)**

Review this section carefully with your insurance agent prior to Proposal submission. See “Insurance Checklist” for specific coverage requirements applicable to the Contract.

1. General Insurance Requirements:
2. The successful Proposer shall not start work under the Contract until the successful Proposer has obtained at his/her own expense all of the insurance required under the Contract and such insurance has been approved by the City of Alexandria (City); nor shall the successful Proposer allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been obtained and approved by the successful Proposer. Approval of insurance required of the successful Proposer and subcontractors for the City will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City’s request, certified copies of the required insurance policies.
3. The successful Proposer shall require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, Workers’ Compensation and Employers’ Liability insurance and other insurance coverage as indicated in this attachment, in the same manner as specified for the successful Proposer. Upon request, the successful Proposer shall immediately furnish subcontractors’ certificates of insurance to the City.
4. All insurance policies required under the Contract shall include the following provision: Thirty (30) day notice of cancellation, non-renewal, material change, or coverage reduction is required on all policies.
5. No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the successful Proposer, or the surety, or its bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.
6. The City of Alexandria (including its officers, agents and employees) is to be listed as an additional insured on all insurance policies except Workers’ Compensation and Professional Liability, which must be stated on the certificate(s) of insurance or the certified policy, if requested. Coverage afforded under this section shall be primary with respect to the City, its officers, agents, and employees. The contractor’s insurance will be primary and the City’s insurance or self-insurance shall be non-contributory.
7. The successful Proposer shall provide insurance as specified in the “City of Alexandria, Virginia Insurance Checklist”.
8. The successful Proposer covenants to save, defend, keep harmless and indemnify the City and all of its officers, agents and employees (collectively the “City”) from and against any and all claims, lawsuits, liabilities, loss, damage, injury, costs (including litigation costs and attorney’s fees), charges, liability or exposure, however caused, resulting from or arising out of or in any way connected with the successful Proposer’s performance or nonperformance



of the terms of the Contract Documents or its obligations under the Contract. This indemnification shall continue in full force and effect until the successful Proposer completes all of the Work required under the Contract, except that indemnification shall continue for all claims involving products or completed operations after final acceptance of the Work by the City for which the City gives notice to the successful Proposer after the City's final acceptance of the Work.

9. The successful Proposer shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property used in connection with the Contract. The successful Proposer assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.
10. Insurance coverage required in these specifications shall be in force throughout the Contract term. Should the successful Proposer fail to provide acceptable evidence of current insurance within seven (7) Calendar Days of written notice at any time during the Contract term, the City shall have the absolute right to terminate the Contract without any further obligation to the successful Proposer, and successful Proposer shall be liable to the City for the entire additional cost of procuring performance and the cost of performance of the uncompleted portion of the Contract at the time of termination.
11. Contractual and other liability insurance provided under the Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising or inspecting the project. The successful Proposer shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.
12. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The successful Proposer shall be fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for the acts, commissions and omissions of persons directly employed by it.
13. Precaution shall be exercised by the successful Proposer at all times for the protection of persons (including employees) and property. All existing structures, utilities, roads, services, trees, and shrubbery shall be protected against damage or interruption of service at all times by the successful Proposer and its subcontractors. The successful Proposer shall be held responsible for any damage to persons (including employees) and property occurring by reason of its operation on the property.
14. If the successful Proposer does not meet the insurance requirements of the specifications, alternate insurance coverage, satisfactory to the City's Purchasing Agent, may be considered. Written request for consideration of alternate coverage shall be received by the City's Purchasing Agent at least (10) ten Business Days prior to the date set for opening the Proposals. If the City denies the request for alternate coverage, the specified coverage will be

required to be submitted. If the City permits alternate coverage, an amendment to the insurance requirements will be prepared and distributed prior to the time and date set for Proposal openings.

15. All required insurance coverage shall be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the City. The insurers shall have a policyholders' rating of "A-" or better, and a financial size of "Class VIII" or better in the latest edition of Best's Insurance Reports, unless the City grants specific approval for an exemption, in the same manner as described in section 13 above.
16. The City will consider deductible amounts as part of its review of the financial stability of the Proposer. Any deductibles shall be disclosed in the Proposal and all deductibles will be assumed by the successful Proposer.

## II. Successful Proposer's Liability Insurance – "Occurrence" Basis:

1. The successful Proposer shall purchase and maintain in a company or companies authorized to do business in the Commonwealth of Virginia, and acceptable to the City such insurance as will protect the successful Proposer and the City from claims set forth below which many arise out of or result from the successful Proposer operations under the Contract, whether such operations are by the successful Proposer or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - A. Claims under Workers' Compensation, disability benefits and other similar employee benefit acts;
  - B. Claims for damages because of bodily injury, occupational sickness or disease, or death of successful Proposer's employees;
  - C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than successful Proposer's employees;
  - D. Claims for damages insured by usual Personal Injury Liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the successful Proposer, or by any other person;
  - E. Claims for damages, other than to the Work itself (but only to the extent of coverage under any Builders' Risk or other property form, if applicable) because of injury to or destruction of tangible property, including loss of use resulting there from;
  - F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance of use of any owned, hired, or non-owned motor vehicle.
2. The specific insurance policies required to cover the claims listed above in subsection II. 1 shall include terms and provisions, and be written for not less than the limits of liability, (or greater limits if required by law or contract) as shown on the "City of Alexandria, Virginia Insurance Checklist" contained in the Request for Proposals documents.
  - A. Commercial General Liability – Such Commercial General Liability policy shall include any or all of the following as dictated on the "City of Alexandria, Virginia Insurance Checklist":

3. Premises/Operations;
  - ii. Actions of Independent Contractors;
4. Products/Completed Operations to be maintained for three years after completion of the Work;
  - iv. Contractual liability including protection for the successful Proposer from claims arising out of liability assumed under the Contract, and including Automobile Contractual Liability;
  - v. Personal Injury and Advertising Injury Liability
  - vi. Explosion, Collapse or Underground Hazards.
5. Commercial Automobile Liability including Uninsured Motorist's and Underinsured Motorists Coverage.
6. Workers' Compensation – statutory benefits as required by Virginia law or the U.S. Longshoremen's and Harbor Workers' Compensation Act, or other laws as required by labor union agreements, including standard Other States coverage; and Employers' Liability coverage.

### III. Commercial General or other required Liability Insurance – “Claims Made” Basis

If Commercial General or other liability insurance purchased by the successful Proposer has been issued on a “claims made” basis, the successful Proposer shall comply with the following additional conditions. The limits of liability and the extensions to be included as described in the “City of Alexandria, Virginia Insurance Checklist” remain the same. However, the successful Proposer shall either:

- (a) Agree to provide the certificates of insurance evidencing the above coverage for a period of three years after final payment for the Contract. This certificate shall evidence a retroactive date, no later than the beginning of the successful Proposer or subcontractors Work under the Contract; or
- (b) Purchase a three year extended reporting period endorsement for the policy or policies in force during the term of the Contract as evidence of the purchase of this extended reporting period endorsement by means of a certificate of insurance or a certified copy of the endorsement itself.

**REQUIRED SUBMITTAL-DISCLOSURES RELATING TO CITY OFFICIALS AND  
EMPLOYEES**

I hereby state that, as of this date (check one):

- ( ) Our firm has **no reason** to believe that any member of the City Council, any official or employee of the City, or any member of any commission, committee, board or corporation controlled or appointed by the City Council has already received, in connection with or related in any way to this contract, or has been promised, in the event this contract is awarded to the firm, any commission, finder's fee or other thing of value
- ( ) Our firm **has reason** to believe that the following City Council members, City officials and/or employees, and/or members of a Council-appointed or –controlled commission, committee, board or corporation have already received, in connection with or related in any way to this contract, or have been promised, in the event this contract is awarded to the firm, any commission, finder's fee or other thing of value:

_____ Name	_____ Title/Position
_____ Name	_____ Title/Position

I hereby state that, as of this date:

- ( ) Our firm has **no reason** to believe that any member of the City Council or any official or employee of the City would or may be financially affected, whether affirmatively or negatively, and whether personally or through a spouse or other family member, if this contract were awarded to the firm
- ( ) Our firm **has reason** to believe that the following members of the City Council and officials and employees of the City would or may be financially affected, whether affirmatively or negatively, and whether personally or through a spouse or other family member, if this contract were awarded to the firm:

_____ Name	_____ Title/Position
_____ Name	_____ Title/Position

\_\_\_\_\_  
Proposer's Name

\_\_\_\_\_  
Proposer's Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Proposer's Authorized Signatory

**ATTACHMENT I**  
**DISTRICT of COLUMBIA**  
**TERMS & CONDITIONS**

**1. Covenant Against Contingent Fees:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

**2. Shipping Instructions – Consignment:**

Unless otherwise specified in this Invitation for Bids/Request for Proposals, each case, crate, barrel, package, etc., delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point.

**3. Patents:**

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

**4. Quality:**

Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

**5. Inspection Of Supplies:**

- (a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of

supplies.

- (b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.
- (c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.
- (d) The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.
- (e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.
  - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.
  - (2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest
- (f) The District has the right either to reject or to require correction of

nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.

- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.
- (j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
- (k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.
- (l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the

Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

## **6. Inspection Of Services:**

- (a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.
- (c) The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- (e) If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- (f) If the Contractor fails to promptly perform the services again or take the



necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

**7. Waiver:**

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

**8. Default:**

- (a) The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
  - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
  - (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
- (b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- (c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess

cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

- (d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called “manufacturing materials”) as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled “Disputes”. The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.
- (e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.
- (f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (g) As used in paragraph (c) of this clause, the terms “subcontractor(s)” means subcontractor(s) at any tier.

## **9. Indemnification:**

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the “District”) from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys’ fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor’s officers, employees,

agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

**10. Transfer:**

No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

**11. Taxes:**

- (a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.
- (b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

“The District of Columbia Government is Exempt from Federal Excise Tax – Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland.”

Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

- a) **Deliveries to Glenn Dale Hospital – Exemption No. 4647**
- b) **Deliveries to Children's Center – Exemption No. 4648**

c) Deliveries to other District Departments or Agencies – Exemption No. 09339 “The District of Columbia Government is Exempt from Sales and Use Tax –  
Registration No. 53-600, The District of Columbia Office of Tax and Revenue.”

**12. Appointment of Attorney:**

- (a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.
- (b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

**13. District Employees Not To Benefit:**

Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or

degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

**14. Disputes:**

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.
- B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
  - (1) A description of the claim and the amount in dispute;
  - (2) Any data or other information in support of the claim;
  - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (4) The Contractor's request for relief or other action by the Contracting Officer.
- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (e) The Contracting Officer's written decision shall do the following:
  - (1) Provide a description of the claim or dispute;
  - (2) Refer to the pertinent contract terms;
  - (3) State the factual areas of agreement and disagreement;

- (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (6) Indicate that the written document is the contracting officer's final decision; and
  - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.
- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- (2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.
- (i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**C. Claims by the District against a Contractor**

- (a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

- (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:
  - (a) Provide a description of the claim or dispute;
  - (b) Refer to the pertinent contract terms;
  - (c) State the factual areas of agreement and disagreement;
  - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (f) Indicate that the written document is the Contracting Officer's final decision; and
  - (g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.
- (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.
- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**15. Changes:**

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or

in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**16. Termination For Convenience Of The District:**

- (a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all contracts to the extent they relate to the work terminated.
  - (4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
  - (6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer



may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

- (f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:
- (1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of :
    - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;
    - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and
    - (iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.
  - (3) The reasonable cost of settlement of the work terminated, including-
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.
- (h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement

proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

- (i) In arriving at the amount due the Contractor under this clause, there shall be deducted:
  - (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
  - (2) Any claim which the District has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.
- (j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.
- (k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (l) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct

charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

**17. Recovery Of Debts Owed The District:**

The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

**18. Retention and Examination Of Records:**

The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.

The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

**19. Non-Discrimination Clause:**

(a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.) (“Act” as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986

in the D. C. Register, Mayor' s Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor' s Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
  - (b) recruitment, or recruitment advertising;
  - (c) demotion, layoff, or termination;
  - (d) rates of pay, or other forms of compensation; and
  - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).
- (5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available

to employees and applicants for employment.

- (6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- (9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

**20. Definitions:**

The terms Mayor, Chief Procurement Officer, Contract Appeals Board and District will mean the Mayor of the District of Columbia, the Chief Procurement Officer of the District of Columbia or his/her alternate, the Contract Appeals Board of the District of Columbia, and the Government of the District of Columbia respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

**21. Health And Safety Standards:**

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

**22. Appropriation Of Funds:**

The District's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided.

**23. Buy American Act:**

- (a) The Buy American Act (41 U.S.C. §10a) provides that the District give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall deliver only domestic end products, except those-
- (1) For use outside the United States;
  - (2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  - (3) For which the District determines that domestic preference would be inconsistent with the public interest; or
  - (4) For which the District determines the cost to be unreasonable.

**24. Service Contract Act of 1965:**

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).

- (1) "Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.
- (2) "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or

professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

- (b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(c) Compensation.

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.
- (2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.
  - (a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or



disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

- (b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
- (c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;
- (d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;
- (e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum

wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

- (f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;
  - (g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
  - (4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.
- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
  - (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:
    - (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
    - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits

provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.
- (g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
  - (1) For each employee subject to the Act:
    - (a) Name and address;
    - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
    - (c) Daily and weekly hours worked; and
    - (d) Any deductions, rebates, or refunds from total daily or

weekly compensation.

- (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
- (3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract With the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

- (l) Contractor's report:
- (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.
  - (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- (m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.
- (n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.
- (1) (i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.
  - (ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject

to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

- (iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.
- (2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

## **25. Cost and Pricing Data:**

- (a) This paragraph and paragraphs b through e below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.
- (b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.
- (c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (d) Any reduction in the contract price under paragraph c above due to defective data from a prospective subcontractor that was not subsequently awarded, the

subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.

- (e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
- (f) The following specific information should be included as cost or pricing data, as applicable:
  - (1) Vendor quotations;
  - (2) Nonrecurring costs;
  - (3) Information on changes in production methods or purchasing volume;
  - (4) Data supporting projections of business prospects and objectives and related operations costs;
  - (5) Unit – cost trends such as those associated with labor efficiency;
  - (6) Make or buy decisions;
  - (7) Estimated resources to attain business goals;
  - (8) Information on management decisions that could have a significant bearing on costs.
- (g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:

- (1) final payment under the contract;
- (2) final termination settlement; or
- (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

**26. Multiyear Contract:**

If this contract is a multiyear contract, then the following provision is made part of this contract:

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

**27. Termination Of Contracts For Certain Crimes And Violations:**

- (a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:
  - (1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or
  - (2) There has been any breach or violation of:
    - (A) Any provision of the Procurement Practices Act of 1985, as amended, or
    - (B) The contract provision against contingent fees.
- (b) If a contract is terminated pursuant to this section, the Contractor:
  - (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and
  - (2) Shall refund all profits or fixed fees realized under the Contract.
- (c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.



**ATTACHMENT J**  
**MONTGOMERY COUNTY GOVERNMENT, MD**  
**TERMS & CONDITIONS**

**GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR**

**1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION**

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first tier subcontracts.

**2. AMERICANS WITH DISABILITIES ACT**

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

**3. APPLICABLE LAWS**

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

**4. ASSIGNMENTS AND SUBCONTRACTS**

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

**5. CHANGES**

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30

days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

#### 6. CONTRACT ADMINISTRATION

- A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:
- (1) serve as liaison between the County and the contractor;
  - (2) give direction to the contractor to ensure satisfactory and complete performance;
  - (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
  - (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
  - (5) accept or reject the contractor's performance;
  - (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
  - (7) prepare required reports;
  - (8) approve or reject invoices for payment;
  - (9) recommend contract modifications or terminations to the Director, Office of Procurement;
  - (10) issue notices to proceed; and
  - (11) monitor and verify compliance with any MFD Performance Plan.
- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

#### 7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

#### 8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS, AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).

(f) a prohibition against contingent fees. Section 11B-53. Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code. In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

**13. GUARANTEE**

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

**14. HAZARDOUS AND TOXIC SUBSTANCES**

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

**15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

**16. IMMIGRATION REFORM AND CONTROL ACT**

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

**17. INCONSISTENT PROVISIONS**

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

**18. INDEMNIFICATION**

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

**19. INDEPENDENT CONTRACTOR**

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

**20. INSPECTIONS**

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

**21. INSURANCE**

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the minimum insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. The minimum limits of coverage listed shall

not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County, nor shall failure by the County to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Contractor must provide to the County at least 30 days written notice of a cancellation of, or a material change to, an insurance policy. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. After consultation with the Department of Finance, Division of Risk Management, the Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

Please disregard TABLE A. and TABLE B., if they are replaced by the insurance requirements as stated in an attachment to these General Conditions of Contract between County and Contractor.

TABLE A. INSURANCE REQUIREMENTS  
(See Paragraph #21 under the General Conditions of Contract  
between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

				Ove
	<u>Up to 50</u> <u>1,000</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	
Workers Compensation (for contractors with employees)				
Bodily Injury by				
Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	
Attachment				
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300 Attachment	500	1,000	See
Minimum Automobile Liability (including owned, hired and non owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	
Attachment				
Property Damage				
each occurrence	300	300	300	
Professional Liability* for errors, omissions	250	500	1,000	See
Attachment				
and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000				

Certificate Holder  
Montgomery County Maryland (Contract #)  
Office of Procurement  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850 4166

\*Professional services contracts only

(Remainder of Page Intentionally Left Blank)

TABLE B. INSURANCE REQUIREMENTS  
 (See Paragraph #21 under the General Conditions of Contract  
 between County and Contractor)

	<u>Up to 50</u> <u>1,000</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	
Commercial General Liability minimum Attachment combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See

Certificate Holder  
 Montgomery County Maryland (Contract #)  
 Office of Procurement  
 255 Rockville Pike, Suite 180  
 Rockville, Maryland 20850 4166

**(Remainder of Page Intentionally Left Blank)**

## **22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

## **23. NON-CONVICTION OF BRIBERY**

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

## **24. NON-DISCRIMINATION IN EMPLOYMENT**

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B 33 and Section 27 19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

## **25. PAYMENT AUTHORITY**

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

## **26. P-CARD OR SUA PAYMENT METHODS**

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account ("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

## **27. PERSONAL PROPERTY**

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

## **28. PROTECTION OF PERSONAL INFORMATION BY GOVERNMENT AGENCIES**

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

## **29. TERMINATION FOR DEFAULT**

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or

(c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

30. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

31. TIME

Time is of the essence.

32. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

33. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

**THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.**

## **MONTGOMERY COUNTY Requirements**

**A. The language below will be incorporated into Montgomery County, MD's contract resulting from this solicitation.**

### **PERFORMANCE PERIOD**

#### **1. TERM**

The effective date of this Contract begins upon signature by the Director, Department of General Services. The period in which Contractor must perform all work under the Contract begins on the Contract's effective date and ends after a two year period. Before this term for performance ends, the Director at his/her sole option may (but is not required to) renew the term. Contractor's satisfactory performance does not guarantee a renewal of the term. The Director may exercise this option to renew this term three (3) time(s) for one (1) year each.

#### **PRICE ADJUSTMENTS**

Prices quoted are firm for a period of two years after execution of the contract. Any request for a price adjustment, after this two-year period is subject to the following:

- Approval or rejection by the Director, Department of General Services or designee
- Submitted in writing to the Director, Department of General Services and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the contractor submits to the Member Jurisdiction sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/services under the contract.
- Submitted sixty (60) days prior to contract expiration date, if the contract is being amended.
- May not be approved which exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request. The request shall be based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS.
- The Member Jurisdiction will approve only one price adjustment for each contract term, if a price adjustment is approved.
- Should be effective sixty (60) days from the date of receipt of the contractor's request.
- Executed by written contract amendment.

**B. In addition to the above, the following included/attached documents will apply to any contract with Montgomery County, Maryland resulting from this Solicitation:**

1. PMMD 45 – General Conditions of Contract Between County & Contractor (for Montgomery County, MD);
2. PMMD 91 - Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor (for Montgomery County, MD);
3. PMMD 65 – Montgomery County, Maryland, Minority, Female, Disabled Person



Subcontractor Performance Plan; and

4. Mandatory Insurance Requirements (for Montgomery County Maryland)

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to [www.montgomerycountymd.gov/mfd](http://www.montgomerycountymd.gov/mfd)

- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

**MONTGOMERY COUNTY, MARYLAND  
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR**

**PERFORMANCE PLAN**

Contractor's  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax  
Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTRACT NUMBER/PROJECT  
DESCRIPTION: \_\_\_\_\_

**A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor  
Performance Plan:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax  
Number: \_\_\_\_\_ Email: \_\_\_\_\_

**B. This Plan covers the life of the contract from contract execution through the final contract expiration date.**

**C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified  
minority owned business subcontractors, is \_\_\_\_\_% of the total dollars awarded to Contractor.**

**D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars  
indicated below as a subcontractor under the contract.**

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of  
Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A);  
MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council  
(WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_  
Subcontractor  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax  
Phone Number: \_\_\_\_\_ Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT  
PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods and/or services:

2. Certified by:

Subcontractor

Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax

Number:

Email:

CONTACT

PERSON:

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

3. Certified by:

Subcontractor

Name:

Title:

Address:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax  
Phone Number: \_\_\_\_\_ Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT  
PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

4. Certified By:

Subcontractor

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax  
Number: \_\_\_\_\_

Email

:

CONTACT

PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

---

---

---

---

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

---

---

---

---

G. A full waiver request must be justified and attached.

Full Waiver Approved:	Date	Partial Waiver Approved:	Date
_____	: _____	_____	: _____
MFD Program Officer		MFD Program Officer	
Full Waiver Approved:	Date	Partial Waiver Approved:	Date
_____	: _____	_____	: _____
Director		Director	
Cherri Branson		Cherri Branson	
Office of Procurement		Office of Procurement	

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. ) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S  
NAME:

---

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S  
NAME:

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Cherri Branson, Director, Office of Procurement

\_\_\_\_\_  
Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor must notify the Director, Office of Procurement of any proposed change to the Subcontractor Performance Plan.

## **Mandatory Insurance Requirements (for Montgomery County Maryland)**

### **MANDATORY INSURANCE REQUIREMENTS**

### ***Bike Share Program***

***Operation and Maintenance of the Bike Share System - Install, Operate and Maintain Bike Sharing Stations, Bicycles and Related Equipment and Collect and Track Membership and User Fees***

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the *minimum* following insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary. Subject to applicable law, the insurance companies providing insurance coverage, as referenced in this agreement, may not limit coverage to their insured, or the County as an additional insured, to stated minimum amount(s) of insurance referenced in this contract/agreement.

#### **Commercial General Liability**

A minimum limit of liability of ***two million dollars (\$2,000,000)*** combined single limit, for bodily injury and property damage coverage per occurrence and ***five million dollars (\$5,000,000) aggregate***, covering all premises and operations and including the following coverages:

- Personal Injury
- Completed Operations
- Contractual Liability
- Independent Contractors
- Premises and Operations
- Product Liability

#### **Employee Dishonesty**

\$100,000 per occurrence

#### **Automobile Liability Coverage**

A minimum limit of liability of ***one million dollars (\$1,000,000)*** combined single limit for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

#### **Workers' Compensation/Employer's Liability**

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

#### **Additional Insured**

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract. The Additional Insured endorsements shall have no added exclusions or limitations of coverage to limits of liability contractually required; or percentage of negligence attributed to the named insured. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.



Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County Government  
Commuter Services / Anne Root  
101 Monroe Street, 10<sup>th</sup> floor  
Rockville, Maryland 20850

**ATTACHMENT K**  
**FAIRFAX COUNTY, VA**  
**TERMS & CONDITIONS**

THE PARTIES TO THIS CONTRACT, Fairfax County (“Fairfax County” or “the County”) AND (“CONTRACTOR”), MUTUALLY AGREE THAT:

1. FAIRFAX COUNTY engages the CONTRACTOR to provide the following goods and/or services:
  - 1.1. As stated in RFP 00000584.
2. PERIOD OF CONTRACT:
  - 2.1. The period of this contract shall be from contract start date, or date of award, whichever is later, through contract end date. This contract may be renewed for two one-year periods, as mutually agreed upon. The contractor agrees that prices shall remain firm for one year. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), or other relevant indices.
3. COMPENSATION:
  - 3.1. Fairfax County agrees to pay the contractor at the rate of or for a total sum of for services provided. As the Contractor is not a bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the contractor.
4. AUTHORITY:
  - 4.1. The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by Fairfax County. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of Fairfax County for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and shall not be binding on the County.
  - 4.2. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County’s obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under

the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

5. DEFINITIONS:

- 5.1. All terms used in this agreement are defined in the Fairfax County Purchasing Resolution, Article 1, Section 6 and shall be used in accordance with such definitions.

6. INTERPRETATION OF CONTRACT:

- 6.1. Any questions pertaining to this contract shall be directed to:

Contract administrator name, Contract Specialist  
Department of Purchasing & Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, Virginia 22035-0014  
Telephone Number: (703) 324-direct dial extension  
E-mail: firstname.lastname@fairfaxcounty.gov

7. METHOD OF ORDERING:

- 7.1. As requirements arise, authorized individuals will place orders for specific quantities of items covered herein. Regardless of the method of ordering used, the contract and any subsequent modifications determine performance time and dates. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed.
- 7.2. The County may use two (2) different methods of placing orders from the contract: Purchase Orders (PO) and approved County procurement cards.
- 7.3. A Purchase Order may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become a part of the resulting contract.
- 7.4. Credit card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently under contract with JP Morgan Chase/Master Card.

8. CANCELLATION OF ORDERS:

- 8.1. Purchases made under this contract are for readily available services and supplies; time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this contract. Should public necessity demand it, the County reserves the

right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

9. NEW GOODS, FRESH STOCK:

- 9.1. All contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

10. INSPECTION AND ACCEPTANCE:

- 10.1. For determining acceptance of supplies or services for the purpose of eligibility for a prompt payment discount, inspection and acceptance shall be accomplished only after examination (including testing) to determine conformance with the contract requirements. Inspection, as appropriate, shall be accomplished within a reasonable time.
- 10.2. Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. The County will bear the expense of inspection except for the value of samples used in case of rejection. Inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

11. PACKING LIST/DELIVERY TICKETS:

- 11.1. A packing list or delivery ticket must be furnished with each shipment indicating the Purchase Order number, vendor name, item description, quantity ordered, and quantity shipped.

12. INVOICING PROCEDURE:

- 12.1. The contractor shall submit an invoice for each Purchase Order and submit to the BILL TO address shown on the order. The invoice shall contain the applicable Purchase Order number and the name of the department receiving the services.

13. PAYMENT:

- 13.1. Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and thirty (30) days after upon receipt of a properly completed invoice, subject to contract requirements. Fairfax County reserves the right to withhold any or all payments or portions due to contractor's failure to perform in accordance with the provision of the contract, including failure of goods delivered to satisfactorily pass inspection or acceptance testing.
- 13.2. Unless otherwise stated in the contract, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent of the value of the entire order may be retained until completion of contract.

- 13.3. For equipment, payment of the contract price may be paid after such equipment is delivered on the site, installed (if installation is required), and tested and found to be satisfactory and, further, subject to the requirements of Section 13.

14. SHIPPING:

- 14.1. All materials shipped to the County must be shipped F.O.B. destination unless otherwise stated in a subsequent purchase order. The materials must be delivered to the "ship to" address indicated on the purchase order. Fairfax County shall not pay transportation charges unless the contractor received prior approval from the Purchasing Agent.

15. AUDIT RECORDS:

- 15.1. The contractor shall maintain adequate copies of books, records, vouchers, and records of treatment in such a manner that they may be audited in progress and upon three years following completion of the contract. The contractor, from the effective date of final payment or termination hereunder, shall preserve and make such records available to Fairfax County for a period of three (3) years thereafter.

16. TAX EXEMPTION:

- 16.1. Fairfax County is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. The Federal Excise Tax Number is 54-74-012K. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling (703) 324-3206.

17. CONTRACT INSURANCE PROVISIONS:

- 17.1. The contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
- 17.2. The contractor shall, during the continuance of all work under the contract provide the following:
- a. Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
  - b. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever

located, resulting from any action or operation under the contract or in connection with the contracted work.

The General Liability insurance shall include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.

- c. The contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- d. Contractor agrees to maintain Contractors Liability insurance in the amount of \$1,000,000.00 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- e. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The contractor must either:

- 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the contractor's or sub-contractor's work under this contract, or
  - 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- f. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- g. The contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

- h. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
  - i. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
  - j. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.
  - k. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the contractor's insurance agent or representative.
- 17.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the County. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 17.4. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
- 17.5. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- 17.6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- 17.7. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 17.8. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this contract.
- 17.9. The County, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."

18. INDEMNIFICATION:

- 18.1. The contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the contractor shall, at his or her own expense, satisfy and discharge the same. The contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

19. CONTRACT ALTERATIONS:

- 19.1. No alterations in the terms of the contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent. Should it become proper or necessary in the execution of this contract to make any change in design or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.
- 19.2. No payment shall be made to the contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
- 19.3. The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

20. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:

- 20.1. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the contractor desires to assign his or her right to payment of the contract, contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.



21. TERMINATION FOR CONVENIENCE:

- 21.1. The contract will remain in force for the full period specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
  - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
- 21.2. The contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery of a Notice of Termination to the contractor at least five working days prior to the termination date specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

22. TERMINATION OF CONTRACT FOR CAUSE:

- 22.1. If, through any cause, the contractor fails to fulfill in a timely and proper manner his or her obligations under this contract, or if the contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the contractor under the contract shall, at the option of the County, become its property and the contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- 22.2. Notwithstanding the above, the contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the contractor for the purpose of set off until such time as the exact amount of damages due to the County from the contractor is determined.

23. GUARANTIES & WARRANTIES:

- 23.1. All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies.

24. GENERAL GUARANTY:

24.1. Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the contractor.

25. SERVICE CONTRACT GUARANTY:

25.1. Contractor agrees to:

- a. Furnish services described in the contract at the times and places and in the manner and subject to conditions set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the contractor for infraction. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective

work or material.

26. OFFICIALS NOT TO BENEFIT:

- 26.1. Upon acceptance of this contract, the contractor certifies that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract in accordance with the Fairfax County Purchasing Resolution Article 2, Section 4.A.3.

27. LICENSE REQUIREMENT:

- 27.1. All firms doing business in Fairfax County shall obtain a license as required by Chapter 4, Article 7.2, of The Code of the Fairfax County, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm).

28. REGISTERING OF CORPORATIONS:

- 28.1. In accordance with Virginia Code Section 13.1-758, any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, as amended, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209.

29. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:

- 29.1. A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

30. COVENANT AGAINST CONTINGENT FEES:

- 30.1. The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to

terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

31. VENDOR RELATIONS DIVISION:

- 31.1. In connection with the performance of this contract, the contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
- 31.2. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

32. INELIGIBILITY:

- 32.1. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 4, Section 1 of the Fairfax County Purchasing Resolution.

33. ORDER OF PRECEDENCE:

- 33.1. In the event of conflict, the provisions of this contract shall take precedence over any other contract document.

34. DELAYS AND SUSPENSIONS:

- 34.1. The County may direct the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the contractor.
- 34.2. If the County does not direct the contractor, in writing, to suspend, delay, or interrupt the contract, the contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the

cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the contractor.

- 34.3. The contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

35. CONTRACTUAL DISPUTES:

- 35.1. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within ninety (90) days, in accordance with Article 4, Section 5 of the Fairfax County Purchasing Resolution, as amended.

36. COMPLIANCE WITH FEDERAL, STATE, AND COUNTY LAWS:

- 36.1. The contractor will comply with all applicable federal and state laws and with all County ordinances and requirements.

37. HIPAA COMPLIANCE:

- 37.1. Fairfax County Government has designated certain health care components as covered by the federal Health Insurance Portability and Accountability Act of 1996. The contractor may be designated by the Purchasing Agent as a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. If so designated, the contractor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The contractor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Further information regarding HIPAA compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

38. NON-DISCRIMINATION:

- 38.1. During the performance of this contract, the contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor, in accordance with Article 2, Section

4.C of the Fairfax County Purchasing Resolution, as amended.

39. DRUG FREE WORKPLACE:

- 39.1. During the performance of this contract, the contractor agrees to provide a drug-free workplace for the contractor's employees in accordance with Article 2, Section 4, B.6 of the Fairfax County Purchasing Resolution, as amended.

40. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 40.1. Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Acceptance of this contract by the contractor acknowledges the contractor's commitment and compliance with ADA.

41. VENUE:

- 41.1. This contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the state courts of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.

42. IMMIGRATION REFORM AND CONTROL ACT:

- 42.1. Contractor agrees that it 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.

ACCEPTED BY:

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cathy A. Muse, CPPO

\_\_\_\_\_  
Date

**ATTACHMENT L  
ARLINGTON COUNTY, VA  
TERMS & CONDITIONS**

**ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
SUITE 500, 2100 CLARENDON BOULEVARD  
ARLINGTON, VA 22201**

**AGREEMENT NO. TBD**

THIS AGREEMENT is made, on the date of execution by the County, between Contractor's name, Contractor's address ("Contractor") a name of state type of entity authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

**1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of:

This Agreement  
RFP 00000584 – Scope of Work  
Attachment B – Contract Pricing

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Attachment A), the primary purpose of the Work is to supply bicycles, stations, related equipment, and spare parts for use in the Capital Bikeshare program. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

**3. CONTRACT TERM**

The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than TBD 2018 ("Initial Contract Term"), subject to any

modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than three (3) additional 12-month periods, from TBD, 2018 to TBD, 2021 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

#### **4. CONTRACT PRICING**

The County will pay the Contractor in accordance with the terms of the Payment section below and of Attachment B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Attachment A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Attachment B unless otherwise agreed by the parties in writing.

#### **5. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer who will be appointed by the Director of the Arlington County department or agency requesting the work under the Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

#### **6. PAYMENT TERMS**

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

#### **7. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract;  
or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this



Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

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

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. 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.

#### **8. NON-APPROPRIATION**

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

#### **9. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

#### **10. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

#### **11. DELIVERY**

All goods are purchased F.O.B. destination. The Contractor is responsible for handling and transportation costs to the designated point of delivery. Transportation, handling and all related charges are included in the quoted unit prices and any discounts.

## **12. WARRANTY**

The Contractor fully guarantees all goods and materials provided to the County against factory defects. The Contractor will provide all available manufacturers' warranties to the Project Officer at the time of delivery and will correct at no expense to the County any defects that occur as the result of either faulty materials or the manufacturer's workmanship within the period of the manufacturer's standard warranty. The Contractor further guarantees all goods and materials against defects resulting from faulty materials or the manufacturer's workmanship for five years from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty.

## **13. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS**

The County will inspect and accept goods or materials at the delivery location in Arlington County, Virginia, within ten calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept or pay for any goods or materials that the Contractor stores or delivers off-site.

The Contractor is responsible for title and risk of loss or damage to all goods until the County accepts them. The County may conduct any tests or inspections that it deems appropriate before acceptance. The County's right of inspection does not relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use.

The Contractor and any subcontractors may not purchase any goods or materials subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials delivered pursuant to this Contract.

## **14. DISPOSAL OF WASTE AND DAMAGE TO COUNTY PROPERTY**

The Contractor is responsible for all costs associated with the removal of packing materials, trash, and debris ("Waste") and must dispose of the Waste immediately, legally, off-site and without using County waste containers. If the Contractor fails to adhere to this requirement the County will contract a third-party to remove the Waste at the Contractor's expense. The County will deduct any costs that the County incurs for Waste removal from the final payment due to the Contractor.

Similarly, the County will repair at the Contractor's expense any damage that the Contractor or its agents cause to any County-owned or County-controlled property and will deduct the repair costs from the Contractor's final payment, unless the County agrees that the Contractor may make the repairs. The Contractor must make any such repairs to the County's satisfaction and within ten days of the date of the damage.

## **15. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

#### **16. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

#### **17. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) 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 violating such prohibition; (iii) 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 (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

#### **18. FAILURE TO DELIVER**

In case of failure by the Contractor to deliver goods or services in accordance with the Contract Documents, the County, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or under law. At its discretion, the County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

## **19. TERMINATION**

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

### **A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs

resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

#### **B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

#### **20. INDEMNIFICATION**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

#### **21. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

## **22. COPYRIGHT**

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

## **23. CONFIDENTIAL INFORMATION**

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

## **24. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than

nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **25. COUNTY EMPLOYEES**

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

#### **26. FORCE MAJEURE**

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

#### **27. AUTHORITY TO TRANSACT BUSINESS**

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

#### **28. RELATION TO THE COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

#### **29. ANTITRUST**

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

#### **30. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

### **31. ASSIGNMENT**

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

### **32. AMENDMENTS**

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

### **33. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

### **34. DISPUTE RESOLUTION**

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

### **35. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION**

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

### **36. ARBITRATION**

No claim arising under or related to this Contract may be subject to arbitration.

### **37. NONEXCLUSIVITY OF REMEDIES**

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

### **38. NO WAIVER**

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

### **39. SEVERABILITY**

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.



**40. SURVIVAL OF TERMS**

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY’S FEES, AND CONFIDENTIAL INFORMATION.

**41. HEADINGS**

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections’ scope.

**42. AMBIGUITIES**

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

**43. NOTICES**

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

**TO THE CONTRACTOR:**

---

---

---

---

**TO THE COUNTY:**

---

---

---

---

**AND**

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**44. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

CONTRACTOR

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

NAME: MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT

NAME AND  
TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_