

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201
(703) 228-3410

INVITATION TO BID NO. 20-DES-ITB-235-9

ELECTRONIC SEALED BIDS WILL BE RECEIVED BY ARLINGTON COUNTY VIA VENDOR REGISTRY UNTIL 2:00 P.M., EASTERN TIME ON JANUARY 14, 2021 FOR THE FOLLOWING WORK:

- THE CONSTRUCTION OF A NEW ELEVATOR AT THE PENTAGON CITY METRORAIL STATION. THE WORK SHALL INCLUDE ACCESS TO THE PASSAGEWAY FROM THE WEST SIDE OF SOUTH HAYES STREET AS WELL AS PROVIDE REDUNDACY FROM THE STATION ENTRANCE.
- THE WORK IS FUNDED BY THE FEDERAL TRANSPORTATION ADMINISTRATION, THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION AS WELL AS LOCAL FUNDS.

VENDORS ARE REQUIRED TO REGISTER ON [VENDOR REGISTRY](#) IN ORDER TO SUBMIT A RESPONSE TO THIS INVITATION TO BID. NO RESPONSES WILL BE ACCEPTED AFTER THE BID DUE DATE AND TIME.

The County will conduct a virtual bid opening via Microsoft Teams Application (APP). Bidders interested in viewing the public bid opening must download the APP and join the meeting via the Microsoft Teams APP and enable audio, video or both. The link to join the virtual bid opening is provided below:

[Join Microsoft Teams Meeting](#)
[+1 347-973-6905](#) United States, New York City (Toll)
Conference ID: 475 857 573#

Bid Surety in the amount of Five Percent (5%) of the bid must be submitted with the bid. Performance and Payment Bonds in the amount of One Hundred Percent (100%) of the award will be required of the successful Bidder.

NOTE: THIS INVITATION TO BID DOES NOT REQUIRE PROVISION OF BRAND NAME ITEMS. SUBSTITUTIONS WILL NOT BE ALLOWED FOR THE FOLLOWING ITEMS:

THIS SOLICITATION AND THE SUBSEQUENT CONTRACT THEREAFTER IS SUBJECT TO COMPLIANCE WITH FEDERAL TRANSIT ADMINISTRATION (FTA) REGULATIONS CONTAINED IN THIS DOCUMENT.

A PRE-BID CONFERENCE

A virtual, NON-MANDATORY, Pre-Bid Conference will be held on December 29, 2020 at 10:00 A.M., Eastern Time on Microsoft Teams to allow potential Bidders an obtain clarification of the Scope of Work, specifications and requirements of the solicitation. The link to join the Pre-Bid Conference is provided below:

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 347-973-6905,,931921332#](tel:+13479736905931921332) United States, New York City

NOTICE: ANY BIDDER ORGANIZED AS A STOCK OR NONSTOCK CORPORATION, LIMITED LIABILITY COMPANY, BUSINESS TRUST OR LIMITED PARTNERSHIP, OR REGISTERED AS A LIMITED LIABILITY PARTNERSHIP, MUST BE AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA PRIOR TO SUBMITTING A BID (REFER TO AUTHORITY TO TRANSACT BUSINESS SECTION IN THE SOLICITATION FOR FURTHER INFORMATION).

Arlington County reserves the right to reject any and all bids, cancel this solicitation, and waive any informalities or irregularities as defined in the Arlington County Purchasing Resolution.

Arlington County, Virginia
Office of the Purchasing Agent
Shirley Diamond, Procurement Officer
stdiamond@arlingtonva.us

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BID FORM

I. INFORMATION FOR BIDDERS

1. QUESTIONS AND ADDENDA

BIDDERS MUST BE REGISTERED IN VENDOR REGISTRY TO SUBMIT A QUESTION FOR THIS INVITATION TO BID.

All communications relating to this solicitation must be submitted online using Vendor Registry. For a question to be considered, the question must be entered in the Question Section of the ITB No. 20-DES-ITB-235-9.

Prior to the award of a contract resulting from this solicitation, Bidders are prohibited from contacting any County staff other than those assigned to the Office of the Purchasing Agent.

QUESTIONS REGARDING THE ORIGINAL SOLICITATION MUST BE SUBMITTED BY JANUARY 5, 2020 AT 3:00 P. M., EASTERN TIME TO BE CONSIDERED FOR AN ADDENDUM.

ALL QUESTIONS RECEIVED BY THE ABOVE QUESTION DEADLINE, JANUARY 5, 2020 AT 3:00 P.M., EASTERN TIME, WILL BE RESPONDED TO IN VENDOR REGISTRY AND POSTED FOR ALL BIDDERS. THE SYSTEM WILL NOT ACCEPT ANY QUESTIONS AFTER 2020 AT 3:00 P.M., EASTERN TIME.

If any questions or responses require revisions to this solicitation, such revisions will be by formal Addendum only. Bidders are cautioned not to rely on any written, electronic, or oral representations made by any County representative or other person, including the County's technical contact, that appear to change any portion of the solicitation unless the change is ratified by a written Addendum to this solicitation issued by the Office of the Purchasing Agent.

2. INTEREST IN MORE THAN ONE BID AND COLLUSION

Reasonable grounds for believing that a Bidder is interested in more than One (1) bid for a solicitation, including both as a Bidder and as a sub-contractor for another Bidder, or that collusion exists between two or more Bidders, will result in rejection of all affected bids. However, an individual or entity acting only as a sub-contractor may be included as a sub-contractor on bids of two or more different Bidders. Bidders rejected under the above provision will also be disqualified if they respond to a re-solicitation for the same Work.

3. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information that a Bidder or contractor submits in connection with a procurement transaction may be exempted from public disclosure under the Virginia Freedom of Information Act ("VFOIA").

The Bidder or Contractor must invoke VFOIA protection clearly and in writing on the Bid Form for County review. The Bid Form must include at least the following:

- (1) The data or other materials sought to be protected, and
- (2) Specific reasons why the material is confidential or proprietary. It is the Bidder's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

4. DEBARMENT STATUS

The Bidder must indicate on the Bid Form whether it or any of its principals is currently debarred from submitting bids to the County or to any other state or political subdivision and whether the Bidder is an agent of any person or entity that is currently debarred from submitting bids to the County or to any other state or political subdivision. An affirmative response may be considered grounds for rejection of the bid.

5. AUTHORITY TO TRANSACT BUSINESS

Any Bidder organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth of Virginia 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.

The proper and full legal name of the entity and the identification number issued to the Bidder by the Virginia State Corporation Commission must be included on the Bid Form. Any Bidder that is not required to be authorized to transact business in the Commonwealth must include in its bid a statement describing why the Bidder is not required to be so authorized. The County may require a Bidder to provide documentation that,

- (1) Clearly identifies the complete name and legal form of the entity, and
- (2) Establishes that the entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a Bidder to provide such documentation will be a ground for rejection of the bid or cancellation of any award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

6. ARLINGTON COUNTY BUSINESS LICENSES

The successful Bidder must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this solicitation, contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, at 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, tel. (703) 228-3060, or e-mail mailto: business@arlingtonva.us.

7. VIRGINIA CONTRACTOR LICENSE

For all Work that is classified as being performed by "Contractors" as defined by the Virginia State Board for Contractors, a Class A, B, or C License is required.

If a contract for performing or managing construction, removal, repair or improvements is for \$120,000 or more, or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve-month period is \$750,000 or more, the Bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS A CONTRACTOR."

If a contract for performing or managing construction, removal, repair or improvements is for \$10,000 or more, but less than \$120,000, or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve-month period is \$150,000 or more, but less than \$750,000, the Bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS B CONTRACTOR."

If a contract for performing construction, removal, repair or improvements is for \$1,000 or more, but no more than \$10,000 or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve month period is less than \$150,000, the Bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS C CONTRACTOR." Class C contractors shall not include electrical, plumbing, and heating, ventilation and air conditioning contractors.

For further information, contact the State Board for Contractors, 2 South Ninth Street, Richmond, VA 23219, (804) 367-8511.

8. BID FORM SUBMISSION

The submitted Bid Form must be signed and fully executed. The Bid Form must be submitted electronically via Vendor Registry no later than the date and time specified in this solicitation. The Vendor Registry system will not accept bids after the close date and time. The County will not accept emailed or faxed bid. The Bidder name on the electronic bid submittal shall be the same as the Contractor/Vendor name as the registration in Vendor Registry for the upload to be considered a valid bid.

ONLY ELECTRONIC SUBMISSION IS ALLOWED, NO BID SUBMITTED OTHER THAN A VENDOR REGISTRY ELECTRONIC UPLOAD WILL BE ACCEPTED. Arlington County is not responsible for late submissions, missed Addendums, or questions not submitted before the end date and time.

Timely submission is solely the responsibility of the Bidder. The Vendor Registry System will not accept applications after the publicly posted date and time. A bid may be rejected if the Bid Form is not signed in the designated space by a person authorized to legally bind the Bidder.

Modification of or additions to the Bid Form may be cause for rejection of the bid; however, Arlington County reserves the right to decide, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to bid acceptance, Arlington County may request the Bidder to withdraw or modify any such modifications or additions, if it does not affect quality, quantity, price, or delivery.

Bids and all documents uploaded/submitted to Arlington County by a Bidder become the property of the County upon receipt.

9. BIDDER CERTIFICATION

Submission of a signed Bid Form is certification by the respective Bidder that it is registered with the Virginia State Corporation Commission (SCC), if applicable, it is the legal entity authorized to enter into an agreement with the County, and that it will accept any award made to it as a result of the submission. Entry of a Bidder's SCC number may be required at Vendor Registration.

10. ERRORS IN EXTENSION

If the unit price and the extension price differ, the unit price will prevail.

11. DEDUCT ITEMS

Each Bidder shall submit with its bid a separate sealed envelope, prominently marked with the name of the Bidder, the Invitation to Bid Number, and the words "DEDUCT ITEMS," containing a fully completed and executed County supplied "Deduct Items" form.

The required form is included in this solicitation. The Bidder shall include and reflect the actual and reasonable cost of all labor, materials, transportation, taxes, overhead and profit and all other costs associated with the respective Deduct Item. The Base Bid submitted on the County supplied Bid Form shall include all Work required to complete all items identified in the solicitation, including the Work the Bidder determines to be necessary to perform the Deduct Item(s).

If the County determines that a low bid, otherwise deemed to be acceptable in all respects by the County, exceeds available funds then the County may open the sealed Deduct Items envelope of the lowest responsive and responsible Bidder and subtract items in the order that they are listed until a contract price acceptable to the County is obtained.

The County will not open a "Deduct Items" envelope of any other Bidder, or negotiate with any Bidder, other than the lowest responsive and responsible Bidder.

12. EXCEPTIONS

Conditional or qualified bids containing exceptions, unless specifically allowed in the solicitation, are subject to rejection in whole or in part as nonresponsive.

13. NON-CONFORMING TERMS AND CONDITIONS

If a bid contains alternate terms and conditions that do not conform to the terms and conditions in this solicitation, the bid will be subject to rejection for non-responsiveness. The County reserves the right to permit a Bidder to withdraw nonconforming terms and conditions from its bid prior to the County's determination of non-responsiveness.

14. BIDDERS' RESPONSIBILITY TO INVESTIGATE

Before submitting a bid, each Bidder must make all investigations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the County upon which the Bidder will rely. No pleas of ignorance of such conditions and requirements will relieve the successful Bidder from its obligation to comply in every detail with all provisions and requirements of the contract or will be accepted as a basis for any claim for any monetary consideration on the part of the successful Bidder.

15. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

Each Bidder is responsible for ascertaining the nature and locations of the Work of the solicitation, and for investigating the general and local conditions and factors which can affect the Work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. Availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stage, tides, or similar physical conditions at the site;
- d. Conformation and conditions of the ground, and
- e. Character of equipment and facilities needed before and during Work performance.

Each Bidder is responsible for investigating the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work publicly or otherwise available, as well as from the drawings and specifications made a part of this solicitation.

The locations of existing utilities, including underground utilities, which may affect the Work are indicated on the drawings or in the specifications insofar as their existence and location were known at the time of preparation of the drawings. However, nothing in these drawings or specifications shall be construed as a guarantee that such utilities are in the location indicated or that they actually exist, or that other utilities are not within the area of operations. The Bidder shall make all necessary investigations to determine the existence and locations of such utilities.

The County assumes no responsibility for any conclusions or interpretations made by the Bidder based on the information made available by the County. The County assumes no responsibility for any understanding reached or representation made concerning conditions which could affect the Work by any of its officers or agents before the execution of the contract, unless that understanding, or representation is expressly stated in the Contract.

16. INCOMPLETE DOCUMENTS

Each Bidder is responsible for having determined the accuracy and/or completeness of the solicitation documents upon which it relied in making its bid, and has an affirmative obligation to notify the Arlington County Purchasing Agent immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a Bidder downloads an electronic version of the solicitation documents, that potential Bidder is responsible for determining the accuracy and/or completeness of the electronic documents and ensuring that the electronic documents used in preparing the bid are the most current version of solicitation documents issued by the County.

If the successful Bidder proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified the Arlington County Purchasing Agent, the Bidder hereby agrees to perform any activity described in the missing or incomplete documents at Bidder's sole expense and at no additional cost to Arlington County.

17. ERRONEOUS OR INFEASIBLE REQUIREMENTS

Each Bidder is responsible for having determined the feasibility of the Work required and shall notify the County Purchasing Agent immediately upon discovery of any apparent erroneous, contradictory, incomplete, or infeasible requirements or directions contained in the Solicitation Documents. If a Bidder fails to notify the County of such conditions immediately upon discovery, the Bidder assumes all responsibility for any and all Work required to satisfy the contract requirements at no additional cost to the County and within the Time for Completion.

18. QUALIFICATION OF BIDDERS

In order to be considered responsible and responsive, Bidders shall have the experience described below, and provide the supporting documentation as instructed.

COMPANY QUALIFICATIONS:

Bidders shall have Five (5) continuous years of experience performing Public Works infrastructure projects. The experience shall be Work of similar size and scope, construction, re-construction, and maintenance.

The Bidder's obtained project experience shall consist of the following:

- Vertical construction project(s);
- Elevator new construction project(s), and
- Vertical re-construction project(s).

Bidders shall provide a list of Three (3) similar projects recently completed projects involving vertical construction, the same material, equal size, and comparable length. For each project, Bidders shall list the following information:

- Project Name
- Project description and Bidder's scope of Work within the project
- Project manager's name, telephone number and email address
- Work start date, scheduled completion, and actual completion date
- Initial contract cost and final contract cost

The experience of the contractor owner(s) may be imputed to a newly formed company/Contractor provided the Contractor owner(s) has/have at least Five (5) years of demonstrated experience of reliability and meets the criteria set forth herein.

19. STAFFING QUALIFICATIONS:

The Foreman, Superintendent, Project Manager assigned to this Work shall have, at a minimum, Five (5) years of experience in overseeing projects vertical construction project(s) and elevator new construction project(s) Bidder shall submit resume of the proposed Forman with their Bids.

In addition, the Purchasing Agent may require a Bidder to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material or goods specified herein in a satisfactory manner before the award of any contract. A Bidder may also be required to provide past history and references. Failure to qualify according to the foregoing requirements will result in bid rejection.

20. DETERMINATION OF RESPONSIBILITY

In determining "a responsible Bidder", in addition to price and other considerations, the Purchasing Agent shall consider the following:

- (i) Completion by the Bidder and any potential sub-contracts of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration;
- (ii) Participation by the Bidder and any potential sub-contractors in Apprenticeship Training Programs by state, local agency or the U.S. Department of Labor, and
- (iii) Maintenance by the Bidder and any potential sub-contractor(s) of records of compliance with applicable local, state and federal statutes, regulations.

21. ALTERNATE BID

Bidders who have other items they wish to offer in lieu of, or in addition to, what is required by this solicitation shall submit a separate bid clearly marked "ALTERNATE BID". Alternate bids will be automatically deemed nonresponsive.

22. INFORMALITIES

The County reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a bid insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the services being procured. If insufficient information is submitted for Arlington County to properly evaluate a bid or a Bidder; the County may request such additional information after bid opening, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the services being procured.

23. USE OF BRAND NAMES/"OR EQUIVALENT" BIDS

Unless identified as a "No Equivalent" item in the solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to that specific brand, make or manufacturer. The use of the brand, make or manufacturer's identification is intended to convey the general type, style, character, and quality of the article described. When a brand name is specified and followed by the phrase "or approved equal," the brand name product may be substituted if a suitable equivalent considering quality, Workmanship, economy of operation, and suitability for the intended use, is accepted by the County Purchasing Agent.

The County may accept any equivalent item(s) that it considers suitable for the intended use.

For those items not identified as "No Equivalent", and followed by the phrase "or approved equal," the County has established the following procedure for determining the equivalency of a particular item:

Bidder Submission of Proposed Equivalent Item(s):

- 1) Bidder shall submit to the County its proposed item(s) for determination of their equivalency to the Brand Name(s) specified.
- 2) Each proposed item must be described on a separate page, indicating the appropriate specification section number, product or fabrication or installation method to be replaced, and specifics of the proposed item. Attach any technical information, photographs, brochures and the relevant data listed below that supports the proposed item and will permit the County to fairly determine acceptability of the item proposed:
 - a. Reasons why the specified product cannot be provided, if applicable.
 - b. Coordination information, including a list of changes or modifications needed to other parts of the Work that will be necessary to accommodate proposed substitution.
 - c. Detailed comparison of significant qualities of proposed substitution with those of the product specified.
 - d. Product Data, including drawings and descriptions of products and fabrication and installation procedures.
 - e. Samples, where applicable or requested.
 - f. List of similar installations for completed projects with project names and addresses and names and addresses of Architects and owners, if requested.
 - g. Material test reports from a qualified testing agency indicating and interpreting test results for compliance with requirements indicated.
 - h. Statement of impact on the construction schedule. If specified product or method of construction cannot be provided within the Contract Time, include letter from

manufacturer, on manufacturer's letterhead, stating lack of availability or delays in delivery.

- i. Cost information.
 - j. Contractor's certification that proposed substitution complies with requirements in the Contract Documents and is appropriate for applications indicated.
- 3) The County will consider factors provided in the project technical specifications. such as relative costs, equivalency of features, serviceability, and the design of the item proposed.
- 4) All pages of the submission shall be marked with the name, address and contact information of the Bidder, and sent via email to the Office of the Purchasing Agent to arrive prior to the question deadline established in Section I., paragraph I. ADDITIONAL INFORMATION. E-mail transmittals will be accepted at stdiamond@arlingtonva.us.

County Review of Proposed Equivalent Item(s):

- 1) Approved item(s) will be added to the solicitation, in the form of an Addendum to the solicitation, and uploaded to Vendor Registry.
- 2) Bidders whose item(s) have not been approved will be so advised in writing simultaneously with the issuance of the Addendum.

24. NEW MATERIAL

Unless otherwise provided for in this solicitation, all goods, materials, supplies, or components offered to the County under this bid solicitation must be new, not used or reconditioned, and are not of such age or so deteriorated as to impair their usefulness or safety and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If a Bidder believes that furnishing used or reconditioned goods, materials, supplies or components will be in the County's interest, the Bidder shall notify the County Purchasing Agent in writing no later than Fifteen (15) calendar days prior to the date set for opening of bids.

The notice shall include the reasons for the request and any benefits which may accrue to the County if the Purchasing Agent authorizes the bidding of used or reconditioned goods, materials, supplies or components.

25. BID WITHDRAWAL PRIOR TO BID OPENING

The Bidder may withdraw a bid from Vendor Registry before the opening date and time. It is the sole responsibility of the Bidder to remove and/or resubmit a bid before the bid deadline.

26. WITHDRAWAL OF BID FROM CONSIDERATION AFTER BID OPENING

After the opening of a bid, a Bidder may withdraw its bid from consideration if the price of the bid is substantially lower than other bids due solely to a mistake therein, provided the bid is submitted in good faith, the mistake is a clerical mistake as opposed to a judgment mistake, and is actually due to an unintentional arithmetic error or an unintentional omission of a quantity of Work, labor or material made directly in the compilation of the bid, which unintentional error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original Work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

No partial withdrawals of bids will be permitted after the time and date set for the bid opening. The Bidder must give an electronic written notice to the Arlington County Purchasing Agent of a claim of right to withdraw a bid and provide all I Work papers, documents and other materials used in the preparation of the bid sought to be withdrawn, within Two (2) business days after the date of bid opening. A bid may also be withdrawn if the County fails to award or issue a notice of intent to award the bid within Ninety (90) days after the date fixed for opening bids.

27. METHOD OF AWARD

The County will award to the lowest priced responsive, responsible Bidder and in accordance with Provision 20 in this solicitation.

28. NOTICE OF DECISION TO AWARD

When the County has made a decision to award a contract(s), the County will post a Notice of Award or Intent to Award to [Vendor Registry](#).

29. INSURANCE REQUIREMENTS

Each Bidder must be able to demonstrate proof of the specific coverage requirements and limits applicable to this solicitation. If the Bidder is not able to do so, it may propose alternate insurance coverage for consideration by the County. Written requests for consideration of alternate coverage must be received by the County Purchasing Agent, at a minimum of, Ten (10) Working days prior to bid due date. If the County permits alternate coverage, an amendment to the Insurance Checklist will be issued prior to the time and date set for receipt of bids.

30. SURETY REQUIRED

Companies who wish to implement digital signatures during the COVID-19 public health emergency may do so, along with a **SURETY BOND SEAL ADDENDUM** which contains an electronic corporate seal and states the following:

“Due to logistical issues associated with the use of traditional seals during this COVID-19 pandemic, [Surety Company] has authorized its Attorney-in-Fact to affix [Surety Company’s] corporate seal to any bond executed on behalf of [Surety Company] by any such Attorney-in-Fact by attaching this Addendum to said bond.

To the extent this Addendum is attached to a bond that is executed on behalf of [Surety Company] by its Attorney-in-Facts, [Surety Company] hereby agrees that the seal below shall be deemed affixed to said bond to the same extent as if its raised corporate seal was physically affixed to the face of the bond.”

A. BID SURETY:

A fully completed and properly executed original Bid Bond, cashier's check, certified check, money order, or cash escrow in the amount of Five Percent (5%) of the amount of the bid made payable to the Treasurer of Arlington County shall accompany each bid. The Bid Surety will be retained until after the award to the successful Bidder. The Bid Surety of the successful Bidder will be retained until completion of the Contract or the posting of a Performance Bond, whichever occurs sooner. A bid submitted without a proper bid surety will be rejected.

B. FAILURE TO EXECUTE:

The failure of a Bidder to accept an award and file acceptable Performance and Payment Bonds within Ten (10) calendar days after Notice of Intent to Award will cause cancellation of the award and the forfeiture of the Bid Surety to the County.

C. PERFORMANCE SURETY:

A fully completed and properly executed original Performance Bond in the amount of One Hundred Percent (100%) of the amount of the bid will be required of the successful Bidder to ensure satisfactory completion of the Work. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the County.

Where applicable, the Performance Bond shall be renewable annually in the original amount through the completion of the Contract, including all warranty and guarantee periods.

D. PAYMENT BOND:

A fully completed and properly executed original Payment Bond in the amount of One Hundred Percent (100%) of the amount of the bid, will be required of the successful Bidder to ensure payment of all persons who have and fulfill contracts for the Contractor for performing labor, providing equipment, or providing material in the performance of the Work provided for in the Contract. The Bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the County.

Where applicable, the Payment Bond shall be renewable annually in the original amount for the duration of the Contract.

31. EXECUTION OF CONTRACT

Within Three (3) business days after the Contract is presented to the successful Bidder for signature, the Contractor must submit to the County Purchasing Agent the original of the executed Agreement. Within Ten (10) business days the Contractor must submit executed performance and payment bonds and required certificate of insurance.

Failure to do so shall constitute a default, and the County may award the Contract to the next lowest responsive and responsible Bidder or solicit new bids. The County may then charge against the Contractor the difference between the amount of the Contract award and the amount for which a Contract is subsequently executed, up to the total amount of the Contractor's bid security.

32. EXPENSES INCURRED IN PREPARING BID

All expenses related to a bid are the sole responsibility of the Bidder.

33. NEGOTIATIONS WITH LOWEST RESPONSIVE AND RESPONSIBLE BIDDER

If the bid by the lowest responsive and responsible Bidder exceeds available funds, the County reserves the right to negotiate with the apparent low Bidder to obtain an acceptable price. Negotiations with the apparent low Bidder may involve discussions of reduction of quantity, quality, or other cost saving mechanisms. The final negotiated contract shall be subject to final approval of the County, in its sole discretion.

34. ELECTRONIC SIGNATURE

If awarded, the Bidder may be required to accept an agreement and sign electronically through the County's e-signature solution, DocuSign.

FOLLOWING THIS PAGE IS THE AGREEMENT THAT WILL BE ENTERED INTO BETWEEN THE COUNTY AND THE CONTRACTOR. THE AGREEMENT IS PART OF THIS SOLICITATION. THIS AGREEMENT IS SUBJECT TO REVIEW BY THE COUNTY ATTORNEY PRIOR TO BEING SUBMITTED FOR CONTRACTOR'S SIGNATURE.

II. AGREEMENT AND CONTRACT TERMS AND CONDITIONS

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

CONTRACT NO. 20-DES-ITB-235-9

THIS AGREEMENT is made, on _____, 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:

- Agreement No. 20-DES-ITB-235-9 and all modifications properly incorporated into the Agreement
- Exhibit A – Arlington County Invitation to Bid No. 20-DES-ITB-235-9 including DES General Conditions and Special Conditions
- Exhibit B – Federal Transportation Administration-Third Party Clauses
- Exhibit C – Disadvantage Business Enterprises Provisions, Forms
- Exhibit D – Davis Bacon Wage Determination
- Exhibit E – Drawings, Construction Notes
- Exhibit F – WMATA Site Specific Work Plan Guidelines
- Exhibit G – WMATA Adjacent Construction Project Manual
- Exhibit H – WMATA Computer Aided Drafting (CAD) Standard Manual
- Exhibit I – WMATA Manual of Design Criteria-Revision 3
- Exhibit J – WMATA Safety and Security Certification
- Exhibit K – WMATA Safety, Environmental Manual
- Exhibit L – Virginia Department of Transportation (VDOT) Requirements
Work Zone Pedestrian, Bicycle Guidance
- Exhibit M – WMATA Special Provision-SP006-Section 02465-Helical Screw Foundation
- Exhibit N – Arlington County Construction Standards, Specifications
- Exhibit O – Arlington County Lighting Specifications
- Exhibit P – Arlington County Code, Chapter 15-Noise Control
- Exhibit Q – Arlington County Traffic Signal Specifications-Version 3
- Exhibit R – Pentagon City New Elevator Technical Specifications
- Exhibit S – WMATA Division-1 Specifications
- Exhibit T – WMATA Insurance-Minimum Insurance Limits
- Exhibit U – Geotechnical Report-Part R-1
- Exhibit V – Deed of Temporary Easement and Construction Agreement
- Exhibit W – Contractor Bid Form/Price Schedule

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 will furnish all labor, materials, and equipment for the construction of the Pentagon City second elevator (the "Project") and all other Work shown, described, and required by the Contract Documents (hereinafter "the Work").

The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer identified in Section 56, Notices, unless the Contractor is otherwise notified in writing.

The County has authorized the consultant identified below to act as the County representative for specific purposes to perform specified duties and responsibilities, and to have the rights and authorities as assigned in connection with completion of the Work in accordance with the Contract Documents until such time as the County may notify the Contractor otherwise:

4. CONTRACT TERM

The term of this Agreement will commence upon issuance of the Notice to Proceed (NTP). Final Completion shall be Five Hundred Forty (540) consecutive calendar days from Notice to Proceed.

5. TIME FOR COMPLETION

Work under this Agreement shall achieve Substantial Completion no later than Four Hundred Eighty (480) consecutive calendar days after the commencement date given in a Notice to Proceed provided by the County to the Contractor, subject to any modifications made as provided for in the Contract Documents.

The Four Hundred Eighty (480) consecutive calendar day period shall be the Period of Performance for Substantial Completion. No Work shall be deemed Substantially Complete until it meets the requirements of Substantial Completion set forth in the General Conditions.

Final Completion of the Work shall be completed no later than Sixty (60) consecutive calendar days after the date of acceptance of Substantial Completion by the County Project Officer. Work will not reach Final Completion until it meets the requirements set forth in the General Conditions.

6. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Progress Payments and Retainage and Payment Terms Sections below and at the unit prices shown in the Price Schedule (Exhibit W).

The Contractor will complete the Work for the total amount specified in Exhibit U unless such amount is modified as provided in this Agreement.

The Contract Amount includes all of the Contractor's costs and fees (profit) and is inclusive of all anticipated or known site conditions, anticipated or known materials, labor, and equipment costs, or any other costs which should reasonably have been expected by the Contract Documents.

7. PROGRESS PAYMENTS AND RETAINAGE

The County will make monthly progress payments to the Contractor upon written application by the Contractor, on the basis of a written estimate of the Work performed during the preceding calendar month as approved by the Project Officer.

Five Percent (5%) of each progress payment will be retained by the County until Final Completion and acceptance of all Work covered by the Agreement.

All material and Work covered by partial payments will become the property solely of the County at the time the partial payment is made. However, the Contractor will have the sole responsibility, care and custody for all materials and Work upon which payments have been made until Substantial Completion.

When calculating payment for materials on-site, the County shall not pay for materials which are not scheduled for incorporation into the Work within Sixty (60) days from the date of application for payment.

8. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. Each invoice must certify that the invoice submitted is a true and accurate accounting of the Work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee.

The County will pay the Contractor within Forty-Five (45) days after approval of an invoice for completed Work which is reasonable and allocable to the Contract. The number of the County Purchase Order pursuant to Work has been performed must appear on all invoices.

9. PAYMENT OF SUB-CONTRACTORS

The Contractor is obligated to take one of the two following actions within Seven (7) days after receipt of payment by the County for Work performed by any sub-contractor under this Contract:

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

The Contractor is obligated to pay interest to the sub-contractor on all amounts owed by the Contractor to the sub-contractor that remain unpaid after Seven (7) days following receipt by the Contractor of payment from the County for Work performed by the sub-contractor 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 One Percent (1%) per month.

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

The Contractor's obligation to pay an interest charge to a sub-contractor 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.

10. RELEASE AND REQUEST FOR FINAL PAYMENT

In order to receive Final Payment upon Final Completion of the Project and before Final Acceptance, the Contractor must submit to the Project Officer a signed original notarized copy of the Arlington County Release and Request for Final Payment form per the General Conditions.

11. LIQUIDATED DAMAGES

Time is of the essence under this Contract. The Work must be completed within the Time for Completion. The County and the Contractor agree that damages for failure to achieve Substantial Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that **\$3,163.00** per consecutive calendar day is in proportion to the actual loss that the County would suffer from such delay.

Therefore, the Contractor will pay the County as Liquidated Damages **\$3,163.00** per consecutive calendar day for each and every day beyond the time for Substantial Completion that the County determines Substantial Completion has not achieved.

The County and the Contractor also agree that damages for failure to achieve Final Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that **\$3,163.00** per calendar day is in proportion to the actual loss the County would suffer from such delay.

Therefore, the Contractor will pay the County as liquidated damages **\$3,163.00** per day for each and every day beyond the time for Final Completion until Final Completion is achieved.

The County will be entitled to deduct liquidated damages against any sums owed by the County to the Contractor under this Contract. The Contractor hereby waives any defense as to the validity of any liquidated damages on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

12. DAVIS-BACON PREVAILING WAGE RATES

Exhibit C to this Agreement establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the Contract.

13. 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.

14. LIEN

It is expressly agreed that after any payment has been made by the County either to the Contractor for Work done, or labor or material supplied under the Contract, the County will have a lien upon all material delivered to the site either by the Contractor, or for the Contractor, which is to be used in the performance of the Contract.

15. VALUE ENGINEERING PROPOSAL (VEP)

Unless otherwise provided, the Contractor may submit to the County a written VEP for modifying the plans, specifications, or other requirements of the Agreement covering the Work (Contract) for the purpose of reducing the total cost of the Contract without reducing the design capacity or quality of the finished product. If the VEP is accepted by the County, the net savings will be equally divided by the County and the Contractor.

Each VEP shall result in a net savings over the Contract cost without impairing essential functions and characteristics of the item(s) or of any other part of the project, including, but not limited to, service life, reliability, economy of operation, ease of maintenance, aesthetics, and safety. At least the following information shall be submitted with each VEP:

- (a) A statement that the proposal is submitted as a VEP;
- (b) A statement concerning the basis for the VEP, benefits to the County, and an itemization of the Contract items and requirements affected by the VEP;
- (c) A detailed estimate of the cost under the existing Contract and under the VEP;
- (d) Proposed specifications and recommendations as to the manner in which the VEP changes are to be accomplished; and
- (e) A statement as to the time by which a Contract Amendment adopting the VEP must be issued so as to obtain the maximum cost-effectiveness.

The County will process the VEP in the same manner as prescribed for any other proposal that would necessitate issuance of an Amendment. The County may accept a VEP in whole or part by issuing an Amendment that will identify the VEP on which it is based.

The County will not be liable to the Contractor for failure to accept or act on any VEP submitted pursuant to these requirements or for delays in the Work attributable to any VEP. Until a VEP is put into effect by an Amendment, the Contractor shall remain obligated to the terms and conditions of the existing Agreement. If an executed Amendment has not been issued by the date on which the Contractor's

proposal specifies that a decision should be made or such other date as the Contractor may subsequently have specified in writing, the VEP shall be deemed rejected.

The Amendment effecting the necessary modification of the Contract will establish the net savings agreed on, provide for adjustment of the contract prices, and indicate the net savings. The Contractor shall absorb all costs incurred in preparing a VEP.

Reasonably incurred costs for reviewing and administering a VEP will be borne by the County. The County may establish any reasonable conditions it deems appropriate for consideration, approval, and implementation of the VEP. The Contractor's Fifty Percent (50%) share of the net savings shall constitute full compensation to it, including by way of illustration and not limitation compensation for time, for effecting all changes pursuant to the Amendment.

Unless specifically provided for in the Amendment authorizing the VEP, acceptance of the VEP and performance of the Work thereunder will not change the Contract Term limit.

The County may adopt a VEP for general use in contracts administered by the County if it determines that the VEP is suitable for application to other contracts. A VEP identical with or similar to a previously submitted VEP will be eligible for consideration and compensation under these provisions if it has not been previously adopted for general application to other contracts administered by the County. When a VEP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VEP was submitted prior to the date of adoption of the VEP.

If a VEP is based on or is similar to a change in the plans, specifications, or special provisions adopted by the County prior to submission of the VEP, as determined by the County, the County will not accept the VEP.

The County will be the sole judge of the acceptability of a VEP. The requirements herein apply to each VEP initiated, developed, and identified as such by the Contractor at the time of its submission to the County. However, nothing herein shall be construed as requiring the County to consider or approve a VEP, and the decision to enter into an Amendment to the contract to accommodate a VEP shall be in the County's sole discretion.

Subject to the provisions contained herein, the County, or any other public agency with the County's permission, shall have the right to use all or part of an accepted VEP without obligation or compensation of any kind to the Contractor.

If a VEP is accepted by the County, any provisions herein that pertain to the adjustment of contract unit prices attributable to alterations of contract quantities will not apply to the items adjusted or deleted as a result of putting the VEP into effect by an Amendment.

16. 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 sub-contractor or vendor.

17. 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.

18. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must provide the following:

- (i) 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 sub-contractor or vendor.

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

19. SEXUAL HARASSMENT POLICY

If the Contractor employs more than Five (5) employees the Contractor shall do the following:

- (i) Provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees

- that are required to complete sexual harassment training provided by the Department of Human Resource Management, and
- (ii) Post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

20. PROJECT STAFF

The County has the right to reasonably reject staff or sub-contractors whom the Contractor assigns to the Project. The Contractor must then provide replacement staff or sub-contractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees and its sub-contractors is the sole responsibility of the Contractor.

21. FAILURE TO DELIVER

If the Contractor fails to deliver goods or services in accordance with the Contract terms and conditions, the County, after notice to the Contractor, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor. However, if public necessity requires the use of nonconforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

22. UNSATISFACTORY WORK

If any of the Work done, or material, goods, or equipment provided by the Contractor, is unsatisfactory to the County the Contractor must, upon notice from the County, immediately remove at the Contractor's expense such unsatisfactory Work, material, goods, or equipment and replace the same with Work, material, goods, or equipment satisfactory to the County. If the Contractor fails to do so after Fifteen (15) calendar days the County shall have the right to remove or replace the rejected Work, material, goods, or equipment at the expense of the Contractor and offset the expense and administrative costs against any sums owed to the Contractor.

This provision applies during the Contract term and during any warranty or guarantee period. At the Project Officer's discretion, rather than correction or replacement of the Work, an appropriate adjustment to the Contract Amount may be made.

23. 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 Fifteen (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 Thirty (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 sub-contractors. 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 Fifteen (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.

24. INDEMNIFICATION

The Contractor covenants for itself, its employees and its sub-contractors 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, vendors, delivery drivers and/or sub-contractors, 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.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor’s discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials (“Materials”) related in any way to contractor’s operations herein.

25. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any sub-contractor 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 sub-contractors 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 sub-contractors 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.

26. 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 sub-contractors 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 sub-contractors or third parties related to this Contract.

27. OWNERSHIP AND RETURN OF RECORDS

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its sub-contractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this Section as part of any contract or agreement related to this Contract into which it enters with sub-contractors or other third parties. The provisions of this Section will survive any termination or cancellation of this Contract.

28. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and sub-contractors 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 sub-contractors are informed of and abide by this requirement.

29. 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 bid was made without collusion or fraud; that it has not offered or received any kick-backs or inducements from any other offeror, supplier, manufacturer or sub-contractor; 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.

30. 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.

31. 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.

32. 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.

33. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or sub-contractors 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.

34. 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.

35. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this Section.

Whenever possible, proposals must comply with the following guidelines:

- Printed double-sided on at least Thirty Percent (30%) recycled-content and/or tree-free paper

- Recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- Avoid use of plastic covers or dividers
- Avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

36. AUDIT

The Contractor must provide any requested documents to the County for examination within Fifteen (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 Thirty (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 (5) years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least Thirty (30) days' notice and must not dispose of the documents if the County objects.

37. 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.

38. AMENDMENTS

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

39. 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.

40. 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 Sixty (60) days after the final payment.

The time limit for a final written decision by the County Manager is Thirty (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.

41. 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.

42. ARBITRATION

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

43. NON-EXCLUSIVITY 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.

44. 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.

45. 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.

52. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

53. 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.**

54. 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.

55. 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.

56. NOTICES

Unless otherwise provided in writing, all legal notices and other formal 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:

_____, **Project Officer**

AND

**Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard
Suite 500
Arlington, Virginia 22201
Telephone: 703-228-3294**

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

**County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201**

57. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

58. INSURANCE, PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required insurance coverage and payment and performance bonds as set forth in the Invitation to Bid through completion of the Contract, including all warranty and guarantee periods.

59. DRPT CONTRACT PROVISIONS

a. The Contractor, their agents and employees shall comply with all covenants and provisions of the Virginia Department of Rail and Public Transportation (DRPT) Master Agreement for the Use of Commonwealth Transportation Funds with the County Board of Arlington County VA dated July 1, 2020, and shall be made expressly a part of any subcontracts executed by the Contractor and shall be binding on all subcontractors, vendors, their agents and employees.

b. The Contractor shall indemnify, defend, and hold harmless the Commonwealth of Virginia, the Virginia Department of Transportation (VDOT), and DRPT, and their officers, agents, and

employees of these entities from and against any all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any act or omission by the Contractor, its subcontractors, agent or employees in the performance of the Work.

c. The obligations of this Section shall survive the termination or completion of the Contract.

d. The Contractor shall name the Northern Virginia Transportation Commission (NVTC) and its Bond Trustee, the Commonwealth of Virginia, the Commonwealth Transportation Board (CTB), DRPT, VDOT and their officers, employees and agents as additional insureds on any insurance policy issued for the Work to be performed, and present satisfactory evidence of insurance coverage before commencing with any Work, so that they are protected from and against any losses actually suffered or incurred, except for losses to the extent caused the negligence or willful misconduct of such entity or person, from third party claims that are directly related to or arise out of: (a) any failure by the Contractor to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this Project, or any breach by the Contractor of its representations or warranties in this Project; (b) any actual or willful misconduct or negligence of Contractor its employees or agents in direct connection with the Work; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trademarked or service-marked materials, equipment devices or processes, copyright rights or inventions by the Contractor in direct connection with the Work; (d) inverse condemnation, trespass, nuisance or similar taking of harm to real property committed or caused by the Contractor, its employees or agents in direct connection with the work; or (e) any assumed liabilities.

e. The Contractor shall indemnify and hold harmless, NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT and their officers, employees and agents from the same losses.

59. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) PROVISIONS AND REQUIREMENTS

This Contract is subject to certain provisions required by the U.S. Department of Transportation as set forth in FTA Circular 4220.1.F, which are attached as Exhibit A. Anything to the contrary notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause the County to be in violation of the FTA terms and conditions.

The Contractor agrees to include this clause and Exhibit A in each subcontract financed in whole or in part with the federal assistance provided by the FTA. Contractor further agrees that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

60. MATERIAL CHANGES

The Contractor shall notify Purchasing Agent within seven days of any material changes in its operation that relate to any matter attested regarding certifications on its bid form.

61. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

CONTRACTOR

**AUTHORIZED
SIGNATURE: _____**

**AUTHORIZED
SIGNATURE: _____**

**NAME: Shirley Diamond
TITLE: Procurement Officer**

**NAME: _____
TITLE: _____**

DATE: _____

DATE: _____

**III. ARLINGTON COUNTY CONSTRUCTION GENERAL CONDITIONS
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A. INTRODUCTION TO TERMS

- 1) The term "Agreement" means the completed and signed Form of Contract Agreement.
- 2) The term "Award Date" means the date of execution of the Agreement by the Purchasing Agent.
- 3) The term "Business Day" shall refer to any day that the County is open for general business.
- 4) The term "Calendar Day" means any day of twenty-four hours measured from midnight to the next midnight. Included are weekends and holidays. When the term "Day" is used it shall be assumed to refer to a Calendar Day unless otherwise specified.
- 5) The term "Change Order" means a written order to the Contractor, signed by the Project Officer and the Contractor, which authorizes a change in the Work, and/or adjustment to the Contract Amount and/or an adjustment to the Time for Completion. A Change Order once signed by all the parties is incorporated into and becomes part of the Contract.
- 6) The term "Commencement Date" means the date on which the Time for Completion will commence for the Contractor to begin to perform his obligations under the Contract Documents as provided in the Notice to Proceed.
- 7) The term "Construction Change Directive" means a written order issued by the County directing a change in the Work prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both.
- 8) The term "Contract Documents" means the Agreement and all the documents and Exhibits and/or Attachments identified therein which shall include the Drawings and the Specifications, and all modifications including amendments and subsequent Change Orders thereto properly incorporated in the Contract.
- 9) The terms "County" and "Contractor" shall mean the respective parties to the Contract. They shall be treated throughout the Contract Documents as though each were of the singular number and masculine gender. Only one Contractor is recognized as a party to this Contract.
- 10) The term "Critical Path Method or CPM" means a step-by-step project management technique for process planning that defines critical and non-critical tasks with the goal of preventing time-frame problems and process bottlenecks. An activity on the critical path cannot be started until its predecessor activity has been completed. is delayed then the entire project is delayed.

- 11) The term "Delay" means an event or condition that results in a Work activity starting or being completed later than originally planned.
- 12) The term "Drawings" means all drawings pertaining to the Contract, including the Contract Drawings and Construction Notes which show and describe the locations, character, dimensions, and details of the Work to be performed under the contract.
- 13) The term "Field Order" is a written order to the Contractor, authorized by the Project Officer, which acknowledges a change in the Work that does not adjust the Contract Amount and does not adjust the Time for Completion.
- 14) The term "Final Acceptance" shall mean the date on which the County issues the final payment for the Work.
- 15) The term "Final Completion" shall mean the condition when the County agrees that all the Work has been fully completed in accordance with the Contract Documents and is acceptable. The date of the Final Completion of the Work under the Contract is the date on which Final Completion is accomplished.
- 16) The term "Float" shall represent the amount of time that a task in a project network or sequence can be delayed without causing a delay to: subsequent tasks ("free float") or project completion date ("total float"). Float shall belong to the County and shall be used for the successful completion of the Project within the Time for Completion.
- 17) The term "Limits of Disturbance (LOD)" shall represent the area within which land disturbing activities take place. Land disturbing activities include all actions that expose bare soil during construction.
- 18) The term "Limits of Work (LOW)" shall represent the area within which construction activities take place, including but not limited to the Limits of Disturbance area.
- 19) The term "Notice to Proceed" shall mean a written notice issued by the County to the Contractor stating the Commencement Date. The Notice to Proceed will specify the Time for Completion of the Contract.
- 20) The term "Project" means the entire proposed construction to be executed as stipulated in the Contract Documents
- 21) The term "Project Officer" means the County Project Officer assigned by the Director of the County Department responsible for the project, or the Director's designee. When a designee to act on behalf of the Project Officer is used by the County, the name of the designee and the duties and authority of such designee will be identified in the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project. The designee

may be a professional architect or engineer or other person employed by the County to perform construction services administration, design services, or project oversight.

- 22) The term "Punch List" means unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect use of the Project, and which are capable of being completed within the time specified for Final Completion after Substantial Completion has been achieved.
- 23) The term "Request for Information" (RFI) means a request originated by the Contractor requesting clarification or additional information from the Project Officer and/or Architect/Engineer concerning information in the construction documents where the Contractor believes there is insufficient information or a conflict in the documents. RFI's shall be submitted by the Contractor sufficiently in advance of the Work to provide time for assessment and response without delay of the Work. Responses to RFI's shall not be construed as authorization for a Change Order.
- 24) The term "Schedule of Values" means a listing of the Contractor's total contract value by Construction Specifications Institute (CSI) divisions, including Division 1, Contractor's General Conditions.
- 25) The term "Site" refers to that portion of the property on which the Work is to be performed or which has otherwise been set aside for use by the Contractor.
- 26) The terms "Special Conditions" mean the written statements modifying or supplementing the Technical Specifications or General Conditions for requirements or conditions peculiar to the Contract.
- 27) The term "Specifications" means and shall include the Technical Specifications, the Special Conditions and all written agreements and instructions pertaining to the performance of the Work.
- 28) When used, the term "Stipulated Price Item" means and includes an item of Work, unanticipated or of unknown quantity at the time of issuance of the solicitation for a Bid and determined to be executed, based on the actual field conditions during the progress of Work under the Contract. The Unit Price for the "Stipulated Price Item", as identified in the "Stipulated Price Items" section of the Bid Form, is predetermined by the County as the current reasonably Workable rate for the Item inclusive of all necessary labor, equipment, materials, overheads (provision and installation), and the contractor's profit.
- 29) The term "Sub-contractor", shall include only those having a direct contract with the Contractor, and it shall include those who furnish material Worked to a

special design according to the plans and specifications for this Work but shall not include those who merely furnish material not so Worked.

- 30) The term "Substantial Completion" shall mean the condition when the County agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the County for the purposes for which it was intended. The date of Substantial Completion of the Work under the Contract is the milestone date on which Substantial Completion condition is accomplished.
- 31) The term "Technical Specifications" means that part of the Contract Documents that describe the quality of materials, method of installation, standard of Workmanship, and the administrative and procedural requirements for the performance of the Work under the contract.
- 32) The term "Time for Completion" shall mean the time period set forth in the Agreement.
- 33) The term "Work" shall mean the services performed under this Contract including, but not limited to, furnishing labor, and furnishing and installing materials and equipment required to complete the Project specified in the Contract Documents.

B. DRAWINGS, SPECIFICATIONS, RELATED DATA AND RECORDS KEEPING

1. INTENT OF THE DRAWINGS AND SPECIFICATIONS

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract with all parts in Working order, and all connections properly made.
- b. The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications. Any additional drawings and or other instructions deemed necessary by the Project Officer or designee will be furnished to the Contractor when required for the Work and shall be incorporated into the Contract Documents.
- c. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that direction, requirements, permission, or review of Project Officer or designee is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install."
- d. Unless otherwise specifically noted, the word "similar" where it occurs in the Drawings, shall be interpreted in its general sense and not as meaning identical, and all details shall be Worked out in relation to their locations and their connection with other parts of the Work.
- e. Materials or Work described in words which, so applied, have a well-known technical, construction industry, or trade meaning, shall be held to refer to the recognized technical or trade meaning.
- f. The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all documents. In case of conflicting variance between the Contract Documents, the Order of Precedence stated in the Agreement shall govern. Figured dimensions on the plans shall be used; drawings shall not be scaled.
- g. Unless otherwise specifically noted, construction tolerances shall be to the numerical precision presented in the Contract Drawings.

2. DISCREPANCIES AND ERRORS

If the Contractor discovers any discrepancies between the Drawings and Specifications and the site conditions or any errors or omissions in the Drawings or Specifications, the Contractor shall at once, but in no event later than three calendar days after discovery of

the discrepancy or error, report them in writing to the Project Officer or designee. If the Contractor proceeds with any Work that may be affected by such discrepancies, errors, or omissions, after their discovery, but before a clarification is provided, such Work shall be at the Contractor's risk and expense. Issues affecting critical path activities shall be made known to the Project Officer or designee within one business day after discovery.

3. DIFFERING SITE CONDITIONS

The Contractor shall immediately, and before the conditions are further disturbed, give notice to the Project Officer of subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site. Such notice shall be followed by a written notice provided within 48 hours of discovery.

The Project Officer will investigate the site conditions promptly after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the Work, or the time required for performing any part of the Work under the contract, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.

No request by the Contractor for an adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any Work that may be affected by such differing site conditions before giving notice to the Project Officer as set forth herein, such Work shall be at the Contractor's sole risk and expense.

No request by the Contractor for an adjustment to the contract for differing site conditions shall be allowed if made after Final Payment under the Contract.

4. COPIES FURNISHED

Except as provided for otherwise, copies of the Drawings and Specifications reasonably necessary for the execution of the Work will be furnished to the Contractor. One electronic copy of the Contract Drawings and Specifications will be provided by the Project Officer or designee to the Contractor.

5. USE OF CADD FILES

The Contractor may request Electronic CADD files related to the Work or the Project. The CADD files will be provided by the County only if the Contractor completes the Arlington County Electronic CADD Drawing Release Form, which form is then incorporated by reference into this Contract. Use of CADD files is at the Contractor's own risk and in no way alleviates Contractor's responsibility for the Work to conform to the Plans and Specifications.

6. **DOCUMENTS ON THE JOBSITE**

The Contractor shall keep on the site of the Project a copy of the Drawings and Specifications updated to include all authorized revisions and RFI responses and shall at all times give the County and its authorized representatives access thereto. The Contractor shall mark up the Drawings on a daily basis in red. The As-Built Drawings shall be submitted to the County at Substantial Completion as the Final As-Built Drawings.

7. **OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

All Drawings and Specifications and copies thereof furnished by the County are the property of the County and shall not be used on other projects. All copies of the Drawings and Specifications except the signed Contract sets shall be returned to the Project Officer or designee at Final Completion.

8. **SUBMITTALS**

- a. The term "submittals", as used herein, shall include fabrications, erection and setting drawings, manufacturers' standard drawings, schedules, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, and other descriptive data pertaining to the materials and equipment as required to demonstrate compliance with the Contract requirements.
- b. Unless other specified in the Specifications the Contractor shall submit for the review of the Project Officer or designee a listing of all submittals required by the Specifications or requested by the Project Officer or designee within fifteen (15) calendar days after receipt of the Notice to Proceed. This listing shall include due dates for each required submittal, coordinated with the project schedule such that adequate time is allotted for review and potential resubmittals, fabrication and delivery without causing delay. The Contractor bears all risk for delay associated with submittals not received in a timely manner.
- c. Submittals shall be submitted in such number of copies as established in the Specifications. Each submission shall be accompanied by a letter of transmittal, listing the contents of the submission and identifying each item by reference to specification section or drawing. All submittals shall be clearly labeled with the name of the project and such information as may be necessary to enable their complete review by the Project Officer or designee. Catalog plates and other similar material that cannot be so labeled conveniently shall be bound in suitable covers bearing the identifying data.
- d. Submittals shall be accompanied by all required certifications and other such supporting material and shall be submitted in sequence or groups that all related items can be checked together. When submittals cannot be checked because a submission is not complete, or because

submittals on related items have not been received by the Project Officer or designee, then such submittals will be returned without action or will be held, not checked, until the missing material is received. Incomplete or defective submittals shall not be considered to have been submitted. Failure to deliver submittals within the specified time will not be grounds for additional time or compensation.

- e. Submittals shall have been reviewed by the Contractor and coordinated with all other related or affected Work before they are submitted for review and acceptance and shall bear the Contractor's certification that the Contractor has checked and approved them as complying with all relevant information in the Contract Documents. Submittals submitted without such certification and coordination will be returned to the Contractor without action and will not be considered as a formal submission.
- f. If shop drawings show variations from the Drawings and Specifications because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in the Contractor's letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment; otherwise the Contractor will not be relieved of the responsibility for executing the Work in accordance with the Drawings and Specifications even though shop drawings have been accepted.
- g. The Project Officer or designee shall review the shop drawings with reasonable promptness. Review and/or acceptance of shop drawings will be general for conformance with the design concept of the Project and compliance with the information given in the Contract Documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Acceptance shall not be construed as permitting any departure from Contract requirements, as authorization of any increase in price nor as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist. Review is not intended to relieve the contractor of full responsibility for the accuracy and completeness of the plans and calculations, or for the complete compliance with the contract documents. Contractor is solely responsible for the means and methods of the construction, including temporary items proposed for use.

9. **SAMPLES**

The Contractor shall submit to the Project Officer or designee, all samples required by the Specifications or requested by the Project Officer or designee. Samples shall be submitted in single units only, unless the Contractor desires additional units for the Contractor's own use. Each sample shall bear a label indicating what the material represented, the name of the producer and the title of the Project. Acceptance of a sample shall be only for conformance with the design concept of the Project and compliance with the information given in

the Contract Documents, and only for the characteristics or use named in such acceptance. Such acceptance shall not be construed to change or modify any Contract requirements or the Contract Price. Materials and equipment incorporated in the Work shall match the accepted samples. The Contractor shall be responsible for researching the availability of the specified product in the dimensions and colors specified at no additional cost to the County. Failure of the Contractor to identify specified products that are not commercially produced within the time required for submittal transmittal in order to meet the project schedule shall not be entitled to additional time or compensation.

10. **TESTS**

Any specified tests of materials and finished articles shall be made by bureaus, laboratories or agencies approved by the Project Officer or designee and the certified reports of such tests shall be submitted to the Project Officer or designee. All tests shall be in compliance with the Specifications. All costs in connection with the testing and test failures shall be borne by the Contractor. Failure of any material to pass the specified tests or any test performed by the Project Officer or designee, will be sufficient cause for refusal to consider, under this Contract, any further materials of the same brand or make of that material. Samples of various materials delivered on the site or in place may be taken by the Project Officer or designee for testing. Samples failing to meet the Contract requirements will automatically void previous acceptance of the items tested. The Contractor will not be compensated for additional time and/or cost incurred in finding an acceptable replacement or the removal and replacement of the defective item.

11. **MATERIALS AND EQUIPMENT LIST**

- a. Unless otherwise specified in the Specifications, within thirty (30) days of the Commencement Date the Contractor shall submit to the Project Officer or designee a complete list of materials and equipment proposed for use in connection with the Project. Partial lists submitted from time to time will not be considered unless specifically approved by the Project Officer or designee.
- b. After any material or piece of equipment has been approved through submittal process, no change in brand or make will be permitted unless satisfactory written evidence is presented to prove that the manufacturer cannot make scheduled delivery of the accepted material, or that material delivered has been rejected and the substitution of a suitable material is an urgent necessity, or that other conditions have become apparent which indicate that acceptance of such other material is in the best interest of the County. The Contractor is solely responsible for the cost and time required to obtain and install a suitable replacement.

12. **STANDARDS, SUBSTITUTIONS**

- a. Any material specified by reference to the number, symbol or title of a specific standard, such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision of the standards or specification and any amendment or supplement, except as limited to type, class or grade, or as modified in such reference. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.
- b. Reference in the Specifications or on the Drawings to any article, device, product, material, fixture, form or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as eliminating from competition other products of equal or better quality by other approved manufacturers. Otherwise, applications for acceptance of substitutions for the specified items will be considered only upon request of the Contractor, not of individuals, trades or suppliers, and only for a specific purpose; no blanket acceptance will be granted. No acceptance of a substitution shall be valid unless it is in written form and signed by the Project Officer or designee.
- c. If any proposed substitution will affect a correlated function, adjacent construction or the Work of other contractors, then the necessary changes and modifications to the affected Work shall be considered as an essential part of the proposed substitution, to be accomplished by the Contractor without additional expense to the County or an extension of the contract time, if and when accepted. Detail drawings and other information necessary to show and explain the proposed modifications shall be submitted with the request for acceptance of the substitution.

13. **SURVEYS AND CONTROLS**

Unless otherwise specified, the Contractor shall establish all baselines for the location of the principal component parts of the Work, establish a suitable number of benchmarks adjacent to the Work, and develop all detail surveys necessary for construction by a professional land surveyor licensed in the Commonwealth of Virginia. The Contractor shall carefully preserve benchmarks, reference points and stakes, and in the case of destruction thereof by the Contractor or due to the Contractor's negligence or the negligence of any subcontractor or supplier, the Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the loss or disturbance of such benchmarks, reference points and stakes. The Contractor shall within 30 days of NTP perform a full site survey to verify all control points shown on the drawings against existing conditions

within the site limits. Any discrepancies found during this effort shall be made known immediately to the Project Officer. Failure to perform this survey and provide proof and acceptance of Project datum, control points, and existing benchmarks will not give rise to any extensions to contract time or amount. The cost of all necessary surveying services shall be considered incidental to the Work and, unless otherwise specified, shall be included in the cost of the Work.

14. **AS-BUILT DRAWINGS**

As-Built Drawings shall be the responsibility of the Contractor. The Contractor shall maintain and mark up one set of prints of the applicable Contract Drawings to portray as-built construction. The prints shall be neatly and clearly marked in red to show all variations between the Work actually provided and that indicated on the Contract Drawings, and all utilities encountered in the Work. All drafting shall conform to good drafting practice and shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. These drawings shall be marked promptly upon any approved change to the Work or discovery of any undocumented utility or obstruction and shall be submitted to the Project Officer or designee in sufficient time to be approved no later than thirty (30) calendar days after the Substantial Completion Date. The final As-Built Drawings approved by the Project Officer or designee shall be submitted in paper copy and .pdf format electronic files prior to Final Completion. Unless otherwise required under the Contract Documents, incorporation of red-lined changes into CADD format shall be the responsibility of the Architect and/or Engineer of Record, with the exception being any documents prepared by the Contractor in CADD, the record version of which shall also be provided to the County in CADD format by the Contractor. Final payments will be held until the complete set of red-line drawings are submitted to and approved by the Project Officer.

15. **WEB BASED RECORDS DOCUMENTATION**

Unless instructed otherwise, the Contractor shall use the web based construction management tool, e-Builder for, but not limited to, submittals, record keeping and document storage of all construction files including, invoices, pay applications, RFIs, approved shop drawings, change orders, construction progress meeting minutes, warranties, equipment specifications and brochures, record drawings, automated alerts and reminders for all functions, and Operation and Maintenance (O&M) Manuals.

C. COUNTY, COUNTY PROJECT OFFICER, AND CONTRACTOR RELATIONS

1. STATUS OF COUNTY PROJECT OFFICER OR DESIGNEE

The Project Officer or designee shall be the County's representative during the construction period. All Contractor instructions or requests shall be issued from or submitted through the Project Officer or designee. The Project Officer or designee shall have authority to suspend the Work whenever such suspension may be necessary in the responsible opinion of the Project Officer or designee to ensure the proper execution of the Contract. The Project Officer or designee shall also have authority to reject all Work and materials that do not conform to the Contract and to decide questions that arise in the execution of the Work. The County Project Officer or designee will, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

2. LIMITATION ON COUNTY'S RESPONSIBILITIES

The County shall not supervise, direct, or have control or authority over, nor be responsible for: The Contractor's means, methods, techniques, sequences or procedures of construction; the safety precautions and programs related to safety, or the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3. DISPUTES

- a. All disputes or claims arising under this Contract or its interpretation, whether involving law or fact or both, or extra Work, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer or designee as set forth in these General Conditions. Such claims must set forth in detail the amount of the claim and shall state the facts surrounding it in sufficient detail to identify it together with its character and scope.
- b. Claims denied by the Project Officer shall be processed in accordance with the procedures outlined in Sections 7-107, Contractual Disputes and 7-108, Legal Actions of the Arlington County Purchasing Resolution and the Dispute Resolution paragraph in the Agreement.
- c. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer or designee, County Manager, County Board, or court, except by prior written approval of the Project Officer or designee.

4. INSPECTION OF WORK

The Project Officer or designee and representatives of any public authority having jurisdiction shall, at all times, have access to the Work while in progress. The Contractor shall provide suitable facilities for such access and for proper observation of the Work and shall conduct all special tests required by the Specifications, the Project Officer or designee's instructions, and any laws, ordinances or the regulations of any public authority applicable to the Work. Nothing in this section shall abrogate or otherwise limits or relieves the Contractor's independent duty to inspect the Work.

5. **INSPECTION OF MATERIALS**

All articles, materials, and supplies purchased by the Contractor for the Work are subject to inspection upon delivery to the site and during manufacturing or fabrication. The County reserves the right to return for full credit, at the risk and expense of the Contractor, all or part of the articles, materials, or supplies furnished contrary to Specifications and instructions. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect materials.

6. **EXAMINATION OF COMPLETED WORK**

If the Project Officer or designee requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, then the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as extra Work, but should the Work so exposed or examined prove unacceptable, then the uncovering, removing and replacing shall be at the Contractor's expense.

7. **RIGHT TO SUSPEND WORK**

The County shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the County may deem necessary or desirable. Any such suspension shall be in writing to the Contractor and the Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the County. No such suspension of the Work shall be the basis for a claim by the Contractor for any increase in the Contract Amount provided that the suspension is for a reasonable time under the circumstances then existing. If the suspension of Work is caused by the County's belief that non-conforming Work is being installed, and subsequent investigation proves that the Work was non-conforming, the Contractor shall not be awarded additional time or costs.

8. **RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 10-day period after receipt of written notice from the County or such shorter time as may be reasonable under the circumstances, to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including the County's expenses, and any additional architect or engineering costs necessary by Contractor's default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County upon demand.

9. **CONTRACTOR MANAGEMENT PERSONNEL**

The Contractor shall keep a competent superintendent and any necessary assistants on the Site at all times during progress of the Work and such persons shall be satisfactory to the Project Officer or designee. The superintendent or project manager shall not be changed except with the Project Officer or designee's consent. If the Project Officer determines that the superintendent or project manager is no longer satisfactory, then the superintendent or project manager must be replaced within 15 days of the Project Officer's written notice with a replacement superintendent or project manager with equal or superior qualifications and subject to Project Officer approval.

The superintendent and project manager shall represent the Contractor and all directions given to such persons shall be as binding as if given to the Contractor. The Contractor shall at all times enforce strict discipline and good order among the Workers performing under this Contract and shall not employ on the Work any person not reasonably proficient in the Work assigned. Persons permitted to perform Work under Contractor, or any sub-contractor, or sub-sub-contractor, shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by the County. Any person not complying with all such requirements shall be immediately removed from the Site.

The Contractor shall have a qualified and experienced person who can clearly communicate technical matters regarding the subject project. This person shall be available via phone to respond to emergency situations on the project 24 hours a day.

10. **DRUG-FREE POLICY**

The Contractor is responsible for ensuring that the Site remains a drug-free site. Contractor will require that employees undergo random drug/alcohol screening on a quarterly interval. Any employee who fails the test must be removed from the Site immediately. Random screening shall be performed by a third party licensed to do so in the Commonwealth of Virginia. The Contractor shall provide its random testing policy and schedule to the Project Officer within 30 days of Notice to Proceed. The Contractor will include this provision in every subcontract relating to this Contract. Any infraction by an employee of the Drug-Free policy shall be reported to the Project Officer within 24 hours.

11. **LANDS BY COUNTY**

The County shall provide access to the lands shown on the Drawings upon which the Work under the Contract is to be performed and to be used for rights of way and for access. In case all the lands, rights-of-way or easements have not been obtained as herein contemplated before construction begins, then the Contractor shall begin its Work on such lands and rights-of-way that the County has acquired access to. No additional time or compensation shall be awarded to the Contractor for modifying Work location and sequence provided other locations are available for Work.

Contractor shall verify the acquisition of all off-site easements and Rights-of-Way prior to the start of off-site construction. Restore all off-site easements to the conditions existing prior to the start of Work.

The Contractor shall confine all activities at the site associated with construction activities, to include storage of equipment and or materials, access to the Work, form Work, etc. to within the designated Limits of Disturbance (LOD).

12. LANDS BY CONTRACTOR

If the Contractor requires additional land or lands for temporary construction facilities and for storage of materials and equipment other than the areas available on the site or right-of-way, or as otherwise furnished by the County, then the Contractor shall provide such other lands and access thereto entirely at the Contractor's own expense and without liability to the County. The Contractor shall not enter upon private property for any purpose without prior written permission of all of the persons and entities who own the property. The Contractor shall provide copies of all agreements to the County and shall include language in the agreement indemnifying and holding the County harmless for any damages, repairs, restoration or fees associated with the use of the property. Upon termination of the agreement, the Contractor shall provide to the County a fully executed release from the property owner.

13. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall continuously maintain and protect all of its Work from damage and shall protect the County's property from damage or loss arising in connection with this Contract until Substantial Completion. After Substantial Completion, the maintenance or protection of any incomplete or remedial Work identified on the punch list that requires maintenance or protection in order to allow for the final completion and acceptance of such Work shall be the responsibility of the Contractor until Final Completion. The Contractor shall make good any such damage or loss, except such as may be caused by agents or employees of the County. Failure to adequately protect the Work shall not be grounds for additional compensation for any maintenance and/or repairs to such Work.
- b. The Contractor shall not place upon the Work, or any part thereof, any loads which are not consistent with the design strength of that portion of the Work.
- c. The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution to prevent damage to pipes, conduits and other underground structures, curbs, pavements, etc., except those to be removed or abandoned in place and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise

referenced their location and shall not remove them until directed. Any damage which occurs by reason of the operations under this Contract, whether shown or not on the approved construction plans, shall be completely repaired or replaced to the County's satisfaction by the Contractor at the Contractor's expense. The Contractor shall be responsible for all damages caused by their construction activities.

- d. Prior to commencing construction activity at the Site, the Contractor shall videotape the Site and an additional Fifty (50) feet outside the perimeter of the Site. Contractor shall submit a copy of high-resolution digital recording on a DVD or flash drive to the County. The recording shall be stable, continuous, and contain all items within the limits of Work. Submission of the DVD to the County shall be a condition precedent to any obligation of the County to consider an Application for Payment. The DVD shall be the property of the County, and the County shall be permitted to reproduce such DVD's and use the same for any purpose without limitation or claim of ownership or compensation from any party. Contractor shall incorporate the cost of the preconstruction survey in the bid amount or the unit prices of the bid items, as applicable. No additional payment will be made by the County.
- e. The Contractor shall shore, brace, underpin, secure, and protect, as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site that may be affected in any way by excavations or other operations connected with the Work required under this Contract. The Contractor shall be responsible for giving any and all required notices to owners or occupants of any adjoining or adjacent property or other relevant parties before commencement of any Work. Contractor shall provide all engineering (signed and sealed) for items listed in this section per the Specifications. The Contractor shall indemnify and hold the County harmless from any damages on account of settlements or loss of all damages for which the County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- f. In an emergency affecting the safety of life or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Project Officer or designee, or the County, is hereby permitted to act, at the Contractor's discretion, to prevent such threatened loss or injury, and the Contractor shall so act without appeal, if so instructed or authorized.
- g. The Contractor shall contact "Miss Utility" at 811 for marking the locations of existing underground utilities (i.e. Water, sewer, gas, telephone, electric, and cable tv) at least 72 hours prior to any excavation or construction. The Contractor is required to identify and

protect all other utility lines found in the Work site area belonging to other owners that are not members of "Miss Utility". Private water and/or sewer laterals will not be marked by "Miss Utility" or the County. The Contractor shall locate and protect these services during construction.

14. SEPARATE CONTRACTS

- a. The County reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractor's reasonable access to the Project including storage of their materials and the execution of their Work and shall properly connect and coordinate its Work with the Work of other such contractors.
- b. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other contractor, the Contractor shall inspect and promptly report to the Project Officer or designee any defects in such Work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper for the reception of the Contractor's Work, except as to defects which may develop in other contractor's Work after its execution.
- c. If the Contractor or any of the Contractor's sub-contractors or employees cause loss or damage to any separate contractor on the Work, the Contractor agrees to settle or make every effort to settle or compromise with such separate contractor. If such separate contractor sues the County on account of any loss so sustained, the County shall notify the Contractor, who shall indemnify and save the County harmless against any expense, claim or judgment arising therefrom, including reasonable attorney's fees.
- d. In case of a dispute arising between two or more separate contractors engaged on adjacent Work as to the respective rights of each under their respective contracts, the Project Officer shall determine the rights of the parties.

15. SUB-CONTRACTS

- a. Unless otherwise specified, the Contractor shall, within fifteen (15) calendar days after the execution of the Contract by the County, provide to the Project Officer or designee, in writing, the names of all sub-contractors proposed for the principal parts of the Work and for such others as requested by the Project Officer or designee, and shall not employ any sub-contractors that the Project Officer or designee may object to as incompetent or unfit after an appropriate determination of the sub-contractor's ability. No proposed sub-contractor will be disapproved except for cause.

- b. The Contractor shall make no substitutions for any sub-contractor previously selected/approved unless first submitted to the County for approval.
- c. The Contractor shall be as fully responsible to the County for the acts and omissions of the Contractor's sub-contractors as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind sub-contractors to the Contractor by the terms of the General Conditions of the Contract, Special Provisions and other Contract Documents comprising the Contract insofar as such documents are applicable to the Work of sub-contractors.
- e. Nothing contained in the Contract shall be construed to create any contractual relation between any sub-contractor and the County, nor shall it establish any obligation on the part of the County to pay to, or see to the payment of any sums to any sub-contractor. The County will not discuss, negotiate or otherwise engage in any contractual disputes with any sub-contractor.
- f. If requested by the County, the Contractor shall replace any sub-contractor at no cost to the County within 30 days of the Project Officers written notice or as otherwise specified. No additional time or compensation will be provided in the event a sub-contractor is removed due to non-compliance of the requirements outlined within the Contract.

16. **ELIMINATED ITEMS**

If any item(s) in the Contract are determined to be unnecessary for the proper completion of the Work contracted, the Project Officer or designee may, upon written notice to the Contractor, eliminate such item(s) from the Contract. Payment will not be made for such item(s) so eliminated; except that the Contractor will be compensated for the actual cost of any Work performed and the net cost of materials purchased before the item(s) was eliminated from the Contract, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit. The County will receive the full unit price credit for Work eliminated prior to production or installation.

17. **COUNTY ORDINANCES**

The Contractor shall comply with all applicable County ordinances, including but not limited to: the *Noise Control, Erosion & Sediment Control, Storm Water Management, and Chesapeake Bay Preservation ordinances (Chapters 15, 57, 60, and 61 of the County Code)*.

D. MATERIALS AND WORKMANSHIP

1. MATERIALS FURNISHED BY THE CONTRACTOR

Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. All Work shall be accomplished by persons qualified in the respective trades.

2. IBC AND VUSBC REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all current International Building Code (IBC) requirements and the requirements of the Virginia Uniform Statewide Building Code (VUSBC); and further certifies that, if the material delivered or used in the performance of the Work is found to be deficient in any of the applicable state or national code requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor under this Contract.

3. ADA COMPLIANCE

The Contractor shall ensure that all Work performed under this Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA).

The Contractor is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines. However, should the Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform the County and its design consultant, if applicable, to allow for corrective action.

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

4. MANUFACTURER'S DIRECTIONS

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's directions as accepted by the Project Officer or designee, unless herein specified to the contrary.

5. WARRANTY

All material provided to the County shall be fully guaranteed by the Contractor against manufacturing defects within the period of the manufacturer's standard warranty. Such defects shall be corrected by the Contractor at no expense to the County. The Contractor shall provide all manufacturers' warranties to the Project Officer by the date of Final Completion.

All Work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials. The Contractor warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects or inferior or faulty Workmanship, or Work not in accordance with the Contract Documents for one (1) year from the date of Substantial Completion or as set forth in the Specifications of the Work by the County in addition to and irrespective of any manufacturer's or supplier's warranty.

No date other than Substantial Completion or as set forth in the Specifications shall govern the effective date of the Warranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

The Contractor shall promptly correct any defective Work or materials after receipt of a written notice from the County to do so. If the Contractor fails to proceed promptly or use its best efforts and due diligence to complete such compliance as quickly as possible, the County may have the materials or Work corrected and the Contractor and its Sureties shall be liable for all expenses and costs incurred by the County.

Nothing contained in this section shall be construed to establish a period of limitations with respect to other obligations the Contractor may have under this Contract.

6. INSPECTION AND ACCEPTANCE OF MATERIALS

Inspection and acceptance by the County will be at the Work site in Arlington County, Virginia and within Ten (10) calendar days of delivery unless otherwise provided for in the Contract Documents. The County will not inspect, accept, or pay for any materials stored or delivered off-site by the Contractor, except as provided by the Payment for Stored Materials clause of these General Conditions and other requirements of the Contract Documents. The County's right of inspection shall not be deemed to 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 County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance. The Contractor shall be responsible for maintaining all materials and supplies in the condition in which they were accepted until they are used in the Work.

The Contractor is to coordinate its Work and request inspections in such a manner as to minimize the cost to the County without impacting the overall schedule of the Project within reason. All costs associated with re-inspection shall be borne by the Contractor.

7. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor or any sub-contractor 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 sub-contractors to warrant that they have good title to, all materials and supplies for which the Contractor invoices for payment. The County may request proof of title or payment prior to acceptance of the Contractor's invoice.

8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS

All material and Work covered by partial payments made by the County will become the property solely of the County at the time the partial payment is made. However, risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. This provision will not be construed as relieving the Contractor from having sole responsibility for all materials and Work upon which payments have been made and for the restoration of any damaged Work or replacement or repair at the County's option of any damaged materials. This provision will not be construed as a waiver of the County's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the Warranty provisions of the Agreement, nor shall payment indicate acceptance of the materials or Work.

9. CONNECTING WORK

The Contractor shall do all cutting, patching, or digging of the Contractor's Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed Project and shall make good after them as the Project Officer or designee may direct. This Work will be performed in a Workmanlike manner utilizing proper care and equipment to achieve proper line and grade. The Contractor shall not endanger any Work by cutting, patching, or digging, or otherwise, and shall not cut or alter the Work of any other contract except with the prior written consent of the Project Officer or designee.

10. REJECTED WORK AND MATERIALS

- a. Any of the Work or materials, goods, or equipment which do not conform to the requirements of the Contract Documents, or are not equal to samples accepted by the Project Officer or designee, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and replaced immediately so as not to cause delay to the Project or Work by others. Any defective Work, whether the result of poor Workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed and the Work shall be re-executed by the Contractor at the Contractor's expense. The fact that the Project Officer or designee may have previously overlooked such defective Work shall not constitute acceptance of any part of it.
- b. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective Workmanship when notified to do so by the Project Officer or designee, the County may, by contract or otherwise, replace such material or correct such Workmanship and charge the cost to the Contractor. This clause applies during the Contract and during any warranty or guarantee period.
- c. The Contractor shall be responsible for managing, addressing within a timely manner, and formally closing out all notices of non-compliance issued by the

inspector of record, Arlington County Inspection Services, or the Design Team. The Contractor shall be solely liable for any costs or time associated with the corrective action to address any notices of non-compliance. The Contractor must Work directly with the entity issuing the notice of non-compliance.

- d. If the Project Officer or designee deems it expedient not to require correction of Work which has been damaged or not done in accordance with the Contract, an appropriate adjustment to the Contract Price may be made.

11. PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos and replacement with County-approved alternate. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or sub-contractors in connection with the Work under this contract. The Contractor shall also reimburse to the County all costs of such goods, equipment, supplies or materials installed if not corrected by the Contractor.

E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY

1. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and locations of the Work of the Contract, and that it has investigated and satisfied itself as to the general and local conditions and factors which can affect the Work or its cost, including but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads;
- c. uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. the information and conditions of the ground; and
- e. the character of equipment and facilities needed before and during Work performance.

The Contractor, by executing the Contract, represents that it has reviewed and understands the Contract Documents and has notified the County of and obtained clarification of any discrepancies which have become apparent during the bidding period. During the Contract, the Contractor must promptly notify the County in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the County timely notice in writing of same and of any corrections, clarifications, additional Drawings or

Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed. If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered, without prompt written notice to the County and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all related claims are specifically waived.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the County, as well as from the Drawings and Specifications made a part of this Contract. Unless otherwise specified, all existing structures, materials and obstructions that interfere with the new construction shall be removed and disposed of as part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the County.

The locations of existing utilities, including underground utilities, which may affect the Work, are indicated on the Drawings or in the Specifications insofar as their existence and location were known at the time of preparation of the drawings. However, nothing in these Drawings or Specifications shall be construed as a guarantee that such utilities are in the location indicated or that they actually exist, or that other utilities are not within the area of the operations. The Contractor shall make all necessary investigations to determine the existence and locations of such utilities. Should uncharted or incorrectly charted utilities be encountered during performance of the Work, notify the Project Officer or designee immediately for instructions. The Contractor will be held responsible for any damage to and maintenance and protection of existing utilities and structures, of both public and private ownership. However, if it is determined that such existing utility lines or structures require relocation or reconstruction or any other Work beyond normal protection, then such additional Work will be ordered under the terms of the clause entitled "Changes in Work." At all times, cooperate with the County and utility companies to keep utility services and facilities in operation.

The County assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the County. The County assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

2. **PUBLIC CONVENIENCE**

The Contractor shall at all times so conduct its Work as to ensure the least possible obstruction to traffic (vehicular, bicycle and pedestrian) and inconvenience to the general public, County employees, and the residents in the vicinity of the Work. Traffic shall be maintained in accordance with the approved Maintenance of Traffic (MOT) plan. No road, street or sidewalk shall be closed to the public except with the permission of the Project Officer or designee and or proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor and included in the cost of the Work to ensure the use of sidewalks, trails, and transit facilities compliant with all applicable ADA and other regulations, as well as the proper functioning of all gutters, drainage inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the Project Officer or designee.

The Contractor is responsible for securing its Work area for safety and security. The Contractor shall confine its construction and presence to the Limits of Work, unless otherwise approved by the County Project Officer.

3. **SAFETY AND ACCIDENT PREVENTION**

The Contractor shall comply with, and ensure that the Contractor's employees and sub-contractors comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the U.S. Department of Labor's Occupational Safety and Hazard Administration (OSHA) Construction Industry Regulations, the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry, the Federal Environmental Protection Agency Standards and the applicable standards of the Virginia Department of Environmental Quality.

The Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the Work specified to be performed by the Contractor and sub-contractor(s).

The Contractor shall identify to the County Project Officer at least one on-site person who is the Contractor's competent, qualified, and authorized safety officer on the Worksite and who is, by training or experience, familiar with and trained in policies, regulations and standards applicable to the Work being performed. The competent, qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or Working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the Work site.

The Contractor shall provide to the County, within 7 days of issuance of the Notice to Proceed, a copy of the Contractor's written safety policies and safety procedures applicable to the scope of Work. Failure to provide this information within may result in cancellation of the Contract.

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all injury to persons and damage to property either on or off the site, which occur as a result of the Contractor's prosecution of the Work.

The Contractor shall take or cause to be taken such additional safety and health measures as the County may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the current version of "Manual of Accident Prevention" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws. The Contractor is directed to the "Rules and Regulations Governing Construction, Demolition and All Excavation" and adopted by the Safety Codes Commission of Virginia, 1966, or latest edition, covering requirements for shoring, bracing, and sheet piling of trench excavations.

4. **HAZARDOUS MATERIALS**

Arlington County is subject to the Hazard Communication Standard, 29 CFR §1910.1200 (Standard). The Contractor agrees that it will provide or cause to be provided Safety Data Sheets (SDS) required under the Standard for all hazardous materials supplied to the County or used in the performance of the Work. Such SDS shall be delivered to the County no later than the time of actual delivery of any hazardous materials to the County or use of such material in the performance of Work under the Contract by the Contractor or its sub-contractors, whichever occurs first. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The County reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when SDS have not been received prior to or at the time of receipt of the shipment for use by the County or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of SDS are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials. The Contractor shall maintain onsite an up to date SDS binder for all material used and delivered to the Project. The County Project Officer or his designee shall be allowed access to the SDS book at all times.

5. **HAZARDOUS WASTE**

Hazardous Waste Generator/Hazardous Waste Disposal: The County Board of Arlington County, Virginia and the Contractor shall be listed as Co-generators. The Contractor shall assume all the duties pertaining to the Waste Generator, including signing the Waste Shipment Record ("WSR") and manifest. The Contractor shall supply the County Project Officer with the executed original Owner's Copy of the WSR, as required by applicable regulatory agencies within 35 days from the time the waste was accepted by the initial

waste transporter, and prior to request for final payment. A separate WSR shall be submitted for each shipment to the disposal site.

Delayed Waste Shipment Records: The Contractor shall report in writing to the EPA Region III office within 45 days if an executed copy of the WSR is not received from the operator of the disposal site. The report to the EPA regional office shall include a copy of the original WSR and a cover letter signed by the Contractor stating the efforts taken to locate the hazardous waste shipment and the results of those efforts.

Temporary Hazardous Waste Storage Prohibited: The Contractor shall not temporarily store hazardous waste unless pre-approved by the County in writing. If so approved, hazardous waste stored off-site in a temporary facility shall be monitored and records shall be kept on the number of containers, size, and weight. The Contractor shall inform the County when the hazardous waste is to be transported to the final disposal site. The County has the right to inspect the temporary site at any time. The Contractor shall submit copies of all relevant manifests, Waste Shipment Record(s), and landfill receipts to the County Project Officer prior to the request for final payment. All paperwork shall be signed by the Contractor and disposal site operator as required.

6. **ASBESTOS**

Whenever and wherever during the course of performing any Work under this Contract the Contractor discovers the presence of asbestos or suspects that asbestos is present, the Contractor shall stop Work immediately, secure the area, notify the County Project Officer immediately and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. Work shall not proceed without an Asbestos-Related Work Authorization executed by the County Asbestos Program Manager.

7. **CROSSING UTILITIES**

When construction crosses highways, railroads, streets, waterways, or utilities under the jurisdiction of State, County, City, or other public agency, public utility, or private entity, the Contractor shall secure written permission where necessary from the proper authority before executing such new construction. A copy of such written permission must be filed with the County before any Work is started. The Contractor shall be required to furnish a release from the proper authority before Final Acceptance of the Work.

8. **OVERHEAD HIGH VOLTAGE LINES SAFETY ACT**

If any Work required herein will be performed within ten feet of an overhead high voltage line, the provisions of Virginia Statute 59.1-406, et. seq., "Overhead High Voltage Line Safety Act" (Act) shall apply. The "person or contractor responsible for the Work to be done", as that term is used in the Act, will be interpreted to mean the Contractor. The Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time prior to the time Work is to be commenced to avoid any delays in the Work. The County will not pay for

lost time, profits, or permit any extension of the Work for any delays caused by the failure of the Contractor to make such arrangements in a timely manner. All costs for the Work shall be paid by the Contractor. The County shall reimburse the Contractor for the actual reasonable cost paid to the owner or operator of the high voltage line by the Contractor on presentation to the County by the Contractor of original invoices from the owner or operator of the high voltage line in the same manner as for other Contractor invoices submitted for Work performed. Retention, if applicable to the Contract, shall not be withheld from the payment to the Contractor by the County for this Work. No processing, administrative, or other charges above the actual amount charged by the owner or operator of the high voltage line shall be paid to the Contractor by the County.

9. **SANITARY PROVISIONS**

The Contractor shall provide and maintain such sanitary accommodations for the use of the Contractor's employees and those of its sub-contractors as may be necessary to comply with the requirements and regulations of OSHA and of the local and State departments of health.

10. **SITE CLEAN-UP AND WASTE DISPOSAL**

The Contractor shall frequently remove and properly dispose of all refuse, rubbish, scrap materials, and debris from the site resulting from the Contractor's operations during the performance of this contract. The Contractor shall ensure the Work site presents a neat and orderly appearance at all times. The Contractor shall isolate any and all dumpsters, trash cans and recycling bins provided for the Project from public use until Final Acceptance.

Unless otherwise stated, the Contract Amount and any unit prices shall include all costs and fees for removal and disposal of all waste and debris, whether disposed of at a County site or at any other location.

The Contractor shall remove all surplus material, false Work, temporary structures including foundations thereof, and debris resulting from the Contractor's operations at Work completion and before Final Acceptance. The County shall reserve the right to remove the surplus material, false Work, temporary structures including foundations and debris. The County will restore the site to a neat, orderly condition if the Contractor fails to do so. The County shall be entitled to offset such cost against any sums owed by the County to the Contractor under this Contract.

11. **STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

When the Project includes an approved SWPPP, the Contractor shall strictly abide by this plan which includes a Pollution Prevention (P2) Plan, an Erosion and Sediment Control (E&S) Plan, and a Stormwater Management Plan. If the Contractor proposes to deviate from this approved plan, it shall be the Contractor's responsibility to coordinate and obtain approval from the County Project Officer prior to implementing any changes.

No separate payment shall be made by the County for SWPPP implementation, with the exception of E&S items as specified on the E&S plans or listed as pay items. The Contractor shall not be entitled to any additional payment for changes to the SWPPP which are the result of the Contractor's Work schedule or resource allocation, weather delays, or other factors not controlled by the County.

F. PROGRESS AND COMPLETION OF THE WORK

1. NOTICE TO PROCEED

The Contractor shall be given written Notice to Proceed with the Work. Such Notice to Proceed shall state the date on which the Work is to be commenced, and every calendar day thereafter shall be counted in computing the actual Time for Completion.

2. TIME FOR COMPLETION

It is hereby understood and mutually agreed by and between the Contractor and the County that the Commencement Date, the rate of progress, and the Time for Completion of the Work to be done hereunder are essential conditions of the Contract.

The Contractor agrees that the Work shall be started promptly upon receipt of a written Notice to Proceed in accordance with the accepted schedule. The Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion of the Project within the Time for Completion specified in the Contract Documents.

3. SCHEDULE OF COMPLETION

Unless otherwise specified, the Contractor shall within Ten (10) business days after the Award Date, or prior to the pre-construction meeting, whichever occurs first, submit schedules which show the order in which the Contractor proposes to carry on the Work, with dates for starting and completing the various activities of the Work. The Contractor shall submit an updated schedule monthly with the request for partial payment. Review and acceptance by the County of the Contractor's schedule of completion shall in no way relieve the Contractor of its responsibility to complete the Work within the contract time.

If the Work falls behind the schedule, the County may require the Contractor to prepare and submit, at no extra cost to the County, a recovery schedule indicating by what means the Contractor intends to regain compliance with the schedule. The recovery schedule must be submitted to the County for review by the date indicated in the County's written demand.

4. CONDITIONS FOR COMPLETION

a. **SUBSTANTIAL COMPLETION**: The Work will be considered Substantially Complete when all of the following conditions have been met and accepted by the Project Officer, and a Certificate of Substantial Completion has been issued:

1. The Contractor has provided formal notice that the Work is substantially complete, and the Project Officer has agreed that the condition of the Work warrants a Substantial Completion inspection;

2. The Contractor has provided a Punch List and that list has been reviewed and approved by the Project Officer. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents;
 3. Final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
 4. Fire Marshal's report, if applicable;
 5. Approval forms and transfer documents for all utilities;
 6. All life safety systems, including fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems are complete and Working in an automatic mode, and the County has been adequately trained in the operation of the systems;
 7. The HVAC system Testing and Balancing Report and build air quality test results as required for LEED certification have been accepted by the Project Officer;
 8. Operation and Maintenance Manuals have been submitted for review;
 9. All documents and verification of training required in accordance with any Commissioning Plan;
 10. Mark-ups of construction drawings showing the As-Built or "Record" condition have been submitted for review and approval by the Project Officer;
 12. Entrances and egress pathways have been constructed and can remain clear of construction activities;
 13. A Certificate of Occupancy has been issued for the space by the County's Inspection Services Division;
 14. All Commissioning has performed and completed to the satisfaction of the Project Officer; and
 15. Schedule to complete the Punch List and value of Work not yet complete.
- b. Upon the Contractor providing notice that the Work is substantially complete, the Project Officer or designee will invite all relevant parties to perform an

inspection of the Work, and any noted deficiencies or incomplete items not indicated on the Contractor's punch list will be added. All punch list items, whether generated by the Contractor or any other party on behalf of the County, shall be completed within thirty (30) days of the date of Substantial Completion, unless otherwise agreed to by the County due to seasonal or other extenuating circumstances.

c. **FINAL COMPLETION:** The Work will be considered Finally Complete when all of the following conditions have been met and accepted and a Final Completion Notice has been issued by the Project Officer:

1. The Contractor has provided formal notice that the Work is complete and the Project Officer has agreed that the condition of the Work warrants a Final Completion inspection;
2. All construction deficiencies and punch list items have been closed and all construction deficiencies corrected and accepted by the Project Officer;
3. All spare parts and attic stock have been delivered, stored in an orderly manner in a space designated by the Project Officer and a complete inventory list has been verified and accepted by the Project Officer;
4. All warranties and manufacturer certificates and contact information for parties providing warranties have been delivered and accepted by the Project Officer;
5. All final Operating and Maintenance manuals have been delivered and approved and accepted by the Project Officer;
6. All final As-Built Drawings in .pdf format on a CD delivered and accepted by the Project Officer;
7. All commissioning has been completed and any open construction items in the commissioning agent's report have been closed and accepted by the Project Officer; and
8. All LEED documents and submittals, if applicable, to be provided by the Contractor or sub-contractors have been submitted and accepted by the Project Officer.

5. **USE OF COMPLETED PORTIONS**

The County shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired; but taking such possession and use shall not be deemed an acceptance of any Work not done in accordance with the Contract Documents. If the Contractor claims that such prior use increases the cost or

delays, the completion of remaining Work, or causes refinishing of completed Work, the Contractor may submit a claim for compensation or extension of time, or both.

G. MEASUREMENT AND PAYMENT

1. PAYMENTS TO CONTRACTOR

The County will make partial payments, less retainage, to the Contractor monthly on the basis of the Contractor's written estimate of the Work performed during the preceding calendar month as approved by the Project Officer or designee.

The Contractor's application for payment shall indicate the amount of Work completed to date in a format consistent with the accepted bid and as indicated below:

- a. **Lump Sum**: For lump sum contracts, the Contractor shall provide to the Project Officer a Schedule of Values, and the application for payment will reflect the Schedule of Values and the amount of Work completed in those units.

For contracts that include multiple lump sum line items, the application for payment shall reflect the percentage of Work completed for each lump sum item. If requested by the Project Officer, the Contractor shall provide a Schedule of Values for each lump sum line item in the contract.

- b. **Unit Price**: The schedule of unit prices in the accepted bid shall be used as the basis for preparing the estimates, and each partial payment shall represent the total value of all units of Work completed, computed at the unit prices stated in the Contract, less the aggregate of previous payments.

At the discretion of the Project Officer, payments may alternatively be based on actual quantities and site measurements taken in the field by County staff using the Contract Unit Prices.

If Stipulated Price Items are included in the contract, Work on such Stipulated Price Items shall be carried out only upon written order by the Project Officer. The payment for a Stipulated Price Item shall be made by the County to the Contractor at the related unit price specified in the 'Stipulated Price Items' section of the Bid Form on the same basis as the payment for any other regular Bid Item.

In addition to the amount of Work completed to date, the application for payment shall indicate the aggregate of all previous payments for each line item, the retainage previously withheld, and the total payment requested this period.

The Contractor's application for payment will not be reviewed or processed unless an updated schedule is attached. The pay application shall also contain a certification by the Contractor that due and payable amounts have been paid by the Contractor, including payments to sub-contractors, for Work which previous payment was received by the Contractor from the County.

2. **PAYMENT FOR STORED MATERIALS**

When requested in writing by the Contractor, payment allowances may be made for material secured for use on the Project and secured at the project site. Such payments will only be made for materials scheduled for incorporation into the Work within sixty (60) days.

Payment for materials stored offsite may be considered at the discretion of the Project Officer. Any such request shall be made in writing, and the Contractor shall provide photographs of materials stored offsite, bills of sale, and proof of insurance on the premises at which off-site materials are stored with the application for payment. Payment for stored materials may also be subject to additional requirements contained elsewhere in the Contract Documents.

3. **PAYMENTS WITHHELD**

The Project Officer or designee may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to the extent necessary to protect the County from loss on account of defective Work not remedied or withhold payment for violation of any contract term or condition not remedied after sufficient notice given to the Contractor.

Any such withholding shall not result in any liability to the Contractor for damages.

4. **COUNTY ORDERED CHANGES IN WORK**

The County, without invalidating the Contract, may order extra Work or make changes by addition, deletion or revision in the Work, with the total Contract Amount being adjusted accordingly if applicable. All such Work shall be executed under the conditions of the original Contract, except that modification of the Time for Completion caused thereby shall be made at the time of approving such change.

- a. Changes in the Work which do not involve extra cost and are not inconsistent with the purpose of the Project can be directed by means of a Field Order. Otherwise, except in an emergency endangering life or property, no extra Work or change shall be made unless in pursuance of a written Construction Change Directive or Change Order and no claim for an addition to the Contract Amount or Contract Time shall be valid unless so ordered.
- b. The Contractor shall review any County requested or directed change and shall respond in writing within Fourteen (14) days after receipt of the proposed change stating the effect of the proposed change upon Contractor's Work, including any increase or decrease in Contract time and price. The Contractor shall furnish the County an itemized breakdown of the quantities and prices used in computing the proposed change. The Contractor shall also furnish any sketches, drawings, and or pictures to properly explain the change or impact to the Project Officer. It is the sole responsibility of the Contractor to provide adequate change order backup to satisfy the Project Officer.

- c. The value of any such extra Work or change shall be proposed by the Contractor in one or more of the following ways: (a) by estimate in a lump sum; (b) by cost and fixed fee; (c) by unit price additions or deletions of quantities stated in the unit price contract; or (d) by any other method permitted under the Arlington County Purchasing Resolution. The Project Officer will determine the method appropriate based on the nature of the changes.
- d. If none of the aforementioned methods is agreed upon the Contractor shall proceed with the Work without delay under force account, provided the Contractor receives a Construction Change Directive. In such case, the Contractor shall keep and present in such form as the Project Officer or designee may direct, a correct account of the cost, together with vouchers. The Project Officer or designee shall be permitted to verify such records on a daily basis and may require such additional records as are necessary to determine the cost of the change to the Work. The Project Officer or designee shall certify to the amount due to the Contractor, including a reasonable lump sum allowance for overhead and profit. A complete accounting of the extra cost shall be made within 14 days after completion of the Work involved in the claim. Refer to Paragraph G.5, *Force Account Work*, below for a description of allowable costs when Work is performed under force account.
- e. A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of labor, materials, and equipment (base cost) required in addition to any markup used. The allowable percentage markups for overhead and profit for a non-force account change to the Work performed by the Contractor's own forces or performed by the Sub-contractor shall be negotiated based on the nature, size, and complexity of the Work involved but shall not exceed the percentages for each category listed below.
 - 1) Sub-contractor's markup for overhead and profit for the Work it performs in a change to the Work shall be a maximum of Fifteen Percent (15%).
 - 2) Contractor's markup for overhead and profit on the Sub-contractor's base cost in a change to the Work shall be a maximum of Ten Percent (10%).
 - 3) Contractor's markup for overhead and profit (including bonds and insurance) for Work it performs in a change to the Work shall be a maximum of Fifteen Percent (15%).
 - 4) The markup for overhead and profit of a sub-sub-contractor at any tier on a change to the Work it performs shall be a maximum of Fifteen Percent (15%). The Contractor and all intervening tiers of sub-contractor's markup on such sub-sub-contractor's base cost in the change to the Work shall not exceed a total of Ten Percent (10%).

- f. Base Cost is defined as the total of labor, material, and equipment costs, it does not include markup for overhead and profit. The labor costs include only the costs of employees directly constructing or installing the change in the Work and exclude the costs of employees coordinating or managing the Work.
- g. The allowable percentage markups for overhead and profit stated above shall compensate the Contractor, sub-contractor, and sub-sub-contractor for all other costs associated with or relating to the change to the Work including by way of illustration and not limitation, general conditions, supervision, field engineering, coordination, insurance, bond(s), use of small tools, incidental job costs, and all other general and administrative home and field office expenses.
- h. Allowable costs for changes in the Work shall not include home office expenses including payroll costs for the Contractor's officers, executives, administrators, project managers, estimators, clerks timekeepers, and other administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups in Subsection (e) above.
- i. If the change to the Work also changes the Time for Completion by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as allowable costs for compensation in addition to the base cost indicated above:
 - 1) site superintendent's pro-rata salary
 - 2) temporary site office trailer expense
 - 3) temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities.

All other direct and indirect overhead expenses are considered covered by and included in Subsection (e) markups above. In no case shall sub-contractor extended overhead be submitted or considered. The County does not have a direct contractual relationship with any sub-contractor or supplier and therefore will not direct, discuss or negotiate with sub-contractors employed by the Contractor.

- j. If Contractor requests an extension to the Time for Completion due to changes in the Work it must provide to the Project Officer adequate documentation substantiating its entitlement for the time extension. The documentation must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior changes to the Work, not just an increase or decrease in the time needed to complete a portion of the total Work. In the event a Critical Path Method (CPM) schedule is required by the Contract, no extension to the Time for Completion shall be granted unless the additional or change to the Work increases the length of the critical path beyond the Time for Completion as demonstrated on the approved

CPM schedule or bar chart schedule. Any Float belongs to Arlington County. A written statement in addition to a CPM analysis shall be prepared explaining how no other sequence of Work activities could have been performed to decrease the impact or eliminate the impact altogether. If requested by the Project Officer, the Contractor must provide alternate documentation detailing the claim to the County's satisfaction.

- k. Any change that will increase the Contract Amount more than Ten Percent (10%) will require notice to sureties and require that Performance and Payment Bonds be increased by the Contractor. The increased Performance and Payment Bonds must be sent to the County's Office of the Purchasing Agent within Fifteen (15) calendar days of the County's approval of such change.

5. **FORCE ACCOUNT WORK**

A Force Account may be used at the County's discretion and only when either 1) agreement on the valuation of a change cannot be made using the methods described in the preceding paragraph, *County Ordered Changes in the Work*, or 2) the County cannot firmly establish an applicable and acceptable estimate for the cost of the Work because the level of effort necessary to perform and complete the Work cannot be reasonably estimated or anticipated but can only be determined by performing the Work. Because of the significant burden on the County to monitor and control the Work, Force Account Work is not a preferred method, and it shall be the responsibility of the Contractor to provide all necessary documentation and justification of costs. The rates for labor, equipment and materials to be used in cases of Work performed on a force account basis will be compensated as documented below. No costs other than those explicitly listed below shall be allowed:

- a. Labor: Before any Force Account Work begins, the Contractor shall submit for approval to the Project Officer the proposed hourly rates and associated labor costs (benefits and payroll burden) for all laborers and forepersons to be engaged in the Work. The number of laborers and forepersons engaged in the Work will be subject to regulation by the Project Officer and shall not exceed the number that the Project officer deems most practical and economical for the Work. For all labor and forepersons in direct charge of the force account Work, excluding general superintendence, compensation will be as follows:
 - 1) Certified Pay Rate: The Contractor will receive the actual rate of wage or scale as set forth in his most recent payroll for each classification of laborers, and forepersons who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such Workers are actually engaged in the Work. If overtime Work is authorized by the County, payment will be at the normal overtime rate set forth in the Contractor's most recent payroll.
 - 2) Benefits: The Contractor will be entitled to receive the actual cost for any fringe benefits that are regularly provided to the classes of laborers and

forepersons engaged in the Work and that are not included in the certified pay rate.

- 3) Payroll Burden: The Contractor will be entitled to receive the actual cost for all costs associated with required payroll taxes and payroll benefits not covered in 2) above, including:
 - Social Security Tax
 - Medicare Tax
 - Unemployment Tax
 - Worker's Compensation Insurance
 - Contractor's Public Liability Insurance
 - Contractor's Property Damage Liability Insurance
 - 4) If the Contractor is unable to provide the necessary documentation for Benefits and Payroll Burden as identified above, the Contractor will be entitled to an additive of 20% of the Certified Hourly Pay Rate as full and final compensation for Benefits and Payroll Burdens
 - 5) Overhead and Profit: The Contractor will be entitled to an additive of 10% on all properly documented and approved costs established in paragraphs 1), 2), 3), and 4) above for all administrative, overhead, and profit associated with labor costs.
 - 6) Subsistence and lodging allowances may be allowed by the Project Officer at the actual and documented costs for lodging and meals if the following conditions are met and the applicable rates and authorization for such costs are established prior to beginning the Work. No additives for overhead, administrative, profit, or any other costs will be permitted for subsistence and lodging.
 - i. The specific Force Account Work is outside the scope of the original contract, requires mobilization of a separate crew not intended to be used on the original contract, and the Contractor's base location is more than 50 miles from the Work site, or
 - ii. Forces which have been Working on the Contract will be used for the Force Account Work and have been routinely staying overnight during the life of the Project, and the Force Account Work will warrant an extension of the contract time, and the distance from the Contractor's base location to the Work site is more than 50 miles
- b. Materials: The Contractor will receive the actual cost of materials accepted by the Project Officer that are delivered and used for the Work including taxes, transportation, and handling charges paid by the Contractor, not including labor and equipment rentals as herein set forth, to which 15 percent (15%) of the cost will be added for administration and profit. The Contractor shall make every

reasonable effort to take advantage of trade discounts offered by material suppliers. Any discount received shall pass through to the County. Salvageable temporary construction materials will be retained by the County, or their appropriate salvage value shall be credited to the County, at the County's discretion.

- c. Equipment: For all equipment other than small tools, the Contractor will be entitled to rental rates as established herein and agreed to in writing before the Work is begun. Transportation costs directly attributable to Force Account Work will be as stated below. Small tools will be considered any equipment which has a new cost of \$1000 or less and will not be eligible for any compensation. The Contractor shall provide the Project Officer a list of all equipment to be used in the Work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The number and types of equipment engaged in the Work will be subject to regulation by the Project Officer as deemed to be the most practical and economical for the Work. No compensation will be allowed for equipment which is inoperable due to mechanical failure. Compensation for equipment shall be as follows:

- 1) Hourly Base Equipment Rental Rates (Owned Equipment) – For equipment authorized for use in the Force Account Work that is owned by the Contractor, the Contractor shall be entitled to an Hourly Base Rental Rate as detailed in the following paragraphs. The Hourly Base Rental Rate for Contractor owned equipment will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the force account is authorized. The rates for equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such equipment by the Contractor at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the authorized Work is to be performed shall be used.
- 2) Hourly Base Equipment Rental Rates (Rented Equipment) – If the Contractor does not possess or have readily available equipment necessary for performing the force account Work and such equipment is rented from a source other than a company that is an affiliate of the Contractor, payment will be based on actual invoice rates when the rates are reasonably in line with established rental rates for the equipment in question and are approved by the Project Officer.
- 3) Hourly Operating Rates – Hourly Operating Rates shall be as established in the Blue Book estimated operating cost per hour. This operating cost will be full compensation for fuel, lubricants, repairs, servicing (greasing, fueling, and oiling), small tools, and any and all incidentals. If rental

rates for the equipment being used in the Work are not listed in the Blue Book or otherwise readily available, the Hourly Operating Cost will be 15% of the established Hourly Base Rental Rate. If invoices for Rental Equipment include the furnishing of fuel, lubricants, repair, and servicing, then the Contractor will not be entitled to any Hourly Operating costs for that equipment.

- 4) Equipment Usage - Equipment usage will be measured by time in hours of actual time engaged in the performance of the Work. The Contractor shall be entitled to the applicable Hourly Base Equipment Rental Rate and Hourly Operating Rate for all approved Equipment Usage.
- 5) Equipment Standby – Standby time is defined as the period of time equipment authorized for Force Account Work by the Project Officer is available on-site for the Work but is idle for reasons not the fault of the Contractor or normally associated with the efficient and necessary use of that equipment in the overall operation of the Work at hand. Hourly rates for Contractor owned equipment on standby, will be at Fifty Percent (50%) of the rate paid for equipment performing Work.

Operating costs will not be allowed for equipment on Standby. When equipment is performing Work less than Forty (40) hours for any given week and is on standby, payment for standby time will be allowed for up to 40 hours, minus hours performing Work. Payment for Standby will be allowed only for Working days. Payment for Standby will not be made for the time that equipment is on the Project in excess of Twenty-Four (24) hours prior to its actual performance in the Force Account Work.

- 6) Transporting Costs – When it is necessary to obtain equipment exclusively for Force Account Work from sources beyond the Project limits and the Project Officer authorizes the transporting of such equipment to the Project site, the cost of transporting the equipment will be allowed as an expense. Where the transport requires the use for a hauling unit, the allowable expense will consist only of the actual cost incurred for the use of the hauling equipment, or the applicable Blue Book cost, whichever is less. When equipment is transferred under its own power, the allowable Transporting cost shall be Fifty Percent (50%) of the Hourly Base Equipment Rental Rate.
- 7) Overhead and Profit – The Contractor shall be entitled to an additive of Ten Percent (10%) on all appropriate and approved Equipment Rental, Operating, and Transporting costs as defined above.

- d. Sub-contracting: The Contractor shall receive the cost of Work performed by a sub-contractor as determined in (a), (b), and (c) above. In addition, the

Contractor will be allowed an allowance per the schedule below for administrative costs and profit.

Total Cost of Subcontract Work: Rate Schedule

\$0 - \$10,000	10%
> \$10,000	\$1,000 + 5 % above \$10,000

- e. Other Costs: The Contractor shall not be entitled to any costs associated with Force Account Work other than those specifically identified in this section.
- f. Statements: Payments will not be made for Work performed on a force account basis until the Contractor has furnished the Project Officer duplicate itemized statements of all costs of such Work detailed as follows:
 - 1. Payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson
 - 2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment
 - 3. Quantities of materials, prices, and extensions
 - 4. Transportation of materials
 - 5. Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

6. **CLAIMS FOR EXTRA COST**

If the Contractor claims that any event will give rise to a claim for an increase in the Contract Amount or that any instructions from the Project Officer, by drawings or otherwise, will incur him extra cost under the Contract, then, except in emergencies endangering life or property, it shall give the Project Officer written notice thereof no later than three (3) days of the event or instruction. The Contractor thereafter must provide to the Project Officer a full cost proposal within 14 days detailing the amount of additional compensation claimed, together with the basis therefore and documentation supporting the claimed amount. No such claims shall be valid unless so made. If the Project Officer agrees that such event or instructions involve extra cost to the Contractor, any additional compensation will be determined by one of the methods provided in the Changes in Work paragraph of these General Conditions as selected by the Project Officer. All pricing and supporting documentation requirements of the Changes in the Work clause shall apply to claims for extra cost deemed valid under this paragraph.

7. **DAMAGES FOR DELAY; EXTENSION OF TIME OTHER THAN FOR WEATHER**

The Contractor's relief for any claim for delay which is unreasonable, or caused by the acts and omissions of the County, or due to causes within the County's control, shall be an extension of the Time for Completion and/or the Contractor's direct costs which result from the delay, but only to the extent any damages for delay were actually caused by the County. The Contractor must give the Project Officer written notice of such delay and damages at the time they were incurred but in no event later than Three (3) calendar days following the perceived onset of the delay. The Contractor's written notice shall specify the nature the delay claimed by the Contractor, the cause of the delay, and the anticipated impact of the delay on the Contractor's Work schedule. The Contractor thereafter must provide to the Project Officer a full claim within Fourteen (14) days after cessation of the delay detailing the amount of additional contract time or compensation claimed, together with the basis therefor and documentation supporting the claim.

If the Contractor is entitled to compensation for delay which is unreasonable, or caused by the acts and omissions of the County, or due to causes within the County's control, and where there is no change in the Work, an itemized accounting of the following direct site overhead expenses will be considered as allowable costs to be used in determining the compensation due the Contractor: site superintendent pro rata salary, temporary site office expense, temporary site facilities, and temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A Fifteen Percent (15%) markup of these expenses will be allowed to compensate the Contractor for home office and other direct or indirect overhead expenses.

If the Contractor submits a claim for damages pursuant to this Section, the Contractor shall be liable to the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim that is determined through litigation to be false or to have no basis in law or fact (Virginia Code §2.2-4335).

The Contractor's sole relief on any claims for delay which is reasonable, or not caused by the acts or omissions of the County, or due to causes not within the County's control, or Force Majeure, shall be an extension of the Time for Completion provided the Contractor gave the Project Officer timely written notice at the inception of such delay.

No extension of the Time for Completion or additional compensation, if applicable, will be granted for any delay unless the Contractor demonstrates the claimed delay directly impacts the Critical Path of the accepted CPM schedule or bar chart schedule, whichever is applicable, and any float has been consumed. Claims for compensation for direct costs which result from delay must be substantiated by adequate documentation clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar chart schedule, as modified, and that the additional costs incurred by the Contractor are directly attributable to the delay in the Work claimed.

8. **TIME EXTENSIONS FOR WEATHER**

The Contractor's sole relief on any claims for delay which is caused by abnormal weather shall be an extension of the Time for Completion provided the Contractor gave the Project Officer written notice no later than Five (5) calendar days after the onset of such delay and provided the weather affected the Critical Path. A fully documented claim for a time extension under this Section must be submitted no later than Thirty (30) calendar days after the cessation of the delay. It shall be the Contractor's responsibility to provide the necessary documentation to satisfy the Project Officer that the weather conditions claimed were encountered, which may include daily reports by the Contractor, copies of notification of weather days to the Project Officer, NOAA backup, and pictures from each day claimed.

The Time for Completion will not be extended due to inclement weather conditions which are normal, as defined below, for Arlington County. The Time for Completion includes an allowance for Workdays (based on Five (5) day Workweek) which according to historical data may not be suitable for construction Work. The Contractor may request extension to the Time for Completion if it can demonstrate unusual and disruptive weather conditions per the requirements below:

- a. That one or more of the Weather Conditions listed below was encountered; and,
- b. The occurrence of the Weather Condition(s) resulted in an inability to prosecute Work which would have otherwise been performed on the day(s) the Weather Condition(s) occurred; and,
- c. The Work which was not able to be completed was on the Critical Path and could not be completed **only** due to the Weather Condition(s) claimed.

The Project Officer will determine the Contractor's entitlement to an extension of the Time for Completion. A time extension of no more than one (1) day will be granted for one (1) day of lost Work which satisfies the requirements above, regardless of the number of Weather Conditions encountered. The Contractor's sole relief shall be an extension of the Time for Completion and no claim for an increase in Contract Amount will be allowed.

The Weather Conditions listed below will be the only basis for consideration by the County, based upon the requirements listed above, as an extension of the Time for Completion due to inclement weather or weather-related site conditions.

Weather Condition #1: Unusually Heavy Precipitation - Figure 1 illustrates the anticipated monthly inclement weather due to precipitation (Rain Days). If the number of days with precipitation in excess of 0.10", as recorded at Washington Reagan National Airport, exceeds the anticipated Rain Days, the Contractor will be entitled to an extension of one (1) day on the Time for Completion for every day in excess of the Rain Days illustrated in Figure 1. The anticipated value of Rain Days for partial months at the beginning and end of the Contract shall be evaluated on a pro-rated basis.

FIGURE 1

Average days with precipitation of 0.1" or more

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	6	7	6	8	6	7	6	6	5	6	6

Weather days are not exclusive to the individual months that they represent in Figure 1. If weather days are not used in a previous month(s) they can be used to offset weather delays in subsequent months. This will be reviewed on a case by case basis and is subject to reconciliation at the end of the Project.

Condition #2: Temperature – The Contractor may be entitled to an additional day for every day that the recorded high temperature at Washington Reagan National Airport is 32 degrees Fahrenheit or less, that has not already been incurred under Weather Condition #1 above. This condition does not apply to vertical construction as defined by the Arlington County Vertical Construction Standards.

9. **RELEASE OF LIENS**

The County, before making final payment, shall require the Contractor to furnish a complete release of all liens arising out of this Contract. The Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the County, to indemnify him against any lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall refund to the County all money that the latter may be compelled to pay in discharging such lien. However, the County may make payments in part or in full to the Contractor without requiring the releases or receipts, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.

10. **FINAL PAYMENT**

After the Contractor has completed all Work and corrections to the satisfaction of the Project Officer or designee and delivered all maintenance and operating instructions, schedules, quantities, bonds, certificates of inspection, maintenance records, As-Built Drawings, and other items required as final payment submittal documents, the Contractor may make application for final payment following the procedure for progress payments. The Final Application for Payment shall be accompanied by all documents required in the Contract, including a complete and signed and notarized copy of the Final Payment Release Form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

CONTRACT NUMBER: _____ **CONTRACTOR NAME:** _____

FINAL PAYMENT AMOUNT: _____

The Contractor hereby requests final payment in the amount indicated on the above referenced Contract. The Contractor agrees that its acceptance of final payment releases and forever discharges Arlington County and its officers, employees, servants and agents from any and all actions, claims, demands and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with the above referenced Contract.

The Contractor certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been fully paid.

AUTHORIZED SIGNATURE DATE: _____

The date of Final Acceptance is the date on which the County issues the final payment for the Work performed.

COMMONWEALTH OF VIRGINIA

COUNTY OF ARLINGTON

On this the ____ day of _____, 20__, before me, personally appeared _____, who acknowledged himself/herself to be _____ in the above instrument, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name by himself/herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

IV. SPECIAL CONDITIONS

1. BACKGROUND OF THE PENTAGON CITY STATION NEW ELEVATOR PROJECT

The Pentagon City Metrorail station is part of the regional rail system owned and operated by the Washington Metropolitan Area Transit Authority (WMATA). The station is one of the highest ridership stations in Northern Virginia, provides access to residential, multiple retail, government, and commercial office buildings, and is a transfer point for regional and local transit buses and numerous private shuttle services. This busy station is currently served by only one elevator from the street level to the station's mezzanine area.

The addition of a new elevator will provide access to the passageway from the west side of South Hayes Street as well as provide elevator redundancy for this station's entrance. This Project will be funded in part by the Federal Transit Administration (FTA) and Virginia Department of Rail and Public Transportation (DRPT) grants as well as local funding. Therefore, the successful Contractor's services shall comply with all applicable federal and state funding agencies' requirements.

2. SITE LOCATION

The Pentagon City Metrorail station is located under the northbound lanes of South Hayes Street with a passageway connecting the station mezzanine to the east and west sides of S. Hayes Street. The station has Two (2) side platforms with a center track. On the east side of South Hayes Street, there are Two (2) escalators and One (1) elevator connecting the passageway to the street; on the west side, there are Two (2) escalators connecting the passageway to the street. Currently, all passengers needing to use the street elevator must enter or exit the station on the east side of South Hayes Street.

The vertical distance between the top of the passageway and the street surface is approximately Twenty-Six (26) feet. The location of the new elevator is mostly determined by the location of the existing passageway, particularly in the north/south direction, since the elevator vestibule must align with the passageway. The north face of the passageway at mezzanine level corresponds to the general area at the surface level of the pedestrian path for people crossing S. Hayes Street (see Exhibits 1-5).

3. SCOPE OF WORK

The general Scope of Work ("Scope of Work" or "Work") requires, but is not limited to, the follow Work:

- a. Excavation and support of excavation for the new elevator shaft, elevator vestibule, elevator machine room, and sump pit;
- b. Cutting through the existing passageway wall;
- c. Installing structural elements to create shaft structure;

- d. Mechanical, electrical, HVAC, communication installations;
- e. Coordination with WMATA to connect to WMATA power and communications panels within the WMATA electric room;
- f. Coordination with WMATA and the County for all Work associated with this Project;
- g. Installation of the new elevator, associated equipment with specified finishes;
- h. Maintenance of Traffic (MOT);
- i. Restoration of the sidewalk, curb ramp around the elevator at the street level plaza, and
- j. Foundation (Helical Piles) Delegated Design and Installation

The Contractor shall furnish all labor, materials, equipment, and permits for the construction of the new elevator for the Pentagon City Metrorail station. The Work shall be performed in accordance with the standards established by this Agreement and the terms of the following:

- Arlington County Specifications, Drawings, Construction Notes;
- Technical Specifications-SP006, Section 02465 Helical Screw Foundation
- WMATA Design Criteria Specifications, WMATA Standard Drawings;
- WMATA Adjacent Construction Project Manual (ACPM)-Rev-5a-09-21-15, Specifications, and
- All Exhibits to the contract document.

Note: The design for the foundation (using helical piles) is not finalized and is a delegated design to the Contractor. The delegated design foundation and the document drawings for the foundation is shown in the conceptual plan design in the drawings. The Contractor shall finalize the design for helical piles, and the Contractor shall obtain approval by WMATA. See drawings, Specifications, and Special Provisions for additional information.

It shall be the obligation of the Contractor to obtain clarification from the County Project Officer and/or designated County Representative regarding WMATA requirements, Specifications, Drawings, Construction Note questions immediately to ensure there is no delay in the progress of the Work.

The Contract Documents set forth the minimum requirements necessary to complete the Work. It shall be the Contractor's sole responsibility to provide sufficient resources to fulfill the contract Scope of Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

The Contractor shall provide all resources to successfully perform the terms of this Contract in accordance with Contract Drawings, and in compliance with Arlington County Standards and Specifications, WMATA Design Criteria specifications, and Exhibits. The Contractor shall perform the Work in a workman like manner, complete, in-place, tested and ready for continuous service.

Upon completion of the Work, the Project shall be accepted, owned, operated and maintained by WMATA.

4. PLANNING AND COORDINATION

The Contractor shall be solely responsible for the coordination of all the Work. The Contractor shall supervise, direct and cooperate fully with all sub-contractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies, and all others whose services, materials, or equipment are required to ensure completion of the Work within the contract Substantial and Final Completion dates.

The Contractor shall coordinate the Work with the County Representatives, WMATA, and all other Contractors employed to perform Work, including but not limited to, utility service companies, to effect proper coordination, progress to complete the Project on schedule and in the proper sequence.

There may be other construction in progress at the Site that may impact the Work. The Contractor shall plan and coordinate the Work in coordination with the work of other contractors. The Contractor shall conduct and arrange its work so as not to impede or interfere with the WMATA, the adjacent property owner, Simon Property (Pentagon City Mall), or County's operation of the Project or the work of other contractors working at the Site in the same or adjacent areas.

The Contractor shall allow the County or County Representatives, WMATA, and other Project contractors or their representatives, access to the Contractor's work areas to complete any work necessary for the regular operation of the Project and the completion of other Contractor's work. A 24-hour notice will be provided for non-emergency situations whenever possible.

The Contractor shall attend and participate in all Project coordination and bi-weekly progress meetings and report on the progress of all work and compliance with progress schedules and WMATA.

No extra compensation will be paid for removing, relocating, re-fabricating, or changing any duct, pipe, conduit routing, or other material or equipment that has been fabricated or installed without proper coordination among all trades involved. Any failure of the Contractor to properly coordinate the Work shall not cause additional costs to the County nor increase the contract time.

The Contractor shall not be responsible for repair for any damage done by contractors, not under the Contractor's authority.

For any inspections or tasks requiring WMATA, the Contractor shall notify WMATA in writing, with a copy to the County Project Officer or County Representative, at least fifteen (15) calendar days in advance of the date of inspection and milestone.

The Construction Manager will be the County's Representative, and all matters of coordination requiring County actions shall be brought to the attention of County Representative (Construction Manager) within Two (2) business days.

Notwithstanding the statement above, the Contractor is solely responsible for the coordination of the Work, including any coordination required with the County, County Representatives, WMATA, and all other contractors employed on the Project Site, including utility service companies. The Contractor shall complete and submit requests for escorts utilizing WMATA standard forms, including the SSWP.

The Contractor shall be liable to the County for any delay and disruption costs incurred by County and other contractors as a result of the Contractor's actions or inactions.

5. CONSTRUCTION STANDARDS

All Work shall conform to Contract Drawings and Specifications along with the current edition (unless otherwise specified) of the following construction standards and specifications:

The Arlington County Department of Environmental Services (DES) Construction Standards and Specifications, a copy of which may be downloaded at no charge from the internet at:

<http://topics.arlingtonva.us/building/construction-standards-specifications/>

The Arlington County Department of Environmental Services (DES) Traffic Signal & Streetlight Specifications May 2014, a copy of which may be downloaded at no charge from the internet at:

<http://topics.arlingtonva.us/building/construction-standards-specifications/>

The Virginia Department of Transportation (VDOT) Road and Bridge Standards and Specifications, a copy of which may be downloaded at no charge from the internet at:

http://www.virginiadot.org/business/locdes/Standards_TOC.asp and

<http://www.virginiadot.org/business/const/spec-default.asp>

The Virginia Work Area Protection Manual (WAPM), a copy of which may be downloaded at no charge from the internet at: <http://www.virginiadot.org/business/trafficeng-WZS.asp>

The Virginia Department of Transportation Work Zone Pedestrian and Bicycle Guidance, a copy of which may be downloaded at no charge from the internet at:

https://www.virginiadot.org/business/resources/wztc/2016_WZ_Ped_BikeGuide.pdf

Manual on Uniform Traffic Control Devices (MUTCD), a copy of which may be downloaded at no charge from the internet at: http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/pdf_index.htm

The Arlington County Department of Environmental Services (DES) Dechlorination and Disposal Procedures, a copy of which may be downloaded at no charge from the internet at:

<http://topics.arlingtonva.us/building/discharging-chlorinated-water/>

National Fire Protection Association (NFPA) standards - a copy of which may be downloaded at no charge from the internet at: <https://www.nfpa.org/Codes-and-Standards>

Arlington County Noise Control Ordinance - https://arlingtonva-my.sharepoint.com/personal/dsoum_arlingtonva_us/projectworks/ReferenceLibrary/Arlington%20County%20Code%20Chap.%2015%20Noise%20Control.pdf

Arlington County Street Light Policy and Planning Guide Instructions for Developers -

<https://arlingtonva.sharepoint.com/sites/des/TED/TeamDocuments/Arlington%20County%20Lighting%20Specifications%202018.pdf#search=Arlington%20County%20Street%20Light%20Policy%20and%20Planning%20Guide%20Instructions%20for%20Developers>

Washington Metropolitan Area Transit Authority JDAC Adjacent Construction Project Manual - The Metro Office of Joint Development and Adjacent Construction Project Manual, a copy of which may be downloaded at no charge from the internet at:

<https://www.wmata.com/business/adjacent-construction/index.cfm>

WMATA Safety System Program – Attachment-I

WMATA Construction Safety, Environmental Manual – Attachment-J

WMATA Computer-Aided Drafting (CAD) Standards Manual – Attachment-G

WMATA Division 01 Specifications – Attachment-R

WMATA Manual of Design Criteria Revision-3 – Attachment-H

The Contractor shall have a copy of the County, WMATA, State and National Standards, a copy of the Contract Documents, Drawings, Specifications, and a copy of the appropriate permits available at the Project Site at all times when construction activity is occurring.

If there is any discrepancy between the Contract Drawings/Specifications and the County, WMATA, Commonwealth of Virginia, or National standards and specifications listed above, then the requirements of the Contract Drawings/Specifications shall prevail over the other documents. In case of conflict or inconsistency between the Drawings and the Specifications, the Contract technical specifications shall govern.

Anything shown on the Drawings but not noted in the Specifications or noted in the Specifications but not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both.

Technical Specifications shall take precedence over General Specifications, Detailed Drawings take precedence over General Drawings.

Special Conditions take precedence over General Conditions. Any conflict or inconsistency in the Drawings shall be submitted by the Contractor to the County Project Officer, whose decision thereon shall be conclusive.

6. DIFFERING SITE CONDITIONS

The Contractor shall, within One (1) business day, notify the County Project Officer or County Representative to request information and a resolution both verbally and in writing when there are differing site conditions.

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the County Project Officer and/or County Representative of the following:
 - (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or
 - (2) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- B. The County Project Officer and County Representative shall investigate the site conditions promptly after receiving notice. If the conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly. No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given written notice required; provided that the time prescribed in (A.) above for giving written notice may be extended by the owner.

- C. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

7. GEO-TECHNICAL BASELINE REPORT

The Geotechnical Baseline Report (GBR) for this Project provides the baseline for ground conditions and behavior expected to be encountered during construction. The report is provided as a reference to aid for the Contractor in preparing their pricing, the GBR will aid the Contractor in performing the Work and will assist the County in administering the Contract for construction. See Attachment-T

The Contractor shall be responsible for performing its geotechnical investigation based on the requirements of the helical pile foundation. The Contractor’s geotechnical investigation and findings shall become the geotechnical report of record. They will be the basis for evaluating the soils conditions, bearing capacity, and friction requirements for the helical pile delegated design.

The GBR intends to document the basis of the design, establish baseline values of the ground properties and behavior during excavation.

The Contractor shall make its own interpretations of the geotechnical data results and findings to prepare their submittal for the Helical Pile design as specified in in the Contract Documents and Special Provision SP0006 – SECTION 02465 HELICAL SCREW FOUNDATIONS.

8. HOLIDAYS AND MINIMIZED CONSTRUCTION ACTIVITIES

During the duration of the Project, there are County observed holidays during which time no work shall be performed on the Project, unless approved in advance by the County. The Contractor shall close open work zones in advance of these events such that impacts to parking and sidewalks are minimized.

Excluding an emergency situation, the Contractor shall make a reasonable effort to minimize any material interference with the business operations of Simon Property and its lessees upon the Simon Property, but nothing herein contained shall prevent or prohibit the Contractor from exercising any of its rights during regular and customarily daylight business hours. Additionally, construction activities shall be limited between November 15 – January 15 to minimize disruption during the peak holiday shopping season (“Minimized Construction Activities”) due to the proximity to the Pentagon City Mall. Major excavation, foundation, and structure installation activities requiring heavy equipment, crane and lay down within the Limits of Disturbance (LOD) that interrupt access to the Pentagon City Mall shall not be allowed during the period of Minimized Construction Activities and in no case shall any access lane to

the Pentagon City Mall be blocked. The type and extent of the Minimized Construction Activities shall be approved in writing by the County Project Officer before the commencement of such activities. No separate or additional payment or compensation will be made to the Contractor for these non-working or Minimized Construction Activities days.

9. WORK HOURS AND SCHEDULE OF WORK

The Contractor shall perform no construction activities, within the jurisdiction of the County, except for construction worker arrival to the construction site and indoor construction activity, no earlier than 7:00 A.M., and end by 9:00 P.M., on weekdays and will commence no earlier than 10:00 A.M., and end by 9:00 P.M., on Saturdays and Sundays.

The Contractor shall place a minimum of one sign per streetfront around the construction site, indicating the permissible hours of construction and provide written copy to all sub-contractors, place one additional sign within the construction trailer containing the same information, and provide a written copy of the permissible hours of construction to all sub-contractors

In addition, the County reserves the right to restrict working days and hours to accommodate special site conditions as required.

Scheduling the Work shall be the sole responsibility of the Contractor. The County will not allow time extensions for the normal and seasonal weather conditions considered typical for a given month in accordance with the National Oceanic and Atmospheric Administration Thirty-Year mean for National Airport (as described in the DES General Conditions). Core hours of work, for work performed within the jurisdiction of WMATA are Monday to Friday 7:00 A.M., to 3:00 P.M.

However, within the limitations of these specifications, the Contractor shall work such hours per shift, as many shifts per day and as many days per week as necessary to complete the Project Work within the construction schedule dates specified. The exception is Contractor work, within the existing passageway, will be during hours of non-revenue Metrorail service. WMATA has posted the hours of revenue Metrorail service at <http://www.wmata.com/rail/schedules.cfm>

10. CONSTRUCTION SCHEDULE

The Contractor is responsible for scheduling and implementing the various phases of the Work. The Contractor shall provide a baseline construction schedule (using calendar days) for the Project to the County Project Officer and County Representative for review and acceptance within Fifteen 15 calendar days after receipt of the Notice to Proceed.

The baseline construction schedule shall show the order in which the Contractor proposes to carry on the Work, with dates for starting and completing the various activities of the Work represented by milestones in the baseline construction schedule. The Contractor shall schedule the Work so that once construction begins on a site, the Work is pursued continuously and without idle time or shutdowns unless approved by the County Project Officer.

The Contractor shall submit an update to the baseline construction schedule monthly with the request for partial payment. Review and acceptance by the County of the Contractor's updated baseline construction schedule of completion shall in no way relieve the Contractor of its responsibility to complete the Work within the contract time. If the Work falls more than Ten Percent (10%) behind the original approved baseline construction schedule, the County may require the Contractor to prepare and submit, at no extra cost to the County, a recovery construction schedule indicating by what means the Contractor intends to regain compliance with the baseline construction schedule. The recovery schedule must be submitted to the County for review by the date indicated in the County's written demand.

The baseline construction schedule shall show weekends and County holidays. The period for the Minimized Construction Activities shall also be shown in the baseline construction schedule.

The baseline construction schedule shall show a detailed order of construction activities including delegated design, review and approval of the helical pile foundation, shop drawings, submittals, samples, material procurement, concrete cure time, permits, inspections and other items necessary to complete the Project, a documentable critical path based on predecessor and successor activities successor with the exception of NTP and Project Completion.

The Project Schedule must delineate all submittals and activities involving WMATA, including, but not limited to, all testing and commissioning. Work shall not commence on the Project until the baseline construction schedule has been accepted and approved by the Project Officer and WMATA. Dates shown on the Project Schedule that relate to the WMATA Facilities and/or operations shall not be changed unless the change is reviewed and approved by WMATA.

The preparation and updating of the baseline construction schedule shall be an incidental activity of the Contractor. No separate payment shall be made for this work.

11. EASEMENTS

The County has obtained temporary and permanent easements from Fashion Centre Mall, LLC, the owner of the property known as the Pentagon City Mall, in order to perform the work covered under this Contract. The Pentagon City new elevator easements and the plan sheets describe the areas and agreements reached with respect to each of the easements acquired.

12. WMATA INDEMNIFICATION

In addition to the indemnification provided to the County per the Contract, the Contractor and its subcontractors shall indemnify and hold harmless WMATA and WMATA's officers, officials, and employees against any liability and claims for injury, including personal injury to or death of person or persons, and for loss or damage occurring in connection with the Project. The indemnity described herein is a contractual undertaking that is not limited by the limits of insurance provided in relation to this Agreement.

If any suit, action or proceeding is brought, or any other claim is made, against WMATA, its employees, or agents by reason of any such claim, the Contractor, upon Notice from WMATA or the County, shall cause its contractors and subcontractors to defend the same with counsel reasonably satisfactory to WMATA, provided, WMATA shall have the right to engage its own counsel who shall be at the expense of WMATA unless WMATA reasonably determines that counsel for the Contractor cannot adequately represent the interests of WMATA.

13. ADDITIONAL INDEMNIFICATION

The Contractor and all subcontractor(s) performing work in the Temporary Construction Easement are shall indemnify and hold County, Fashion Centre, LLC, Simon Properties Group, Trustees, and Lenders, harmless from and against any cost, damage, claim, liability, or expense arising out of or in connection with the entry into, or construction activities in the Temporary Construction Easement.

The Contractor and all sub-contractor(s) performing work in WMATA Permanent Construction Easement area shall indemnify and hold County, Fashion Centre, LLC, Simon Properties Group, Trustees, and Lenders, harmless from and against any cost, damage, claim liability, or expense arising out of or in connection with the entry into, or construction activities on the Permanent Construction Easement.

14. PROJECT MANAGEMENT SOFTWARE

The County has implemented e-Builder as a project management software system. The Contractor shall utilize the e-Builder system and the tasks anticipated to be performed in the e-Builder include but are not limited to: processing submittals, pay applications, potential change orders, change orders, requests for information (RFI), meeting minutes, daily construction reports, action items, construction schedules, punch lists, and incident reports.

15. GENERAL RECORD AND AS-BUILT DRAWING REQUIREMENTS

- All record drawings for the Projects are required to be on bond paper and PDF, both formatted as 22" x 34" sheet sizes, and shall have the name, address, and telephone number of the firm preparing the as-built drawings added to the WMATA sheet mask as provided in WMATA AutoCAD template files.
- Records shall also be submitted using e-Builder software as e-Transmit AutoCAD drawing files and PDF, based on the WMATA Project datum.
- The Contractor's as-built stamp (with embossed or wet seal and with an original signature on each sheet) shall verify that record drawings reflect the actual as-built conditions in the field.
- "AS-BUILT DRAWING" shall be clearly labeled on each sheet.
- Street names shall be on all streets.
- All easements and rights-of-way shall be shown and clearly labeled.
- All survey control with benchmark elevations shall be shown on a separate drawing(s) with a complete description of its location with local references to local features so the point can be recovered in the future.
- The horizontal and vertical locations, description of any utility lines, and other installations of any kind or any other description known to exist within the construction area.
- The locations and dimensions of any changes to buildings and structures.
- As-built elevations to changes made in site grading.
- Changes in details of design or additional information such as approved placement details, pipe sizes, material changes, etc.
- All horizontal distances shall be shown to the nearest hundredth of a foot. All vertical distances shall be shown to the nearest hundredth of a foot.

Mechanical Requirements

- The Contractor shall make all minor changes in duct, pipe, or conduit routings that do not affect the intended function. Still, items may not be resized, or exposed items relocated without the approval of the County and WMATA.

Electrical and Communication Lines

- Locate and clearly label all conduit runs, fittings, splice vaults, pull boxes, meter pedestals, light bases, transformer or switchgear pads, poles and other appurtenances.
- Show all sizes and material types of pipes and conduits.
- Show location and elevations on pipes and fittings where changes or deflections in direction occur.
- Special detail drawings may be required where installations are not shown on approved Contract Drawings for whatever reason or where required for clarity.

Sanitary Sewer System As-Built Requirements

- Show all piping, wyes, tees, valves, manholes, and special cases.
- Identify runs of gravity mains (i.e., 300.4 feet of 8" PVC SDR 35 at 0.4%).
- Elevations shall be given for the top of all manhole covers and for all inverts.
- Service laterals are to be identified with the location of end service or plug (station and offset measured upstream).
- Manholes shall be identified by type.

Drainage System As-Built Requirements

- Provide elevations and locations for all drainage structures, top, invert, bottom, etc.
- Identify the size, material, and slope of all piping.
- Location of connections to existing systems measured from the nearest structure.
- Location of pipe connections, including service lines, measured from the nearest manhole.
- Provide spot elevations and cross-sectional information, as well as slope.
- Elevation of water stage at the date of As-Built.
- Elevation of top of control structure, throat, faces, or underdrain.

16. RED-LINE AND AS-BUILT DRAWINGS:

The Contractor shall prepare and submit as-built drawings that encompass the entire Project area. As-built drawings shall follow, WMATA CAD Standards - see WMATA provided template files with Attachments, and shall be submitted in hard copy paper form and electronic PDF and e-Transmit AutoCAD drawing format to Arlington County's Engineer of Record (EOR, STV, Incorporated) and separately to the County using e-Builder per review process and the review checklist.

The Contractor shall maintain and update a red-line set of drawings of the work performed to date on a regular basis. The red-line drawings shall be located on the Jobsite and shall be made available to the County Project Officer, and/or their representative, the EOR and WMATA upon demand. Red-line

drawings shall be reviewed during the bi-weekly progress meetings to ensure the red-line drawings are being updated and accurately depict the as-built conditions. These drawings shall supplement the Contract Documents, and shop drawings as required to coordinate the work of the various trades. The red-line drawing set shall be submitted along with the as-built drawings as a PDF.

Drafting shall be performed by skilled drafters and shall match original drawings in CAD layers, line weights, symbols and lettering style, and size.

- The Contractor shall submit three (3) hard copy print sets of as-built drawings for WMATA's review and approval at substantial completion.
- The Contractor shall incorporate additions and corrections based on the County, EOR, and WMATA's review. The Contractor shall submit the as-built drawings in compliance with the WMATA Adjacent Construction Project Manual, not later than thirty (30) calendar days after receipt of review comments.
- Completed as-built drawings shall bear the signature of an officer of the Contractor organization, certifying compliance with record conditions, using a rubber stamp having the following information:

AS - BUILT
DATE:
I CERTIFY THAT THIS DRAWING ACCURATELY DEPICTS THE WORK AS CONSTRUCTED
AN OFFICER OF THE CONTRACTOR: _____
CONTRACTOR'S NAME:

The final As-Builts shall be submitted prior to the final payment. The final As-Builts intends to provide the County and WMATA with a post-construction field survey of the Project area that meets industry standards for civil engineering design. Final as-built drawings must comply with the WMATA Adjacent Construction Project Manual, the WMATA CAD Standards. The County will provide the Contractor with applicable AutoCAD files containing property information and survey control for establishing the field survey to be performed.

17. PERMITS

Approved Construction Drawings and Specifications shall be required to acquire the permits. The County shall obtain and pay fees for the Building Construction Permit and Occupancy Permit. All other permits, including WMATA Permits, sheeting and shoring and trade permits, and Right of Way (R.O.W.), shall be obtained by and paid for by Contractor. Information on permit requirements and fees is available on the Arlington County website: <http://building.arlingtonva.us>. The Contractor shall prepare exhibits that may be required by the permit issuer.

Additionally, the Contractor is responsible for obtaining and complying with all applicable State, Federal, WMATA, and Local permits, which are required for construction.

The Contractor shall coordinate the permit submission with the County Project Officer and/or County Representative

18. WORK ON WMATA PROPERTY

WMATA is treating this County Project as a WMATA adjacent construction project and will monitor construction. The Contractor shall fully comply with the WMATA Adjacent Construction Project Manual. Where the Manual, Contract Drawings, or Contract Specifications differ, the more restrictive will apply.

The Contractor shall comply with the following documents:

WMATA Adjacent Construction Project Manual:

<https://www.wmata.com/business/adjacent-construction/index.cfm#main-content>. See Attachment-F

WMATA Construction Safety and Environmental Manual:

<https://www.wmata.com/business/procurement/upload/Construction-Safety-and-Environmental-Manual-CSEM-2013.pdf>. See Attachment -L

Any work within WMATA's right of way or other operational areas will require a WMATA Permit and an approved Site-Specific Work Plan (SSWP). Electrical tie-ins to WMATA equipment will additionally require an approved WMATA Switch Order. Access to WMATA tracks will require approved General Orders and Track Rights (GOTRS) before such work can begin. The Contractor shall obtain WMATA badges from the JDAC Project Manager prior to working on WMATA Facilities and if required by WMATA. Any personnel that requires access to the track will additionally need to complete WMATA's right-of-way safety training course. The Contractor acknowledges that WMATA will require a background check to be provided to WMATA on each person applying for a WMATA badge. The cost for

the Contractor's and subcontractors' employees assigned to this Project to attend the training shall be incidental to the cost of the Project.

19. RFIs AND SUPPLEMENTAL INSTRUCTIONS

Requests for Information (RFIs) shall be submitted in writing by the Contractor using the e-Builder system. Only the Contractor, not sub-contractor(s), shall submit RFIs.

RFIs shall only be used to request interpretation or clarification of apparent issues or problems found within the Contract Documents. The Contractor shall identify details of the issue and provide their interpretation within the RFI. Upon receipt of the RFI, the County and / or the County Representative shall respond using the e-Builder within Fourteen (14) calendar days.

The following are not considered RFI's and may be rejected by the County if submitted as an RFI by the Contractor:

- a. Routine Project correspondence**
- b. Material or shop drawing submittals**
- c. Substitution requests**
- d. Change orders**
- e. Responses to non-conformance notices**
- f. Similar project communications**

RFIs shall not be construed to be a change order. The County may initiate a change to the Contract by noting in the RFI response that a change order will be required. If the Contractor considers an RFI response to be a change to the Contract, then the Contractor must notify the County Project Officer or County representative in writing immediately.

If changes occur after the individual Project assignment is awarded, that affect the Contract Drawings and Specifications, and such change does not affect the contract schedule or cost, the County may issue supplemental instruction. Supplemental instructions are formal notifications to the Contractor to order minor project changes. These adjustments to the Contract Drawings and Specifications may be the result of RFIs, value engineering, recognition of error/omission, changed conditions, requests for substitutions, etc.

20. BI-WEEKLY PROGRESS MEETINGS AND PROGRESS REPORTS

The Contractor's Project Manager and Superintendent shall attend a bi-weekly construction progress meeting as organized by the County Project Officer and/or County Representative. The construction progress meetings will, at a minimum, cover the following topics: permits, safety, errors and omissions,

old business, work performed this reporting period, schedule of future work to be performed, utility coordination issues, adjacent project coordination issues, new business, quality control/quality assurance, community outreach, submittal status, RFI status, PCO/CO status, and upcoming meetings. The frequency of progress meetings may occur weekly if deemed necessary by the County Project Officer and/or County Representative.

Progress Reports. The Contractor shall provide Arlington County with a written monthly status report regarding matters covered by the Contract. The status report shall summarize the progress of the Project, compare the state of the Project to the Project Schedule (including any explanation of any delays), and provide such other information as may be customarily reported on projects of similar size and scope.

21. ARLINGTON COUNTY BUS STOP/OPERATIONS

The Contractor shall notify Arlington County Bus Stop/Operations Management team in writing and by phone at a minimum of Four (4) weeks prior to any work that will impact the existing bus service so that the County can arrange closure and/or relocation of the bus stops. The Contractor shall contact Diane Trent, email: dtrent@arlingtonva.us, phone: 703-228-3049 and Mark Mainardi, email: mmainardi@arlingtonva.us, Phone: 703-228-3392.

Arlington County Transit Bureau Staff will be responsible for providing signage and notification of service disruptions. Any deviations from the plans must be submitted to Arlington County's Bus Stop/Operations Management team four (4) weeks prior to the scheduled service interruption.

22. SIGNS FOR CONSTRUCTION SITE

The Contractor shall install County provided project information signs (size 36"x 48") in English and Spanish at two (2) different locations for the construction site. The Contractor shall provide signposts and incidentals needed for a complete installation of the signs. Signs shall be installed at least Three (3) weeks prior to the start of the construction. The Contractor shall coordinate the location of the signs with the Project Officer and/or County Representative.

After the Project has been completed, the Contractor shall remove and return the signs to the County Project Officer or County Representative. The cost for this work shall be considered incidental to other items within the Contract, and no separate payment will be made.

Whenever work is occurring in front of the Pentagon City Mall entrances, both above and below ground level, the Contractor shall provide and install Two (2) - 36"x48" signs stating, "Businesses Open During

Construction” in English and Spanish at each end of the construction area. The signs shall be displayed, so they are visible to traffic. Directional arrows shall be included as a way of finding measures. Installation, signs, posts, mounting hardware, etc. are considered incidental to the Contract, and no separate payment shall be made for these items.

23. TRAFFIC SIGNALS AND STREETLIGHTS

Materials and construction of the communications conduit, streetlights, and traffic signals shall abide by the latest versions (unless otherwise specified) of the Arlington County Traffic Signal & Streetlight Specifications and the latest Arlington County Government Street Light Policy and Planning Guide Instructions for Developers. All materials for these areas shall be approved by Arlington County Transportation Engineering and Operations Bureau. The County Project Officer or County Representative will facilitate the material specification submissions for review by the Transportation Engineering and Operations Bureau.

Prior to removal of the existing streetlight equipment and materials, the Contractor shall meet with someone from the Arlington County Transportation Engineering and Operations Bureau to verify which equipment will be returned to the County, when and where the returned equipment will be delivered, and which equipment will be disposed. The Contractor shall contact (703) 228-3523 to set up this meeting. All costs associated with the coordination meetings and disposal shall be incidental to other items in the Contract.

24. MAINTENANCE OF TRAFFIC (MOT)

The Contractor shall conduct its operations in a manner that will ensure that all modes of traffic will be uninterrupted except as approved by the County. At the close of each workday, the area of work shall be confined to the smallest area possible, but in no event larger than the area designated in the Construction Documents, so that the maximum use of the street and sidewalk will be restored and the hazard to traffic reduced to the minimum. The Contractor should clean and make safe the work area before the Contractor leaves the Site. No excavation shall remain open within the roadway or sidewalk without the approval of the County except when the excavation can be safely bridged with the use of steel plates or other materials acceptable to the County. When areas of excavation do remain open, the area shall be barricaded, and warning signs shall be posted. Approved safety barriers may be required.

The Contractor has sole responsibility for ensuring that its operations are conducted in a safe manner and notwithstanding any other provision to the contrary, shall fully indemnify Arlington County, its officers, agents and employees for any damage or injury related to traffic operations which are caused

by negligent or otherwise improper or deficient performance under the Contract or nonperformance of the terms of the Contract.

The Contractor shall have One (1) employee that is accredited by VDOT in Basic Work Zone Traffic Control who will be responsible for the placement, maintenance and removal of work zone traffic control devices within the Project limits in compliance with the Right of Way permit requirements and conditions, the approved plans, Specifications, the Virginia Work Area Protection Manual and the Manual of Uniform Traffic Control Devices. An employee accredited by VDOT in Intermediate Work Zone Traffic Control shall be on-site to provide supervision during work zone adjustments or changes to traffic control due to field conditions. These employees shall provide evidence of these accreditations upon request.

The Work shall be performed in accordance with the Arlington County Noise Control Ordinance.

The Contractor shall confine its access to right-of-way and easement areas only.

The Contractor shall be responsible for securing their work area.

The Contractor shall always maintain pedestrian and vehicular access to the Simon Property. In addition to the easement requirements, full or partial driveway closures shall be coordinated with the Simon Property, at a minimum of, Seventy-Two (72) hours in advance.

Work hours are days and times and shown on the approved Maintenance of Traffic (MOT) plans. The Contractor is responsible for investigating and satisfying all Arlington County and VDOT (where applicable) Permit requirements and implementing the Approved MOT.

No mud or debris shall be tracked onto Right-of-Way.

The Contractor shall provide all personnel, signs, barricades, and any other items necessary for the maintenance of traffic and safety. The Contractor shall maintain the use of the appropriate vehicular, bicycle, and pedestrian controls across all roadways in front of the Project and full conformance with all County and VDOT standards and safety requirements. The Contractor should minimize impacts to pedestrian circulation, bicycle, and traffic. The Contractor shall provide proper signage for sidewalk closure, detour, and lane closure, as necessary. The Contractor shall set up controls at the beginning of each workday and takedown controls at the end of each workday, as applicable to each project, for the duration of the Project.

If indicated on the approved Contract Drawings, or with approval of the County Project Officer, the Contractor may be allowed to maintain controls overnight or for longer durations. Considerations that may allow the controls to remain overnight or for longer durations are that the roadway must allow for the safe passage of two-way traffic, and the provision of a safe, accessible pedestrian route through the Site.

A Maintenance of Traffic Plan has been prepared and approved by the County and WMATA. If the Contractor proposes to deviate from the approved MOT Plan for a County road, it shall be the Contractor's responsibility to provide updated MOT plan(s) signed and sealed by a licensed engineer, to coordinate and obtain approval from the County Project Officer Two (2) weeks prior to implementing any changes and this work shall be at no cost to the County.

If the Contractor proposes to deviate from the approved MOT Plan for a County road, it shall be the Contractor's responsibility to coordinate and obtain approval directly from the County prior to implementing any changes, and this work shall be at no cost to the County. The MOT plan was prepared with the preservation of pedestrian access along the corridor and minimizing the disturbance of the various bus routes along the corridor. The Contractor proposed changes to the MOT plan shall minimize the impacts on bus routes and pedestrians along the corridor.

At all times, the Contractor shall use the personnel and traffic control signs and devices necessary to comply with the Virginia Work Area Protection Manual and Part VI of the "National Manual on Uniform Traffic Control Devices." During the progress of the Work when the street may be obstructed to any extent by construction equipment or construction operations, in addition to the signs and barricades, special workers, certified by VDOT to flag the traffic, shall be equipped with VDOT required "STOP\SLOW" double-sided traffic control paddles, shall be designated by the Contractor to direct traffic. These selected workers shall not be assigned to any other duties while engaged in directing traffic.

Prior to any lane closures within the County Right-Of-Way, the County Project Officer or County Representative must be notified (and acknowledge the notification) Seventy-Two (72) hours in advance of any lane closure. Steel plates are permitted in the Arlington County year-round if applicable. Steel plates must be recessed into the pavement, and the Contractor shall report the location of the steel plates to the Arlington County Water Sewer Streets Bureau at the end of each workday.

Failure of the Contractor to correct any MOT deficiency immediately upon notification may result in the Project being shut down until the deficiency is corrected. Repeated violations of this provision may result in Contract termination.

Payment for MOT shall be based on the bid form. Payment for MOT will be made monthly. The amount to be paid each month will be the bid item amount for MOT divided by the number of months in the Contract. The Contractor shall not be entitled to any additional payment for changes to MOT, which are the result of the Contractor's work schedule or resource allocation, weather delays, or other factors not controlled by the County.

25. SITE ACCESS

The Contractor shall confine operations to Right-of-Way (per issued right-of-way permits) and all easement areas only and shall not work outside of LOD approved plan unless otherwise approved by the County Project Officer.

The Contractor shall comply with the terms of all of the easements for the duration of the Contract and shall not proceed with any work that will cause the County to be in violation of these easement agreements.

26. GENERAL SITE CONTROLS

The Contractor is responsible for the safety and security of their work area.

The Contractor shall provide, erect, and maintain barricades, fences, and/or signage as required to protect the general public, workers, and adjoining properties at no additional cost to the County.

The Contractor shall monitor parking of construction personnel's private vehicles and ensure that the public has unobstructed access to and through parking areas.

The Contractor shall take all necessary and appropriate precautions to ensure the safety of the public and Contract employees on the job to prevent accidents or injury to any persons on, about, or adjacent to the premises where the work is being performed. The Contractor shall comply with all laws, ordinances, codes, rules, and regulations relative to health, safety, and the prevention of accidents. The Contractor shall comply with Arlington County General Conditions and the WMATA Construction Safety and Environmental Manual.

The Contractor may be required to implement a monitoring plan in accordance with the Adjacent Construction Project Manual. As part of such plan, the Contractor shall conduct a pre-construction survey of all WMATA Facilities on or adjacent to the Construction Site prior to the start of any construction-related activity, a monitoring baseline survey, perform monitoring of the facilities during construction and conduct a post-construction survey after completion of construction activities.

27. WMATA FACILITY – PASSAGEWAY/ UNDERGROUND ACCESS PRE-CONSTRUCTION INSPECTION

Independent of the requirements of the WMATA Adjacent Construction Project Manual in regard to WMATA facilities and operations, an inspection of the condition of other buildings or structures near the Project which may reasonably be expected to be affected by the Work will be jointly performed by the Contractor, WMATA and the County. The County may include the owners of such adjacent properties to participate in the joint inspection.

Prior to beginning excavation, the Contractor shall inform the County of buildings or structures on which it intends to perform work or which performance of the Project Work will affect.

28. PRE-CONSTRUCTION DOCUMENTATION/WORKSITE DAMAGES

Prior to any construction activity at the Site, the Contractor shall document the pre-construction conditions of the Site i.e. surface, underground, and streetlight's nighttime operations. The pre-construction documentation shall consist of a high-resolution digital video recorded on MPEG, mp4, or other files of the area within the Limits of Work and an additional Fifty (50) feet outside the perimeter of the Limits of Work.

The Contractor shall submit the MPEG, mp4, or other files prior to any construction activity. The MPEG, mp4, or other files shall be the property of the County, and the County shall be permitted to reproduce such MPEG, mp4, or other files for any purpose without limitation or claim of ownership or compensation from any party. The Contractor shall include the cost of the pre-construction documentation as incidental to other bid items in the Contract, and there will be no separate payment for the pre-construction documentation.

Any damage to property, underground utilities such as streetlight conduits/wires, whether owned by the County or others, resulting from work performed under this Contract shall be repaired or replaced to the County's satisfaction at the Contractor's expense.

The Contractor shall repair all damage to WMATA Facilities and/or operations, and/or the property of others arising from or attributable to the Contractor's actions or omissions (and/or the actions or omissions of its subcontractors, consultants, employees, agents, representatives, or invitees) at no cost

or expense to WMATA, excluding, however, any loss, damage or injury that results solely from the acts or omissions of WMATA, its employees, business invitees, or contractors. Any such repair work must comply with the WMATA Design and Construction Standards.

29. PHOTOGRAPHS

As soon as construction operations have been initiated at the Work site the Contractor shall take a series of digital photographs, in jpeg format, of progress and/or problems that affect the performance throughout the Project until Substantial Completion.

The Contractor shall take and submit a minimum of Ten (10) photos required to be submitted per month; however, the actual number of photos and locations shall be based on the amount of progress/and or problems encountered each month. The photos need to be coordinated with the Arlington County Project Officer to ensure proper coverage or areas.

For informational purposes, each stage of work shall be photographed to include significant work areas and activities in progress. The Contractor shall not be paid until the photographs are uploaded to e-Builder within Ten (10) days after being taken.

Digital photos shall be submitted to Arlington County on a monthly basis via e-Builder to the County Project Officer or as directed. Each photo print shall be identified on a permanent file so that the following data is recorded for each photo to include: the specific contract number; photo number, job location such as survey stationing, to include looking north, south, east or west, date of the photo, progress or problems identified in the lower right-hand corner of the photo or on a separate file.

The data shall be typewritten and arranged, similar to the data listed below:

- a. Arlington County Contract No.
- b. Contract Title:
- c. Prime Contractor:
- d. Date photo was taken:
- e. Photograph No.
- f. Identify Job location, area, elev., Facing North, South, etc. on each photo:
- g. Description of work in progress:
- h. Problems encountered

30. MOBILIZATION

Mobilization consists of preconstruction expenses and the costs of preparatory work and operations performed by the Contractor, which occur before the amount is earned from other Contract items. Mobilization shall include the cost of attending training for the County’s Project Management System and cost for the Contractor’s personnel to attend WMATA right-of-way safety training. The total amount entered on the Bid Form for Mobilization shall not exceed Six Percent (6%) of the total bid amount. Items which are not to be included in the mobilization line item will include, but will not be limited to, the following:

- Any portion of the Work covered by the specific Contract item or incidental work, which is to be included in the Contract item(s).
- Profit, interest on borrowed money, overhead, or management costs. Any costs of mobilizing equipment for force account work.
- Based on the lump sum Contract price for “Mobilization,” payment will be made as follows:
 - Fifty Percent (50%) of the contract lump sum price will be made on the first progress payment.
 - The second installment will be made following installment on the next progress payment following substantial mobilization to the Site.

31. CONSTRUCTION STAGING AND STORAGE

The Contractor is responsible for the staging and storage of materials. The County will provide no space outside of LOD shown on the approved plan.

The Contractor is responsible for securing all land and facilities necessary for construction staging, including but not limited to the protection of materials, disposal of waste, parking, and temporary utilities at no additional cost to the county. The Contractor shall secure the work zone areas at all times.

32. UTILITIES

The Contractor is required to locate, identify, and maintain in operation all existing utilities encountered within the limits of work.

The Contractor shall notify all local utility companies and hire a private utility locator (with regards to WMATA Facilities) and mark the location of any utility lines prior to commencing any work on the Construction Site or the Project.

The Contractor shall pay all charges for utilities used, constructed, or modified in connection with the construction and completion (but not operation) of the Project and shall be liable for any interference,

harm or disruption of any utility service to WMATA arising from or attributable to its construction-related activities.

Existing utility services to WMATA Facilities must remain in place and shall not be utilized by the Contractor during the construction of the Project except and to the extent shown on the approved Construction Documents.

33. ELECTRICAL SERVICE CONNECTIONS

The electrical service connection is to be made by the Contractor by tying into the existing WMATA electrical panels per the approved and permitted electrical plans. An approved Site-Specific Work Plan (SSWP), Switch Order, and WMATA escort is required for WMATA electrical service connection activities.

34. TEMPORARY UTILITY AND ELECTRICAL SERVICES

The Contractor shall determine its needs for the temporary utility services and shall make arrangements with utility companies and governmental agencies to secure such services.

The Contractor shall provide temporary electrical service of sufficient capacity to serve its requirements during the life of the Contract. The source of temporary power for testing may be the temporary service, portable generator or other approved system which will deliver power at the voltage and other characteristics required to accomplish testing as specified. Circuits and construction for temporary systems shall suit the needs of the work and comply with NEC and the codes and regulations of the jurisdictional authorities and the requirements of Arlington County.

Temporary services shall be furnished, installed, connected, and maintained by the Contractor in an approved manner. Prior to completion of the Work the Contractor shall remove all temporary services and restore affected areas as approved.

Shop drawings for temporary utility and electrical services shall be submitted for approval. The power supply shall be of such quantity and type required to perform the Work of the Contract. Maximum primary voltage shall be 600 volts, unless otherwise approved. Lighting equipment shall be of the type and quantity needed to provide illumination of all project areas. Materials for and installation of temporary services shall comply with OSHA requirements and with the minimum requirements of the technical specifications.

35. CHANGES IN QUANTITIES

The Contractor shall perform all Work necessary to complete the Project as described in the Contract Documents based on the unit prices included in the Pricing Schedule (Sheet). The quantities included in the Pricing Schedule (Sheet) are estimated. The Contractor will be paid based on the actual field measurements and actual quantities. Any increase or decrease in quantities installed as compared to quantities listed in the Pricing Sheet shall be provided at the unit prices quoted in the Pricing Sheet. Any unanticipated changes to the Scope of Work required to complete the Project will be addressed by means of a Change Order.

36. CONSTRUCTION QUALITY CONTROL PLAN (CQCP)

The Contractor shall provide a Construction Quality Control Plan (CQCP) and quality control manager which is the performance of the tasks that ensure that construction is performed according to Arlington County and WMATA Technical Specifications, drawings, requisitions, codes of practices, construction procedures and other technical documents referenced in contractual documents on time, within a defined budget, and a safe work environment.

The CQCP shall be consistent with the FTA-IT-90-5001-02.1 and ISO 9001:2008 standards or any update thereto. The CQCP shall address quality assurance in organization, oversight, design, development, installation, inspection, review, and record keeping. WMATA shall be copied on all quality control documents and test results related to the Project.

The Contractor shall create the CQCP and name one individual as quality control manager for the Project. The quality control manager's sole duties on the Project shall be to provide quality control management independent of construction and profit. The quality control manager shall be responsible for all quality control activities and act as the primary contact on quality control issues. The quality control manager must report directly to someone at least one level above the General Contractor's Project Manager and Superintendent. The quality control manager must be a professional engineer with sufficient experience and expertise to perform the duties required of such a role.

The CQCP shall be provided prior to the start of construction and are subject to WMATA's approval as part of the approved Construction Documents. The CQCP shall be as listed below:

- CQC Plan Cover Sheet
- CQC Plan Acknowledgement
- Organizational Chart
- Resumes and Certifications Documentation

- Quality Control Manager Responsibility
- Stop Work Authorization Letter
- Major Definable Features of Work
- Three Phases of Inspection
- Quality Control Testing and Verifications
- Tests and Records
- Testing Agency Schedule
- Submittals
- Tracking Deficiencies
- Contractor's Quality Control Report (CQCR)
- Non-Conformance Report
- Construction Punch List
- Weekly QA/QC Meeting Minutes
- Preparatory Meeting Checklist
- Initial Inspection Checklist
- Receiving Material Inspection Report
- Contractor Quality Control Worksheet

37. SAFETY AND SECURITY CERTIFICATION PLAN.

Prior to the commencement of construction, the Contractor shall develop for the County and WMATA's review and approval, and thereafter execute, a Safety and Security Certification Plan for the Project.

38. SUBMISSIONS TO WMATA FOR APPROVAL.

To obtain WMATA's approval of the any construction phase submittal, The Contractor must submit to Arlington County at least one electronic (pdf) copy and three (3) paper copies of the proposed submittal. Arlington County shall submit such electronic copies for review using WMATA's electronic data management system (currently called "Procore") or other mutually agreed software.

Submissions Must Be Certified. Prior to each submission to WMATA, Arlington County shall cause its designer of record to stamp their approval on such submission to certify that the submission is complete and complies with the terms of this Agreement. Arlington County shall cause its designer of record to stamp such submission as evidence of its approval of them.

Submission Compliance. All submissions to WMATA shall comply with the WMATA Design and Construction Standards, as set forth in Section 2.1(b), and all Applicable Laws.

WMATA shall have thirty (30) business days to review any submissions. WMATA's time for review shall not begin to toll until the complete comprehensive set of documents in sufficient detail, as determined by WMATA, has been submitted.

The Contractor shall not change an approved submission without Arlington County and WMATA's prior written consent. The Contractor shall submit any proposed change(s) to the approved submission, including but not limited to change orders and shop drawings, to the County and WMATA for review. To

ensure that Arlington County and WMATA are able to evaluate how the proposed change is incorporated into the Project, the Contractor shall submit a complete and comprehensive change proposal package (which must include all parts of the Project and/or WMATA Facilities to be impacted by such proposed change) when seeking a change under this Section. Arlington County and WMATA shall review and provide written approval or rejection of the proposed change.

39. WMATA FUNCTIONAL OPERATIONS TEST

An operational test of the Project after it has been fully installed by the Contractor. This test is conducted to determine whether individual components are installed and integrated to operate on a system level per the design intent and the manufacturer's specifications. Such test must take place with WMATA's personnel present.

40. WMATA WARRANTY

Contractor warrants to WMATA the following:

- The Work shall meet all the requirements of the Contract Documents; and
- Equipment and Materials furnished under the Contract Documents shall be of a quality required by the Contract Documents new, and free of defects in materials and workmanship.

If any of the Work fails to meet the standards set forth at any time within the Warranty Period, then, upon reasonable notice to Contractor from WMATA received by Contractor within the Warranty Period, for failures or defects, that occur within Warranty Period the Contractor shall correct such Work to meet the standards. The Contractor warrants to WMATA to repair to such a standard any damage to the Project, even if the performance of such corrective work or repairs is beyond the Warranty Period.

The Warranty Period shall apply for period of Two (2) years after the Substantial Completion date.

If any Work is completed after Substantial Completion, (i.e. Punch list items) or modified, corrected, repaired, replaced and/or re-performed pursuant to this Warranty, then the Warranty applicable to such portion of Work shall apply for Two (2) years from the date of completion of the Work, modification correction, repair, replacement or reperformance, but in no event longer than Three (3) years of Substantial Completion date ("Warranty Period").

Notwithstanding the above, the expiration of Warranty Period does not bar Owners (WMATA) claim for any latent defect in the Work that could not have been reasonably discovered prior to the expiration of the Warranty Period. For avoidance of doubt, any references to service life of equipment and materials in the Contract Document shall be constructed as a standard of quality and shall not be constructed as a warranty or to increase in the duration of the Warranty Period.

41. TIME FOR COMPLETION; SUBSTANTIAL COMPLETION; AND FINAL ACCEPTANCE

A. Time of Essence.

Time is of the essence for the performance of the applicable work by the Scheduled Substantial Completion Date.

B. Scheduled Substantial Completion Date.

a. Scheduled Substantial Completion Date

Contractor shall achieve Substantial Completion of the Work no later than Four Hundred Eighty (480) consecutive calendar days from the Notice to Proceed (“Scheduled Substantial Completion Date”). The Scheduled Substantial Completion Date is subject to adjustment in accordance with this Contract.

b. No Time Extensions.

Except as otherwise specifically provided in this Contract, the County has no obligation to extend the Scheduled Substantial Completion Date, and Contractor shall not be relieved of its obligation to achieve Substantial Completion for any reason.

C. SUBSTANTIAL COMPLETION

1. Conditions of Substantial Completion

In addition to Substantial Completion requirements of the DES General Conditions, the Contractor must submit the following with its request for a determination of Substantial Completion:

- a. The Work is substantially complete, and the Project is ready for operational readiness testing
- b. Contractor has delivered and installed all equipment and materials required for commencing operations, and all such equipment and equipment have passed all testing, inspection and safety certificates required under the Contract Documents;
- c. Contractor has received all applicable Regulatory Approval which Contractor is obligated under the Contract Documents to obtain for use and operation of the Project;
- d. Contractor has successfully completed all the inspections and test and has demonstrated that the requirements of the Contract Document have been met;
- e. Arlington County / County Representative has received, in acceptable form, all documentation, including as-built information, required to be submitted prior to Substantial Completion in the System Acceptance Plan;
- f. Contractor has purchased and delivered to the County for delivery to WMATA free and clear of liens, spare parts, spare equipment and materials in accordance with the Contract Documents
- g. Contractor has completed all training of personnel in accordance with the Contract Documents;

- h. All defects that Materially adversely impact the operation of the Project have been corrected;
- i. Contractor has submitted, in acceptable form, all the required operations and maintenance plans, procedures, rules, schedules and manuals required by the Contract Documents;
- j. Contractor has delivered to Arlington County / County Representative copies of Contractor's final WMATA Safety/Security Certification Report and Certificate, as defined by Contractor's WMATA Safety/Security Certification Management Plan (the format of the Safety/Security Certification Report and Certificate shall be developed and agreed upon by Owner and Contractor at a reasonable time prior to the expected date of Substantial Completion);
- k. The Contractor shall provide a Use and Occupancy Permit;
- l. certificates of inspection and approval required for use and occupancy;
- m. The Contractor shall provide Fire Marshal's approval;
- n. The Contractor shall provide Approvals from, and transfer documents for, all utilities;
- o. All documents and verification of training required in accordance with any Quality Control or Commissioning Plan;
- p. The Contractor has completed preparation of all punch lists, and has prepared a schedule for completion of all punch list items that it is acceptable to the owner
- q. The Contractor shall provide the evidence that all conditions required for Substantial Completion outlined in the Project Construction Coordination Agreement between WMATA and Arlington County have been satisfied.

2. Substantial Completion Certificate

The County shall submit to WMATA a duly executed and completed Substantial Completion Certificate, which certificate shall set forth the date that Substantial Completion is deemed to have occurred as described above.

3. County's Actions

Within Fifteen (15) days following the receipt of Contractor's Substantial Completion Certificate, the County shall either: (a) deliver such certificate, duly executed by County, the County Representative, acknowledging that Contractor has achieved Substantial Completion; or (b) reject such certificate, stating the reasons in reasonable detail as to why such certificate has been rejected.

If the Contractor accepts the reasons for such rejection, it shall take corrective action and repeat the process set forth above. If Contractor disagrees with the reasons for the rejection, it shall promptly notify the County Representative, whereupon Contractor and County Representative shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within Seven (7) days, Contractor shall act in accordance with the instructions of County and the County Representative without prejudice to its rights under Section 41 of the Special Conditions. The County's execution of the Substantial Completion Certificate shall not relieve Contractor of any of its obligations under the Contract Documents.

4. Work to be Performed after Substantial Completion.

Promptly after Substantial Completion, Contractor shall complete all Punch List items and all other work, if any, which was waived for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents necessary to achieve Final Acceptance, including ensuring that the Project has been completed and all components have been properly adjusted and tested.

D. FINAL ACCEPTANCE.

1. WMATA Conditions of Final Acceptance.

In addition to Final Completion requirements of the DES General Conditions, Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- a. Substantial Completion and Operational Readiness has been achieved;
- b. WMATA shall have received in acceptable form: (i) all design documents, including drawings, calculations and specifications; (ii) all final Project Record Documents and Record Deliverables in accordance with the Contract Documents; (iii) the most currently updated Project Schedule; (iv) all Project Right-of-Way maps, surveys and survey maps; and (v) all other deliverables under the Contract Documents;
- c. All of Contractor's and Subcontractors' personnel, supplies, equipment and materials, waste materials, rubbish and temporary facilities shall have been removed from the Site;
- d. Defects involving electromagnetic interference have been corrected;
- e. Contractor shall have delivered to the County satisfactory evidence that there are no outstanding Claims, Liens or stop notices of Contractor or any Subcontractor, or laborer, including Utility Owners, with respect to the Work, other than any previously submitted unresolved Claims of Contractor or a Sub-Contractor or laborer being contested by Contractor (in which event Contractor shall provide a

certification listing all such matters with such detail as is requested by County and, with respect to all Subcontractor and laborer Claims and Claims of third parties, shall include a representation of Contractor that it is diligently and in good faith contesting such matters by appropriate action, including legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "Claim" shall include all matters or facts which may give rise to a Claim;

- f. The Punch List items shall have been completed in accordance with the Contract Documents;
- g. All of Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived.
- h. To the extent required, any State, county and/or municipal inspections and/or certifications have been successfully completed such that the facilities can be placed in service for their full use and function;
- i. The delivery to WMATA of an assignment of ownership to WMATA of all of County's design and construction documents, specifications and shop drawings, together with the design and construction documents, specifications and shop drawings themselves;
- j. The delivery to WMATA of an as-built survey of the Project complying with the then-current standards of the American Land Title Association and the American Congress of Surveying and Mapping (or such professional organizations as may replace them from time to time to set standards for land surveys);
- k. The delivery to WMATA of a final certificate of completion on the then-current form promulgated by the American Institute of Architects (or such other professional organization that may succeed to its role of promulgating industry-standard forms of this type) from the architect or engineer for the Project;
- l. The issuance by WMATA of a Certificate of Final Completion or acceptance, the decision to issue (or not) shall be determined by WMATA in its sole discretion.

2. WMATA Final Acceptance Certificate

The Contractor shall submit to County and WMATA a duly executed and completed Final Acceptance Certificate, which certificate shall set forth the date that Final Acceptance is deemed to have occurred as described above.

42. WMATA EXHIBITS

RECORDED PENTAGON CITY ELEVATOR TEMP EASE (20200100027489)
RECORDED WMATA PERMANENT ELEVATOR EASEMENT
TEMP. EASEMENT - SIMON TO COUNTY (FOR CB APPROVAL)
WMATA-TEMP & PERM EASEMENT EXHIBIT DESIGN OVERLAY 2020 0311
WMATA-PERMIT EXHIBIT B INSURANCE PC2E CONSTRUCTION
WMATA-PLAT EASEMENTS 2019 1213-PERMANENT EASEMENT
WMATA-PLAT EASEMENTS 2019 1213-TEMPORARY EASEMENT
WMATA-REAL-ESTATE-PERMIT-APPLICATION
WMATA-LAND REAL ESTATE PERMIT

43. PROPOSED PENTAGON CITY NEW ELEVATOR ARE SHOWN IN EXHIBIT 1 THROUGH 6 BELOW.

EXHIBIT 1 – LOCATIONS MAP

EXHIBIT 2 – EXISTING CONDITION PLAN

EXHIBIT 3 – EXISTING CONDITIONS – PASSAGE / MEZZANINE LEVEL

EXHIBIT 4 – PROPOSED ELEVATOR – SECTION

EXHIBIT 5 - PROPOSED PENTAGON CITY STATION ELEVATOR (RENDERING)

EXHIBIT 6 - PROPOSED PENTAGON CITY STATION ELEVATOR (RENDERING)

EXHIBIT 1 - LOCATION MAP

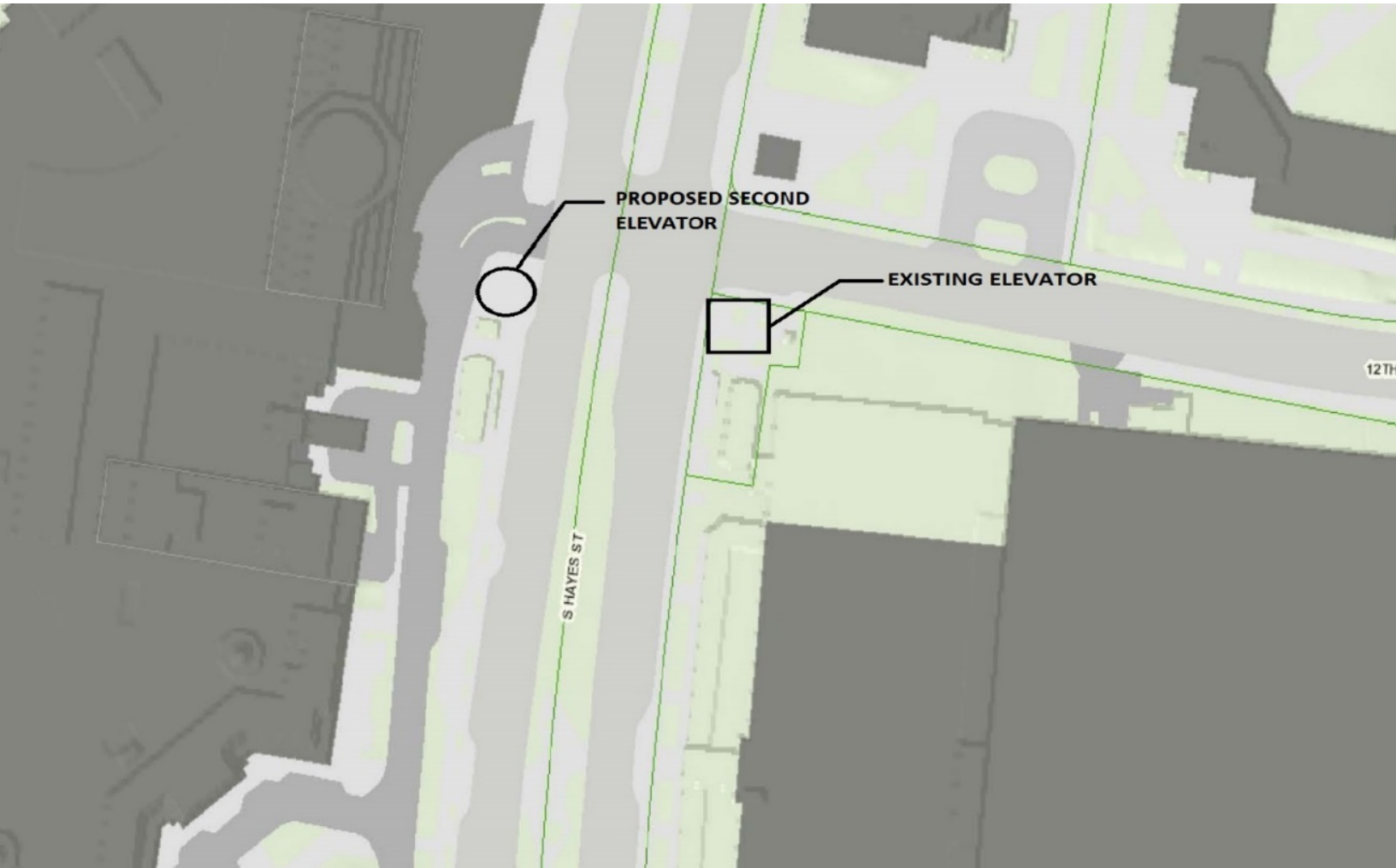


EXHIBIT 3 - EXISTING CONDITIONS – PASSAGE / MEZZANINE LEVEL

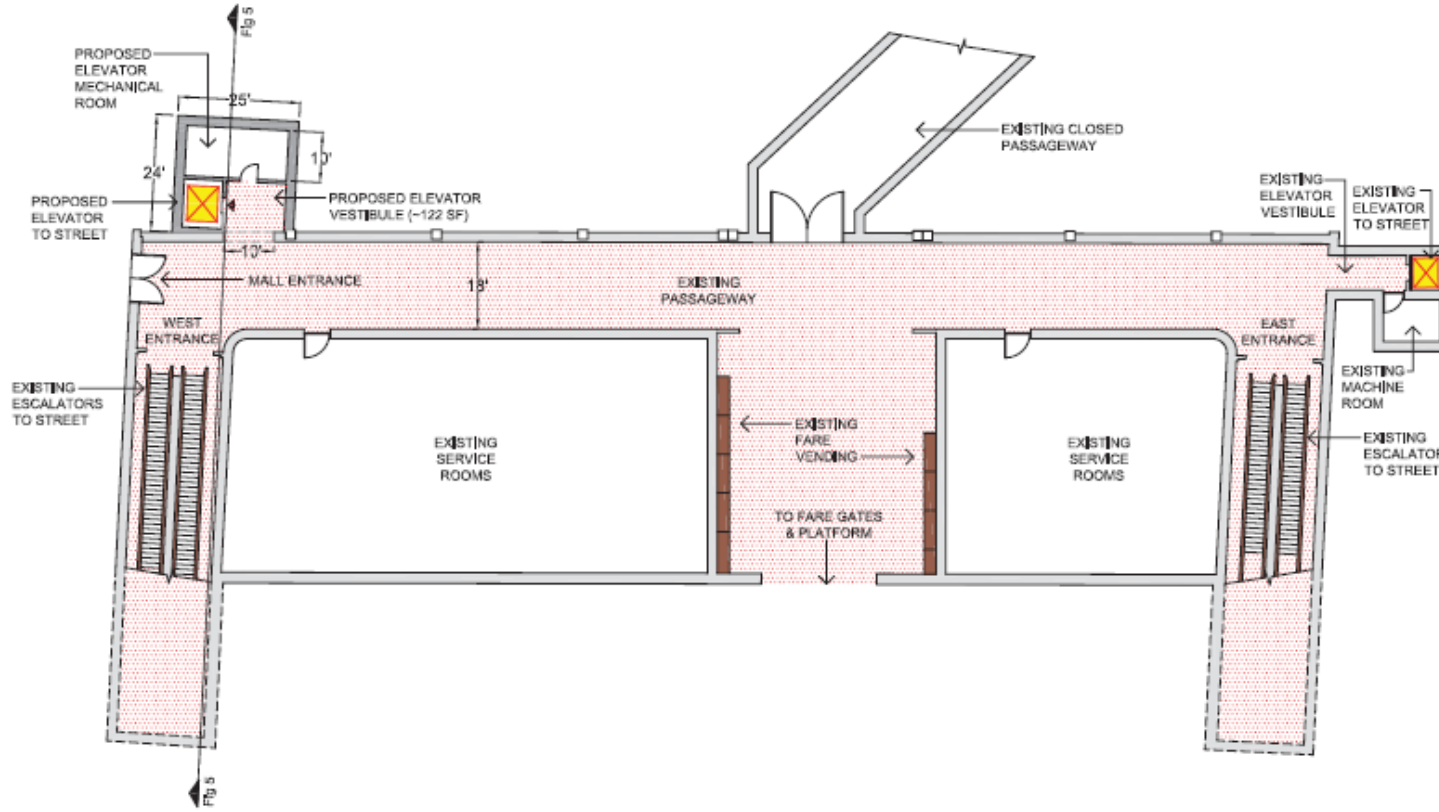


Figure 2: Existing Conditions - Passageway/Mezzanine Level

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Scale: NTS

EXHIBIT 4 - PROPOSED ELEVATOR - SECTION

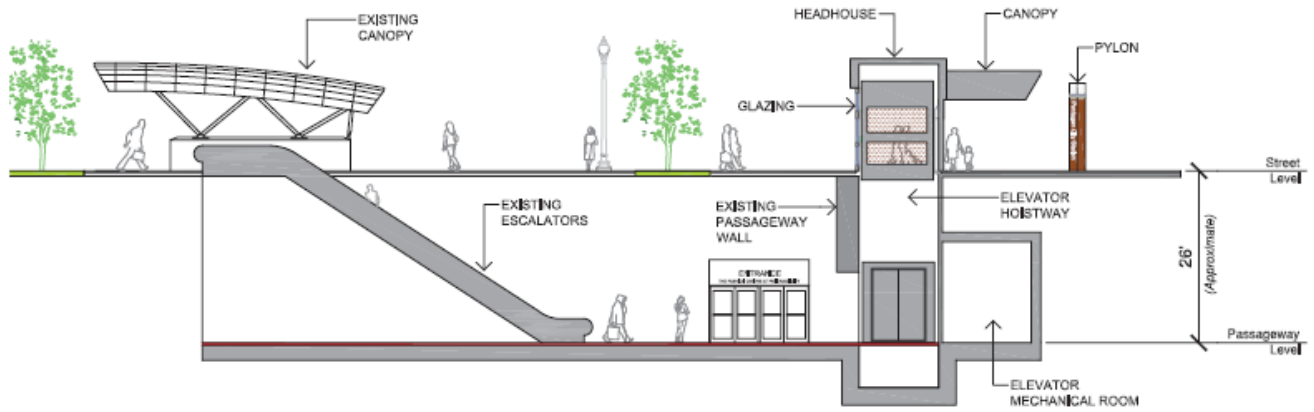


Figure 5: Proposed Elevator - Section



Scale: NTS

EXHIBIT 5 - RENDERING OF PLANNED NEW ELEVATOR FOR PENTAGON CITY METRO STATION



EXHIBIT 6 - RENDERING OF PLANNED NEW ELEVATOR FOR PENTAGON CITY METRO STATION



V. INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See the Insurance Checklist (part of the Bid or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the Work entered into between the County and the Contractor.

1. General

- 1.1 The Contractor shall provide insurance as specified in the Insurance Checklist found on the last page of the bid or proposal form.
- 1.2 The Contract with the Contractor will not be executed by the County until the Contractor has obtained, at its own expense, all of the insurance called for hereunder and such insurance has been approved by the County; additionally, the Contractor shall not allow any sub-contractor to start Work on any subcontract until all insurance required of the sub-contractor has been so obtained and approved by the Contractor. The Contractor shall submit to the County Purchasing Agent copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the County's request, certified copies of the required insurance policies in compliance with the insurance requirements. All endorsements and documentation shall state this Contract's number and title.
- 1.3 The Contractor shall require all sub-contractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation, Employers' Liability insurance, or any other insurance required by the Contract in the same manner and form as specified for the Contractor. The Contractor shall furnish sub-contractor's evidence of insurance and copies of endorsements to the County Purchasing Agent immediately upon request by the County and/or prior to the sub-contractor's performance of Work related to this Contract.
- 1.4 If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County Thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium. A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.
- 1.5 No acceptance and/or approval of any insurance by the County shall be construed as relieving or excusing the Contractor, any surety, or any bond, from any liability or obligation imposed under this Agreement.

- 1.6 Arlington County, and its officers, elected and appointed officials, employees, and agents are to be named as additional insureds under all coverages except Workers' Compensation, Professional Liability, and Automobile Liability, and the endorsement must clearly identify the County as an additional insured permitted to enjoy all the benefits under the applicable policy of insurance. The certified policy, if requested, must so state coverage afforded under this paragraph shall be primary as respects the County, its officers, elected and appointed officials, agents and employees. The following definition of the term "County" applies to all policies issued under the Contract and to all applicable endorsements:

"The County Board of Arlington County and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; and Arlington County Constitutional Officers."

- 1.7 The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. The Contractor 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.
- 1.8 The insurance coverage required shall remain in force throughout the Contract or as otherwise stated in the Contract Documents or these Insurance Requirements. If the Contractor fails to provide acceptable evidence of current insurance within Seven (7) days of written notice at any time during the Contract, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor.
- 1.9 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 or inspecting the Work 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 sub-contractors and any persons employed by the sub-contractor and/or carriers delivering and receiving materials from the Project.
- 1.10 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the Work, such policy shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.
- 1.11 All policies shall include the following language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy."
- 1.6 All policy forms must "Pay on behalf of" rather than "Indemnify" the insured.

- 1.13 Nothing contained in these Insurance Requirements or the Contract Documents shall be construed as creating any contractual relationship between any sub-contractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of its sub-contractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 1.14 Precaution shall be exercised by the Contractor 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 Contractor and its sub-contractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its Work under the Contract whether identified on the Contract Documents or not.
- 1.15 For any claims related to this Work, The Contractor's insurance shall be deemed primary and non-contributory to all other applicable coverage and in particular with respect to Arlington County, its representatives, officials, employees, and agents. Any insurance or self-insurance maintained by Arlington County shall be excess and noncontributory of the Contractor's insurance. The Contractor shall waive its right of subrogation for all insurance claims.
- 1.16 If the Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the Purchasing Agent, may be considered. Written requests for consideration of alternate coverages including the Contractor's most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the County Purchasing Agent at least ten (10) Working days prior to the date set for receipt of bids or proposals. If the County denies the request for alternate coverages, the specified coverages will be required to be submitted. If the County permits alternate coverage, an Addendum to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.
- 1.17 All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The insurers must also have a policy holder's with a rating of "A-VII" in the latest edition of the A.M. Best Co.'s Insurance Reports, unless the County grants specific approval for an exception, in the same manner as described in 1.16 above.
- 1.18 The Contractor shall be responsible for payment of any deductibles applicable to the coverages.
- 1.19 The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure additional protection for the County.

2 Contractor's Insurance:

2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Insurance Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
- v. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract;
- vi. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Business Automobile Liability, including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.3 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; Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or employees of the general contractor to which the insured is subcontracted; or employees of the insured's sub-contractor.

2.1.4 General Environmental Remediation Projects

In addition to the Insurance Requirements specified in the general provision or elsewhere in the Contract Documents, the Contractor shall not commence Work under this Contract until all insurance as required hereafter has been obtained, and certified copies, naming the County as an additional insured, of such insurance have been submitted and accepted by the Purchasing Agent.

- i. An environmental remediation contractor or sub-contractor shall be responsible for purchasing and maintaining Business Automobile Liability insurance and Workers' Compensation insurance as described in 2.1.2 and 2.1.3.

- ii. Acceptance by Arlington County of insurance submitted by the Contractor does not relieve or decrease in any manner the liability of the Contractor for performance of environmental remediation Work under the Contract.
- iii. The Contractor is responsible for any losses, claims, and costs of any kind, which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies. The limits and coverage requirements may be revised at the option of the Arlington County Risk Manager. The requirements outlined shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of Work under the Contract.

2.1.5 Contractors Pollution Liability (CPL) Policy

- i. Minimum liability limits required shall be \$1,000,000 Per Loss and \$2,000,000 Total All Losses, including, but not limited to, property damage, bodily injury, loss of use, and clean-up costs.
- ii. Limits must be dedicated to Work performed under this Contract only, unless prior approval by the Arlington County Risk Manager has been obtained. The policy of insurance shall contain or be endorsed to include the following:
 - a. Pollution coverage as respects asbestos, lead, VOC and PCB's.
 - b. "Covered Operations" designated by the CPL policy must specifically include all Work performed under this contract. (This would include and not be limited to excavation, off-site incineration of soils, demolition, asbestos abatement, drum removal and disposal, in-situ vapor extraction, etc.) and exclusions or limitations affecting Work performed under this contract must be deleted. (i.e., lead, asbestos, pollution, testing, underground storage tanks, radioactive matter, etc.)
 - c. Contractor must comply with all applicable DOT and EPA requirements.
 - d. Premises/Operations.
 - e. Broad form property damage.
 - f. Products/Completed Operations coverage for a minimum of five (5) years after Final Payment.
 - g. Contractual liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
 - h. Cross liability/severability of interest.
 - i. The scope of Work and all related activities under this Contract shall be scheduled as "Covered Operations" under this policy.

- j. Coverage is included on behalf of the insured for covered claims arising out of the actions of independent contractors. If insured is utilizing sub-contractors, the CPL policy must use "By or On behalf of" language with regards to coverage.
- k. Loading and unloading exclusions must be amended so as to include coverage for mobile equipment and automobiles.

2.1.6 Asbestos and Lead Based Paint Abatement Projects

- i. Minimum Liability Limits shall be \$1,000,000 Per Occurrence and \$2,000,000 Aggregate. Limits must be dedicated to Work performed under this Contract only, unless otherwise approved by the Arlington County Risk Manager. The policy shall be written with a minimum annual aggregate combined single limit for Bodily Injury and Property Damage as shown on the Insurance Checklist. This limit can be inclusive of defense costs.
- ii. The policy of insurance shall contain or be endorsed to include the following:
 - a. Coverage for Asbestos/Lead-Based Paint Abatement operations as described in the contract. Specific lead endorsement evidencing this project must be provided, if applicable.
 - b. Pollution coverage as respects Asbestos/Lead-Based Paint for all phases of the abatement process.
 - c. Transportation coverage for the hauling of ACM/Lead-Based Paint from the project site to the final disposal location, as evidenced by the contractor or applicable waste hauler. Contractor must comply with all applicable D.O.T. regulations.
 - d. Premises/Operations.
 - e. Broad Form Property Damage.
 - f. Products/Completed Operations coverage for a minimum of five (5) years after project completion.
 - g. Contractual Liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
 - h. Cross Liability. Any "Insured vs. Insured" – type language must be deleted or amended to "Named Insured vs. Named Insured."

- i. The policy shall not exclude Asbestos/Lead Based Paint bodily injury to employees of Arlington County so long as their designated job duties do not require them to be in the regulated asbestos/lead based paint abatement area.
- j. If the policy or any endorsement contains a provision which limits or eliminates bodily injury or property damage coverage based on final air fiber clearance levels, the policy shall be modified so that it is consistent with the clearing level (FCC) and the appropriate analytical testing protocol contained in the project specifications.
- k. Personal Injury.
- l. Independent Contractors.
- m. Hostile fire coverage is to be provided.

2.1.7 Environmental Impairment Liability, including coverage of insureds' on-site clean up, with the following minimum limits of liability:

Bodily Injury and Property	2,000,000 each occurrence
Damage Liability	4,000,000 annual aggregate

The County Board of Arlington County, Virginia, is to be named in Additional Name Insured or a Broad Form Contractual Endorsement may be added to the policy as respects any liability that may arise out of or result from the handling of Work on this Project including specifically but without limitation thereto, the indemnity provisions in the Agreement. Such policies will be endorsed to provide that they are primary to an insurance carried by the County Board of Arlington County, Virginia.

2.1.8 Should any of the Work hereunder involve the cleanup, remediation and/or removal of bio-solids, bio-hazards waste, or any hazardous or toxic materials, trash, debris, refuse, or waste, the Contractor shall provide, or shall require its sub-contractor performing the Work to provide, the following coverage in addition to the above requirements:

- a) Environmental Liability and Cleanup Coverage – with limits of not less than \$2,000,000 per occurrence.
- b) Business Automobile Liability – for transportation or regulated and/or hazardous waste, products, or materials with limits of not less than \$1,000,000, per occurrence. Said coverage shall include County as an additional insured and shall include both the MCS-90 and CA 9948 (or equivalent) endorsements, which shall be specifically referenced on the certificate of insurance.

2.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, its employees on the job, and others. The Contractor shall comply with all applicable provisions of federal, state and municipal safety laws, insurance requirement's, standard industry practices, the requirements of the operations and this contract, the Contractor, directly through its sub-contractors, shall effect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for safety and

protection of the public, including securing areas, posting danger signs, placarding, labeling or posting other forms of warning against hazards.

3. Commercial General or other Liability Insurance - Claims-made Basis:

3.1 If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Insurance Checklist remain the same. The Contractor must either:

- i. Agree to provide insurance, copies of the endorsement and certified documentation evidencing the above coverages and naming the County as an additional insured for a period of five (5) years after final payment under the Contract. Such documentation shall evidence a retroactive date, no later than the beginning of the Contractors or sub-contractors' Work under this Contract, or
- ii. Purchase an extended (minimum five [5] years) 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 copy of the endorsement itself. The extended reporting period will begin upon final payment under the Contract.

4. Builder's Risk Insurance

4.1 The Contractor shall purchase and maintain builders risk insurance with a limit equal to the initial Contract Amount and any amendments to the Contract which affect the project cost on a replacement cost basis. Builder's Risk insurance shall be maintained until Final Payment under the Contract has been made or until no person or entity other than the County has an insurable interest in the covered property, whichever is earlier. The Builder's Risk insurance shall include the County as defined in Section 1.6, Contractor, sub-contractors and sub-sub-contractors as named insureds.

4.2 Insurance shall be on an all-risks policy form including the perils of fire, theft, vandalism, malicious mischief, lightning, wind, force majeure, collapse, and earthquake. Coverage is to apply for demolition occasioned by enforcement of any applicable legal requirements, and Architect's fees. Coverage for the peril of flood shall not be required unless otherwise required in the Contract Documents.

4.3 Unless otherwise provided in the Contract Documents, the builders risk insurance shall also cover materials to be incorporated into the project which are stored off the site.

4.4 The Contractor shall purchase and maintain Boiler and Machinery insurance, if required by the contract documents or by law, with a limit satisfactory to the County. The Boiler and Machinery insurance shall cover objects during installation and until Final Acceptance by the County. The County shall be included as a named insured.

4.5 Any loss under Builder's Risk insurance shall be payable to the County as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay sub-contractors their just shares of insurance proceeds received by the Contractor, and by appropriate

agreements, written where legally required for validity, shall require sub-contractors to make payments to their sub-sub-contractors in similar manner. The County, as fiduciary, shall have the right to adjust and settle a loss with insurers.

- 4.6 The insurance company providing the Builder's Risk coverage shall grant permission for the County to partially occupy or use the premises under construction prior to final acceptance without removing or affecting the coverage.

V. ATTACHMENTS AND FORMS

Attachment - A

Federal Transit Administration (FTA) Third Party Contract Clauses

Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

This Contract/project is funded in whole or in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between Arlington County Government (hereinafter referred to as "Arlington County") and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1F. The Contractor/Bidder/Offeror is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA).

Contractor/Bidder/Offeror is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, Contractor/Bidder/Offeror is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements.

Upon request of Arlington County or FTA, Contractor/Bidder/Offeror shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of each subcontractor's compliance at all tiers.

The following solicitation provisions and required contract clauses will be incorporated by reference in any contract resulting from this solicitation issued by Arlington County. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the bidder/offeror to execute and submit certain required certifications with the bid/proposal or contract, which are included herein. Failure to execute and submit required certifications with the bid/proposal or contract documents may render a bid/proposal non-responsive or a contract null and void.

Clauses may not be listed in consecutive numerical order as only those provisions and required clauses that apply to this contract/project have been referenced.

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

48 CFR Part 47.4

Applicability to Contracts

Applicable to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Fly America

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]*:

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

Applicable to all projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract; subcontracts under that amount are subject to Buy America.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

The certificate entitled *Buy America Requirements- Certificate of Compliance* must be completed and submitted with the Bid/Proposal.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 55305

46 CFR Part 381

Applicability to Contracts

Applicable to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration,

Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

Applicable to all contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Seismic Safety – The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required by the Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

The certificate entitled *Seismic Safety Certificate of Compliance* must be completed and submitted with the Bid/Proposal.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 622, subpart C

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all Third-Party Contractors and their contracts at every tier and subrecipients and their sub-agreements at every tier.

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

Applicable to all contracts and subcontracts exceeding \$150,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387. The Contractor agrees to report each violation to Arlington County and understands and agrees that Arlington County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 20

2 CFR 200.450

2 CFR Part 200 Appendix II (J)

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 20.

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110 (d).

- Language in Lobbying Certification is mandated by 49 CFR Part 20, Appendix A which provides that contractors file the certification.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who submit a Bid/Proposal for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier

above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier-to-tier up to the recipient.

The certificate entitled *Certification of Restrictions on Lobbying* must be completed and submitted with the Bid/Proposal.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

49 CFR 18.36 (i)

49 CFR 633.17

2 CFR 200.333

Applicability to Contracts

Applicable to all contracts as listed below.

Flow Down

The record keeping and access requirements extend to all Third-Party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Access to Records - The following access to records requirements apply to this Contract:

1. Where Arlington County is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide Arlington County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or their authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where Arlington County which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to Arlington County, the Secretary of the US Department of Transportation and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period

of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until Arlington County, the FTA Administrator, the US Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes – The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Arlington County and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

2 CFR Part 200.325

31 CFR Part 223

Applicability to Contracts

Applicable to all construction or facility improvement contracts or subcontracts exceeding the simplified threshold.

Flow Down

Bonding requirements flow down to the first-tier contractors.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

2 CFR Part 200, Appendix II (G)

Applicability to Contracts

Applicable to all contracts exceeding \$150,000.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671g. The Contractor agrees to report each violation to Arlington County and understands and agrees that Arlington County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

2 CFR Part 200.322

Applicability to Contracts

Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

These regulations apply to all procurement actions involving items designated by the EPA, where the Contractor purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year exceeds \$10,000.

Flow Down

These requirements flow down to all contractors and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Recovered Materials - The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

18 U.S.C. 874

40 U.S.C. 3145

40 U.S.C. 3141-3148

49 U.S.C. 5333(a)

29 CFR Part 3

29 CFR Part 5

Applicability to Contracts

Applicable to all prime construction, alteration or repair contracts in excess of \$2,000. The requirements extend to all Contractors and their sub-contractors at every tier.

Clause Language

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the

project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(2) **Withholding** – Arlington County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Arlington County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the

plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Arlington County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Arlington County, for transmission to the Federal Transit Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to Arlington County.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
40 U.S.C. 3701-3708
29 CFR Part 5

Applicability to Contracts

Applicable to all contracts exceeding \$100,000. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Clause Language

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of

this section.

(3) **Withholding for unpaid wages and liquidated damages** – Arlington County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(5) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

(1) Arlington County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Arlington County, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**49 CFR Part 31
31 U.S.C. 3801 et seq.
18 U.S.C. 1001
49 U.S.C. 5323**

Applicability to Contracts

Applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1F

Applicability to Contracts

Applicable to all contracts exceeding \$10,000.

Termination for Cause, Including Breach and Default; Cure

The Contract shall remain in force for the Contract Term or Subsequent Contract Term(s) and until the County determines that all requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

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 such failure/s at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as

otherwise specified in the Notice, the Contract is terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). Such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after Notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work. Such costs shall be either subtracted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County (and the County shall be entitled to recover) all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County, the Contractor shall stop Work on the date of receipt of Notice of the termination or other date specified in the Notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

Termination for the Convenience of the County

The performance of work under this Contract may be terminated by the Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2 CFR Part 1200

2 CFR Part 180

Applicability to Contracts

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-Procurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-Procurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

The certificate entitled *Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion* must be completed and returned with the Bid/Proposal.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each Third-Party Contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6101, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Civil Rights requirements flow down to all Third-Party Contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

**49 CFR Part 18
FTA Circular 4220.1F**

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Dispute Resolution

The Contract is governed in part by the applicable provisions of the Arlington County Purchasing Resolution. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Purchasing Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent. Pending final determination of any dispute or claim hereunder, the Contractor shall proceed diligently with the performance of the Work under the Contract.

Arbitration

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts

Applicable to all DOT-assisted contracting activities.

Flow Down

The DBE contracting requirements flow down to all Third-Party Contractors and their contracts at every tier.

Disadvantaged Business Enterprises

a. It is the policy of Arlington County and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBEs”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of Arlington County to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

b. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. Arlington County shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, Arlington County may consider during its review of the Bidder's/Offeror's submission package, the Bidder's/Offeror's documented history of non-compliance with DBE requirements on previous contracts with Arlington County.

c. Arlington County's overall goal for DBE participation is set at **23.3%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 23.3%** of the total Contract price.

d. The contractor and subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Arlington County deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidates damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

e. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the Contractor's receipt of payment for that work from Arlington County. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

1. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from Arlington County for work performed by a subcontractor under the Contract, except for amounts withheld for retainage under subsection (e) of this section.
2. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed as an obligation by Arlington County. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

f. The Contractor shall utilize the specific DBEs listed unless the Contractor obtains Arlington County's written consent; and that, unless Arlington County's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

g. The contractor must promptly notify Arlington County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of Arlington County.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1F**

Applicability to Contracts

Applicable to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Arlington County requests which would cause Arlington County to be in violation of the FTA terms and conditions.

33. ACCESS FOR INDIVIDUALS WITH DISABILITIES

Applicability to Contracts

Applicable to all contracts.

The Contractor agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

34. SAFE OPERATIONS OF MOTOR VEHICLES **23 U.S.C. part 402** **Executive Order No. 13043**

**Executive Order No. 13513
U.S. DOT Order No. 3902.10**

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its Third Party Agreements supported with Federal assistance.

Flow Down

The Safe Operation of Motor Vehicles requirements flow down to all Third-Party Contractors at every tier.

Seat Belt Use- The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Arlington County.

Distracted Driving- The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

35. VETERANS PREFERENCE

Applicability to Contracts

Applicable to all contracts.

The Contractor, if working on a capital project funded using FTA assistance, shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title V) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

ATTACHMENT A- REQUIRED CERTIFICATIONS

BUY AMERICA REQUIREMENTS-CERTIFICATE OF COMPLIANCE

(To be submitted with a bid/proposal exceeding the purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

SEISMIC SAFETY-CERTIFICATE OF COMPLIANCE

(To be submitted with a bid/proposal for the construction of new buildings or additions to existing buildings.)

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Date _____

Signature _____

Company Name _____

Title _____

CERTIFICATION REGARDING LOBBYING PURSUANT TO 49 CFR PART 20
APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Printed Name and Title of Contractor's Authorized Official

Company Name

Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(To be submitted with each bid or offer exceeding \$25,000)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Arlington County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Arlington County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statute or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Signature of Contractor's Authorized Official

Company Name

Printed Name and Title of Contractor's Authorized Official

Date

I am unable to certify to the above statements. My explanation is attached.

DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS

1. Definitions and Interpretations

The County will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The following definitions and any other definitions related to the DBE program have the same meaning as defined in 49 CFR Part 26.

(a) "Disadvantaged Business Enterprise" or "DBE" means a for profit small business concern: (1) which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) "Small Business Concern" means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in section 26.65(b).

(c) "Socially and Economically Disadvantaged Individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and includes any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (6) Non-minority American Women;
- (7) "Tribally-owned concern" means any concern at least 51 percent owned by an Indian tribe;
- (8) "Any individual groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such times as the SBA designation becomes effective; and
- (9) Any individual who the County finds to be socially and economically disadvantaged on a case-by-case basis.

- (d) "USDOT" means the U.S. Department of Transportation including the Federal Transit Administration (FTA).
- (e) "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirement.

2. Small Business Enterprise

The County's Division of Transportation has a Small Business Enterprise (SBE) Program as part of its DBE Program. The County provides race-neutral efforts to facilitate participation of small businesses in its procurement process for federally-assisted projects through the FTA. Although there is no SBE goal for this procurement, SBE firms are encouraged to participate and Offerors are encouraged to seek SBE firms as subconsultants/subcontractors.

3. Banks and Financial Institutions

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions. The identity of such banks is available at: <https://www.occ.treas.gov/topics/consumers-and-communities/minority-outreach/minority-depository-institutions-list.pdf>.

4. Certification and Directory of DBEs

(a) All prospective DBEs must be certified through a Unified Certification Program (UCP). The County recognizes certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD) and the Metropolitan Washington Airports Authority (MWAA).

(b) Each DBE firm will be verified as a certified DBE through one of the UCP Directories listed above and they each maintain online DBE directories of all firms certified. These online directories and appropriate forms to apply for DBE certification are available at the following website addresses:

DSBSD's website: <https://www.sbsd.virginia.gov/certification-division/dbe/>

MWAA's website: <https://www.mwaa.com/topics/local-disadvantaged-business-enterprise>

(c) The eligibility of a DBE certified joint venture will be determined on a project-by-project basis by the County.

(e) Offerors are reminded that only certified DBEs may participate in County contracts in such capacities. If Offerors propose using a DBE not currently certified, it is strongly urged that a UCP be contacted well in advance of the date set for receipt of offers in order to enable review of the proposed DBE's eligibility.

5. DBE Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

(a) If a prime contractor wishes to terminate or substitute a DBE subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE subcontractor with its own forces, an affiliate, a non-DBE subcontractor or with another DBE subcontractor, it must submit written documentation prior to the termination or substitution of the DBE subcontractor to the Contracting Officer. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the **Intent to Perform as a DBE Subcontractor Form(s) Exhibit A** on file with the Contracting Officer. The Offeror/Contractor must provide any and all documentation and information as may be requested with respect to the requested change.

(b) The Offeror's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to, the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE subcontractor being substituted by another DBE subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After providing an opportunity to the County's DBE Specialist to make a recommendation, the Contracting Officer will approve or disapprove the change.

(c) If the change involves a subcontractor substitution, the Offeror/Contractor must make good faith effort to replace one DBE with another DBE. The substitute DBE firm must be certified by a UCP in order for the Offeror/Contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the Offeror/Contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Contracting Officer describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE subcontractor without the prior written consent of the Contracting Officer.

(d) The Offeror/Contractor must submit a new **Intent to Perform as a DBE Subcontractor** form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by a UCP. The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Contracting Officer within ten (10) business days of its receipt of the substitution approval.

(e) If the change involves a modification, the Contractor must submit, if applicable, the **Intent to Perform as a DBE Sub-Contractor** form specified for contract modifications for any DBE subcontractor affected by this change. This form may be obtained from the Contracting Officer.

(f) If the Contractor does not comply with this Provision, the County may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

6. Demonstration of Good Faith Effort

(a) If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. The Offeror shall submit to the County the **Evidence of Good Faith Efforts Form-Exhibit B Form** which documents the steps it has taken to solicit participation from DBE firms. This form should be submitted when the initial response to the County's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, the County will only consider those documented efforts that occurred prior to the good faith efforts determination.

(b) In the event that a firm submitted by an Offeror in accordance with the requirements of the Submission of DBE Utilization Forms and Related Documentation provision cannot be certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have Ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same Ten (10) calendar day period.

(c) The County will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

(d) Offerors are reminded that the issue of whether or not the Offeror has met or exceeded the established goal and/or demonstrated good faith efforts is considered a matter of the Offeror's responsibility. The County will only award contracts to Offerors determined to be responsible. The Contracting Officer, after affording the County's DBE personnel an opportunity to make a recommendation, shall be responsible for determining the sufficiency of an Offeror's good faith effort to meet contract goals.

(e) An Offeror that the Contracting Officer determines is not responsible may request administrative review and reconsideration under the County's Procurement Regulations. As part of any reconsideration, if requested, the Offeror may elect to meet in person with the County's Purchasing Agent to discuss credit toward meeting the DBE goal or whether the Offeror made adequate good faith efforts.

7. Offeror's DBE Obligation

The Offeror's DBE Obligation is outlined in Section VIII – Federal Transit Administration Clauses provision 28 entitled Disadvantaged Business Enterprise (DBE). The County has established an overall goal of 10.6 percent race-neutral DBE participation on FTA-assisted contracts.

8. Payment Documentation

Concurrently with the submission of each invoice or request for a progress payment under this contract, the Contractor shall provide a breakdown of the amounts paid to DBEs identified by the Contractor to participate in this contract. The breakdown shall be provided on the attached **Monthly DBE Subcontractor Progress Report Form (Exhibit D)**. As provided elsewhere in this Contract, the County may withhold all or part of any payment otherwise due the Contractor if the Contractor fails to submit the **Monthly DBE Subcontractor Progress Report** form and/or make prompt payments to its subcontractors, suppliers, materialmen or laborers.

9. Sanctions for Noncompliance with the County's DBE Program Provisions

Failure of the Contractor to carry out the County's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the County may deem appropriate. The County reserves the right to apply legal and contract remedies available under Federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. The County will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take steps provided in 49 CFR Section 26.107.

10. Submission of DBE Utilization Forms and Related Documentation

(a) Each Offeror should submit to the County a Summary of Subcontractor/Subconsultant/Suppliers form (Exhibit C) and an executed **Intent to Perform As a DBE Subcontractor** form for each proposed subcontractor when the initial response to the County's solicitation is due. If an Offeror does not meet the County's DBE participation goal, the **Evidence of Good Faith Efforts** form should also be submitted when the initial response to the county's solicitation is due. The submission of this information is considered an issue of responsibility, and the County will not award a contract to any Offeror who has not supplied this documentation.

(b) The **Intent to Perform As A DBE Subcontractor** form for each proposed subcontractor shall constitute a representation by the Offeror to the County that it believes such firm is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Offeror that if it is awarded the contract, it will enter into a subcontract with such subcontractor for the work described at the approximate price set forth in the **Intent to Perform As A DBE Sub-Contractor Form**.

(c) If the DBE Subcontractor participation changes after the forms have been submitted, but prior to award of the contract, the Offeror will be required to immediately notify the Contracting Officer of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modification or Substitutions provision of this Exhibit.

(d) Except as authorized by the Contracting Officer, the successful Offeror shall enter into formal agreements with the subcontracting firms shown in the submitted **Intent to Perform As A DBE Subcontractor Form(s)** within Ten (10) business days after receipt of a contract executed by the County. The successful Offeror (Contractor) shall provide the Contracting Officer a copy of each agreement within Three (3) business days of execution.

(e) If an Offeror is a DBE and lists itself on the **Intent to Perform As A DBE Sub-Contractor Form**, it is required to perform the work indicated with its own work force.

EXHIBIT A

INTENT TO PERFORM AS A DBE SUBCONTRACTOR FOR A CONTRACT AWARD

All DBE subcontracting firms to be used on this solicitation must fill out this form.

DBE firms participating in Arlington County's contracting opportunities must have "current" certification status with a Unified Certification Program (UCP) prior to award of this contract. If the County determines that the firm is not an eligible DBE firm for Arlington County contracts and subcontracts, the prime contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and the County will not award a contract to any Offeror who has not supplied this documentation.

1. Arlington County Solicitation #: _____
2. Name of **DBE** Subcontracting Firm _____.
3. Has the **DBE** subcontractor been certified as a DBE by a UCP agency? _____
4. The **DBE** subcontractor is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

and at the following price \$ _____.

BY: _____ DATE: ____/____/____

(Signature of **DBE** subcontracting Owner, President or Authorized Agent)

PHONE: _____

(Print or Type - Name of Signature of Owner, President or Authorized Agent of **DBE** subcontracting firm)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the _____

(Title of Declarant)

and a duly authorized representative of _____

(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform As A DBE subcontractor form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the subcontracting firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed DBE subcontracting firm for work as indicated by this form within ten (10) business days after receipt of the contract

executed by Arlington County. The undersigned will provide the Contracting Officer a copy of that agreement within Three (3) business days of execution.

The Prime Contractor designated the following person as their DBE Liaison Officer:

(Name-Please Print) (Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the U.S. Department of Transportation, and possibly the U.S. Department of Justice, for prosecution.

Name of Declarant: _____

Signature: _____ Date: _____

EXHIBIT B

**EVIDENCE OF GOOD FAITH EFFORTS FORM
(SUBMIT THIS FORM ONLY IF DBE GOAL CANNOT BE FULFILLED)**

If an Offeror does not meet the County’s DBE participation goal, it shall be eligible for award of the contract if it can demonstrate that it has made a good faith effort to meet the DBE goal. If necessary, the Offeror shall submit this form to document the good faith efforts attempt made in soliciting participation from DBE firms. In order to show that good faith efforts were made, the Offeror must demonstrate the methods it used to seek DBE participation, in accordance with the Regulations Regarding the Determination of Good Faith Efforts Participation.

Arlington County Solicitation No. _____ Current Date: ____/____/____

Project Name: _____

Offeror (Firm): _____

Telephone: _____

Contact Person: _____ E-Mail: _____

Address: _____ City/State/Zip: _____

To determine whether an Offeror has demonstrated good faith efforts to reach the DBE participation goal on the above referenced project, the County will consider, at a minimum, evidence of Good Faith Efforts as described in the table below.

YES (☐)	NO (☐)	EVIDENCE OF GOOD FAITH EFFORTS
		PRE-BID MEETING(S): The Offeror attended pre-bid or pre-proposal meetings scheduled by the County to discuss, among other matters, DBE participation opportunities and acknowledged receipt of DBE certified vendor lists.
		ADVERTISEMENT: The Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities.
		WRITTEN NOTICE(S): The Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow
		FOLLOW-UP: The Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.
		SMALL CONTRACTS: The Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down the contract into economically feasible
		INFORMATION: The Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract.
		GOOD FAITH NEGOTIATIONS: The Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable

		ASSISTANCE EFFORTS: The Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by the County or the Offeror.
		ASSISTANCE IN OBTAINING SUPPLIES: The Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or
		WRITTEN NOTICE(S): The Offeror obtained written documentation from a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential subcontractor for failing to obtain Offeror-
		COMMUNITY RESOURCES: The Offeror effectively used the services of available minority and women community organizations, contractor groups; local, State, and Federal business assistance offices; and other organizations that provide assistance in
		OTHER – PLEASE EXPLAIN:

I certify that the information contained in this Evidence of Good Faith Efforts Form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and /or prosecution under applicable State and Federal laws.

Print Name/Title of Person Completing this Form:

Signature: _____

Date: _____

I certify the information furnished above is correct to the best of my knowledge and represents a current status of the prime contractor's DBE subcontracting activity for the period covered by this report. Further, those sub-contractor's due payment pursuant to the terms of their subcontracts will be paid within Seven (7) days after prime contractor's receipt of payment from Arlington County.

Name: _____ Signature: _____ Title: _____ Date: _____

The DBE Subcontractor Progress Report form is to be filled out by the Contractor and submitted with each invoice. The instructions below correspond to each item on the reverse side of the form.

3. Prime Contractor

Fill in your company's name.

4. Project Name

Fill in the name of the project.

5. Contract Number

Fill in the contract number assigned to your project by Arlington County.

6. Contract Amount (as Amended)

Fill in dollar amount of original contract plus/minus the dollar amount agreed upon at a later date as a result of contract modifications, if applicable.

7. Total Amount Received to Date

Fill in the dollar amount you have received from Arlington County to date.

8. Total Amount Owed

Fill in the dollar amount of the contract minus amount paid to you by Arlington County.

9. Amount of This Invoice

Fill in the dollar amount of the invoice being submitted to Arlington County this reporting period.

10. Total Value of DBE Contracts

State the total committed dollar value to all DBE subcontractors for the duration of the contract.

11. Committed DBE Percentage

Fill in the percentage of DBE participation you committed to obtain in the contract.

12. Actual DBE Participation % to Date

Dollar amount paid to all DBE firms divided by dollar amount received by Contractor from Arlington County.

13. Name of Subcontractor

Name all subcontractors (use additional sheets as necessary).

14. DBE (Y/N)

State whether the subcontractor is a DBE firm or not.

15. Work Status This Reporting Period

Check the box stating whether the DBE subcontractor is actively working on the project, is currently inactive on the project or if they've completed their work on the project.

16. Description of Work

State the work performed by the DBE subcontractor.

17. Amount and Date of Last Payment Made to Subcontractor

State the amount and date of last payment made to each DBE subcontractor. Submit evidence of payment (i.e. cancelled check, check register, etc.).

18. Amount of Subcontract Award

State the committed dollar value to the DBE subcontractor for the duration of the contract.

19. Amount Paid to Date

Add all amounts paid to each DBE subcontractor to date.

20. Percent Paid to Date

Dollar amount paid to the DBE subcontractor divided by the amount committed to them.

21. Amount Invoiced this Reporting Period

Fill in how much of the invoice from this reporting period will be paid to each DBE subcontractor.

ATTACHMENT - C

DAVIS-BACON WAGE RATE DETERMINATION

General Decision Number: VA20200035 09/18/2020

Superseded General Decision Number: VA20190035

State: Virginia

Construction Types: Heavy

Counties: Alexandria*, Arlington, Clarke, Culpeper,
Frederick, Fredericksburg*, Spotsylvania and Winchester*

Counties in Virginia.

*INDEPENDENT CITIES

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date

0 01/03/2020

1 02/07/2020

2 02/14/2020

3 05/15/2020

4 06/26/2020

5 07/10/2020

6 09/11/2020

7 09/18/2020

BRVA0001-003 05/03/2020

Rates Fringes

MASON - STONE.....\$ 39.76 18.88

CARP0177-012 05/01/2017

Rates Fringes

CARPENTER, Includes Form Work....\$ 28.36 11.53

ELEC0026-023 06/01/2020

ARLINGTON COUNTY, Cities of Alexandria and Fredericksburg
Rates Fringes

ELECTRICIAN.....\$ 47.35 19.77+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

ELEC0026-024 11/04/2019

CLARKE, CULPEPER, FREDERICK COUNTIES, SPOTSYLVANIA COUNTY
(Excluding the City of Fredericksburg), City of Winchester
Rates Fringes

ELECTRICIAN.....\$ 32.02 18.50+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

ENGI0077-019 05/01/2020

Rates Fringes

POWER EQUIPMENT OPERATOR:

35 ton Cranes and Above.....\$ 38.99 10.05+a

Cranes Below 35 tons.....\$ 36.64 10.05+a

Mechanic.....\$ 38.99 10.05+a

Tower and Climbing Cranes...\$ 41.00 10.05+a

Tower Cranes and Cranes

100 tons and Over.....\$ 41.00 10.05+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:

Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium.

LABO0011-010 06/15/2020

Rates Fringes

LABORER: Pipelayer.....\$ 27.77 8.63

* PAIN0051-014 06/01/2020

Rates Fringes

GLAZIER

Glazing Contracts \$2

million and under.....\$ 28.02 12.55

Glazing Contracts over \$2

million.....\$ 32.26 12.55

PLAS0891-006 02/01/2020

Rates Fringes
CEMENT MASON/CONCRETE FINISHER...\$ 28.82 11.68

SUVA2010-036 09/01/2010

Rates Fringes

DIVER TENDER.....\$ 22.53 3.98
DIVER.....\$ 23.73 4.21
IRONWORKER, REINFORCING.....\$ 22.45 11.85
IRONWORKER, STRUCTURAL.....\$ 20.55 8.25

LABORERS

Common or General.....\$ 11.24 1.32

Flagger.....\$ 7.39 0.20

Landscape.....\$ 10.00

POWER EQUIPMENT OPERATOR:

Backhoe.....\$ 18.47 0.75

Bobcat/Skid Loader.....\$ 11.40

Bulldozer.....\$ 17.54

Excavator.....\$ 17.79

Loader.....\$ 18.99 0.75

Trackhoe.....\$ 12.75 1.24

Tugboat.....\$ 19.00

TRUCK DRIVER, Includes All

Dump Trucks.....\$ 12.14 0.75

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====
Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate). Union Rate Identifiers A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of

the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014. Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate. Survey Rate Identifiers Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted. Union Average Rate Identifiers Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier. A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed. With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations.

Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board).

Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

"END OF GENERAL DECISION"

ATTACHMENT – D

DRAWINGS, CONSTRUCTION NOTES

(Issued Separately)

ATTACHMENT – E

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)

SITE SPECIFIC WORK PLAN GUIDLILNES

ATTACHMENT – F

WMATA ADJACENT CONSTRUCTION PROJECT MANUAL

Revision-5a-09-21-15

ATTACHMENT – G

**WMATA COMPUTER-AIDED DRAFTING (CAD)
STANDARD MANUAL**

ATTACHMENT – H

WMATA MANUAL OF DESIGN CRITERIA

Revision - 3

(Issued Separately)

ATTACHMENT – I

WMATA SAFETY SYSTEM PROGRAM

(Issued Separately)

ATTACHMENT – J

WMATA SAFETY, ENVIRONMENTAL MANUAL

March 2013

ATTACHMENT – K

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) REQUIREMENTS

WORK ZONE PEDESTRIAN, BICYCLE GUIDANCE

May 1, 2016

ATTACHMENT –L

WMATA SPECIAL PROVISIONS FOR
SP006-SECTION 02465

HELICAL SCREW FOUNDATIONS

September 20, 2019

ATTACHMENT –M

ARLINGTON COUNTY CONSTRUCTION STANDARDS, SPECIFICATIONS

(Issued Separately)

ATTACHMENT – N

ARLINGTON COUNTY LIGHTING SPECIFICATIONS

Revision 1

05-20-18

(Issued Separately)

ATTACHMENT – O

ARLINGTON COUNTY CODE
CHAPTER 15 - NOISE CONTROL

ATTACHMENT – P

ARLINGTON COUNTY TRAFFIC SIGNAL SPECIFICATIONS

Version – 3

01-31-19

ATTACHMENT - Q

ARLINGTON COUNTY
PENTAGON CITY NEW ELEVATOR TECHNICAL SPECIFICATIONS

WMATA PROJECT # 251666
STV PROJECT #40186609

(Issued Separately)

ATTACHMENT – R

WMATA DIVISION 01 SPECIFICATIONS

ATTACHMENT – S

WMATA INSURANCE
MINIMUM INSURANCE LIMITS

ATTACHMENT – T

GEOTECHNICAL REPORT
PART R-1

September 20, 2019

ATTACHMENT – U

DEED OF TEMPORARY EASEMENT AND CONSTRUCTION AGREEMENT

ATTACHMENT – V

PRICE SCHEDULE

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT

INVITATION TO BID NO.20-DES-ITB-235-9

BID FORM

ELECTRONIC BIDS WILL BE RECEIVED BY THE COUNTY VIA VENDOR REGISTRY NOT LATER THAN 2:00 P.M., EASTERN TIME ON DECEMBER _____, 2020 FOR THE CONSTRUCTION OF THE PENTAGON CITY ELEVATOR IN ACCORDANCE WITH THE DRAWINGS, SPECIFICATIONS, TERMS AND CONDITIONS OF THIS SOLICITATION.

THE FULL LEGAL NAME OF THE ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE BELOW. THIS BID FORM AND ALL OTHER DOCUMENTS THAT REQUIRE A SIGNATURE MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON WHO IS AUTHORIZED TO BIND THE BIDDER, OR THE BID MAY BE REJECTED.

SUBMITTED BY:

(legal name of entity)

AUTHORIZED SIGNATURE:

PRINT NAME AND TITLE:

ADDRESS:

CITY/STATE/ZIP:

TELEPHONE NO.:

E-MAIL
ADDRESS:

THIS ENTITY IS INCORPORATED
IN:

THIS ENTITY IS A:

*(check the applicable
option)*

CORPORATION

LIMITED PARTNERSHIP

GENERAL PARTNERSHIP

UNINCORPORATED ASSOCIATION

LIMITED LIABILITY COMPANY

SOLE PROPRIETORSHIP

IS BIDDER AUTHORIZED TO TRANSACT BUSINESS IN THE
COMMONWEALTH OF VIRGINIA?

YES

NO

IDENTIFICATION NO. ISSUED TO THE ENTITY BY THE
SCC:

Any Bidder exempt from Virginia State Corporation Commission (SCC) authorization requirement must include a statement with its bid explaining why it is not required to be so authorized.

VIRGINIA CONTRACTOR'S LICENSE NUMBER:

BID FORM, PAGE 2 OF 7

ENTITY'S DUN & BRADSTREET D-U-N-S NUMBER: (if available)

HAS YOUR FIRM OR ANY OF ITS PRINCIPALS BEEN DEBARRED FROM SUBMITTING BIDS TO ARLINGTON COUNTY VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION WITHIN THE PAST THREE YEARS?

YES NO

HAS YOUR FIRM DEFAULTED ON ANY PROJECT IN THE LAST THREE YEARS?

YES NO

HAS YOUR FIRM HAD ANY TYPE OF BUSINESS, CONTRACTING OR TRADE LICENSE, REGISTRATION OR CERTIFICATION REVOKED OR SUSPENDED IN THE PAST THREE YEARS?

YES NO

HAS YOUR FIRM AND ITS PRINCIPALS/OWNERS BEEN CONVICTED OF ANY CRIME RELATING TO ITS CONTRACTING BUSINESS IN THE PAST TEN YEARS?

YES NO

HAS YOUR FIRM BEEN FOUND IN VIOLATION OF ANY LAW APPLICABLE TO ITS CONTRACTING BUSINESS (LICENSING LAWS, TAX LAWS, WAGE AND HOUR LAWS, PREVAILING WAGE LAWS, ENVIRONMENTAL) WHERE THE RESULT OF SUCH VIOLATION WAS THE PAYMENT OF A FINE, BACK PAY DAMAGES, OR ANY OTHER PENALTY IN THE AMOUNT OF \$5000 OR MORE?

YES NO

BIDDER STATUS: MINORITY OWNED: WOMAN OWNED: NEITHER:

The undersigned certifies that (Bidder Name) _____ is currently registered with the Virginia State Board of Contractors as required by the Code of Virginia. Certificate Number _____ for a Class ____ License was issued on the _____ day of _____, 20____. The undersigned further certifies that the registration fee and all renewal fees required under law have been paid.

TIME LIMIT FOR PROJECT:

SUBSTANTIAL COMPLETION FOUR HUNDRED EIGHTY (480) CONSECUTIVE CALENDAR DAYS FROM NOTICE TO PROCEED.

FINAL COMPLETION SIXTY (60) CONSECUTIVE CALENDAR DAYS FROM SUBSTANTIAL COMPLETION.

LIQUIDATED DAMAGES:

**SUBSTANTIAL COMPLETION \$3,163.00 PER DAY
FINAL COMPLETION - \$3,163.00 PER DAY**

BID FORM, PAGE 3 OF 7

MINIMUM BIDDER QUALIFICATIONS:

In a separate attachment, Bidders shall provide the following documentation:

- Proof of Five Years (5) of continuous experience conducting public Works infrastructure projects. The experience shall be Work of similar size and scope;
- List of [similar recently completed projects that involve the same material, equal size, and comparable length. For each project, Bidders shall list the following information:
 - Project Name,
 - Project description and Bidder’s scope of Work within the project,
 - Project manager’s name, telephone number and email address,
 - Work start date, scheduled completion, and actual completion date,
 - Initial contract cost and final contract cost;
- Resumes of the proposed Foreman, Superintendent, and Project Manager assigned to this Work, who shall have, at a minimum, Five (5) years of experience in overseeing projects of similar type and size;
- Completion by the Bidder and any potential sub-contractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administrations;
- Participation by the Bidder and any potential sub-contractors in apprenticeship training programs approved by the state agencies or the U.S. Department of Labor; or
- Maintenance by the Bidder and any potential sub-contractor of record of compliance with applicable local, state and federal laws, if Bidder is not qualified by the Virginia Department of Transportation.

COMPLETE THE PRICING SHEET PROVIDED WITH THE BID DOCUMENTS AS ATTACHMENT U TO ITB NO. 20-DES-ITB-235-9 AND SUBMIT IT WITH YOUR BID.

FAILURE TO SUBMIT THE PRICING SHEET WITH THE BID WILL DEEM THE BIDDER NON-RESPONSIVE.

STIPULATED PRICE ITEMS

STIPULATED PRICE ITEM			
The Contractor agrees to perform related work for the following items at the stipulated prices shown:			
#	ITEM DESCRIPTION	UNIT	PRICE
1	CONCRETE PIER, CRADLE, OR ENCASEMENT	CY	\$200.00
2	ROCK EXCAVATION	CY	\$100.00
3	CRUSHER RUN VDOT #25 OR APPROVED EQUAL	CY	\$75.00
4	OVER EXCAVATION	CY	\$50.00

5	TEST PITS	EA	\$500.00
6	SELECT BORROW	CY	\$50.00
7	MULCH Double Shredded Hardwood Mulch (3" Deep)	SY	\$4.50
8	Maintenance of Traffic @ Six Percent of Bid Price	%	\$

BID FORM, PAGE 4 OF 7

THE UNDERSIGNED UNDERSTANDS AND ACKNOWLEDGES THE FOLLOWING:

THE OFFICIAL COPY OF THE SOLICITATION DOCUMENTS, WHICH INCLUDES ANY ADDENDA, IS THE ELECTRONIC COPY THAT IS AVAILABLE FROM THE VENDOR REGISTRY WEBSITE AT: [HTTPS://VRAPP.VENDORREGISTRY.COM/BIDS/VIEW/BIDSLST?BUYERID=A596C7C4-0123-4202-BF15-3583300EE088](https://vrapp.vendorregistry.com/bids/view/bidslst?buyerid=A596C7C4-0123-4202-BF15-3583300EE088).

VENDORS ARE REQUIRED TO REGISTER ON [VENDOR REGISTRY](#) IN ORDER TO SUBMIT A RESPONSE TO THIS INVITATION TO BID. **NO RESPONSES WILL BE ACCEPTED AFTER THE BID DUE DATE AND TIME.**

POTENTIAL BIDDERS ARE RESPONSIBLE FOR DETERMINING THE ACCURACY AND COMPLETENESS OF ALL SOLICITATION DOCUMENTS THEY RECEIVE FROM ANY SOURCE, INCLUDING THE COUNTY.

The undersigned acknowledges receipt of the following Addenda:

ADDENDUM NO. 1 DATE: _____ INITIAL: _____

ADDENDUM NO. 2 DATE: _____ INITIAL: _____

ADDENDUM NO. 3 DATE: _____ INITIAL: _____

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by a Bidder in connection with a procurement transaction will not be subject to public disclosure under the Virginia Freedom of Information Act. Pursuant to Section 4-111 of the Arlington County Purchasing Resolution, however, a Bidder seeking to protect submitted data or materials from disclosure must, before or upon submission of the data or materials, identify the data or materials to be protected and state the reasons why protection is necessary.

Please mark one:

- No, the bid that I have submitted does not contain any trade secrets and/or proprietary information.
- Yes, the bid that I have submitted does contain trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or materials to be protected and list all applicable page numbers, sections, and paragraphs of the bid that contain such data or materials:

BID FORM, PAGE 5 OF 7

State the specific reason(s) why protection is necessary and why the identified information constitutes a trade secret or is proprietary:

If you fail above to identify the data or materials to be protected or to state the reason(s) why protection is necessary, you will not have invoked the protection of Section 4-111 of the Purchasing Resolution. Accordingly, upon the award of a contract, the bid will be open for public inspection consistent with applicable law.

CERTIFICATION OF NON-COLLUSION: The undersigned certifies that this bid is not the result of or affected by (1) any act of collusion with another person engaged in the same line of business or commerce (as defined in Virginia Code §§ 59.1-68.6 *et seq.*) or (2) any act of fraud punishable under the Virginia Governmental Frauds Act (Virginia Code §§ 18.2-498.1 *et seq.*).

CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES

Provide the name and address of the person who is designated to receive notices and other communications regarding this solicitation. Refer to the "Notices" section in the draft Contract Terms and Conditions for information regarding delivery of notices.

NAME: _____

ADDRESS: _____

E-MAIL: _____

BID FORM, PAGE 6 OF 7

REFERENCES

Bidders should provide Three (3) references for similar Work that has been provided by the Bidder within the past Five (5) years. The County reserves the right to evaluate the quality of Contractor's Work through site visits with Contractor's references.

REFERENCE 1: Contact Name: _____
Organization: _____
Phone Number: _____
E-mail Address: _____
Contract/Project Name: _____
Contract/Project Dates (from-to): _____
Contract/Project Description: _____

REFERENCE 2: Contact Name: _____
Organization: _____
Phone Number: _____
E-mail Address: _____
Contract/Project Name: _____
Contract/Project Dates (from-to): _____
Contract/Project Description: _____

REFERENCE 3: Contact Name: _____
Organization: _____
Phone Number: _____
E-mail Address: _____
Contract/Project Name: _____
Contract/Project Dates (from-to): _____
Contract/Project Description: _____

BIDDER NAME: _____

INSURANCE CHECKLIST

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS MARKED "X".

COVERAGES REQUIRED

COVERAGE MINIMUM(S)

- X 1. Workers' Compensation Statutory limits of Virginia
- X 2. Employer's Liability \$100,000 accident, \$100,000 disease, \$500,000 disease policy limit
- X 3. Commercial General Liability \$1,000,000 CSL BI/PD each occurrence, \$2 Million annual aggregate
- X 4. Premises/Operations \$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- X 5. Automobile Liability \$1 Million BI/PD each accident, Uninsured Motorist
- X 6. Owned/Hired/Non-Owned Vehicles \$1 Million BI/PD each accident, Uninsured Motorist
- X 7. Independent Contractors..... \$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- X 8. Products Liability..... \$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- X 9. Completed Operations..... \$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- X 10. Contractual Liability (Must be shown on Certificate) \$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- __ 11. Personal and Advertising Injury Liability..... \$1 Million each offense, \$1 Million annual aggregate
- X 12. Umbrella Liability \$1 Million Bodily Injury, Property Damage and Personal Injury
- __ 13. Per Project Aggregate
- __ 14. Professional Liability
 - __ a. Architects and Engineers \$1 Million per occurrence/claim
 - __ b. Asbestos Removal Liability \$2 Million per occurrence/claim
 - __ c. Medical Malpractice \$1 Million per occurrence/claim
 - __ d. Medical Professional Liability \$ Limits as set forth in Virginia Code 8.01.581.15
- __ 15. Miscellaneous E&O \$1 Million per occurrence/claim
- __ 16. Motor Carrier Act End. (MCS-90)..... \$1 Million BI/PD each accident, Uninsured Motorist
- __ 17. Motor Cargo Insurance
- __ 18. Garage Liability \$1 Million Bodily Injury, Property Damage per occurrence
- __ 19. Garage Keepers Liability \$500,000 Comprehensive, \$500,000 Collision
- __ 20. Inland Marine-Bailee's Insurance \$ _____
- __ 21. Moving and Rigging Floater Endorsement to CGL
- __ 22. Crime and Employee Dishonesty Coverage \$ _____
- X 23. Builder's Risk Provide Coverage in the full amount of Contract, including any amendments
- __ 24. XCU Coverage Endorsement to CGL
- __ 25. USL&H Federal Statutory Limits
- X 26. Carrier Rating shall be A.M. Best Co.'s Rating of A-VII or better or equivalent
- X 27. Notice of Cancellation, nonrenewal or material change in coverage shall be provided to County at least 30 days prior to action.
- X 28. The County shall be an Additional Insured on all policies except Workers Compensation and Auto and Professional Liability.
- X 29. Certificate of Insurance shall show Bid Number and Bid Title.
- __ 30. OTHER INSURANCE REQUIRED: _____

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the Bidder named below and have advised the Bidder of required coverages not provided through this agency.

AGENCY NAME: _____

AUTH. SIGNATURE: _____

BIDDER'S STATEMENT:

If awarded the Contract, I will comply with all Contract insurance requirements.

BIDDER NAME: _____

AUTH. SIGNATURE: _____

