

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

**INVITATION TO BID NO. 20-269-7**

**PROJECT NO.: P26D**

**ELECTRONIC SEALED BIDS WILL BE RECEIVED BY ARLINGTON COUNTY VIA VENDOR REGISTRY UNTIL  
2:00 P.M. ON AUGUST 7, 2020- FOR:**

**Capital Improvements consisting of streetscape improvements at Two (2) intersections with  
18<sup>th</sup> Street North. The intersections include North Glebe Road and North Wakefield Street.**

**The Work shall include the following:**

- Road paving, asphalt Work;
- Curbs/gutters;
- Sidewalks, walkways;
- Curb extensions,
- Accessible ramps,
- Driveway aprons;
- Storm sewer pipes and inlets;
- Retaining walls;
- Irrigations piping;
- Pavement markings and signage;
- Traffic controls,
- Erosions, sediment controls;
- Signalization upgrades;
- Related site Work and all other related incident Work described, required in the Contract documents.

**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.**

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: 814 000 887#**

**Local numbers | Reset PIN | Learn more about Teams | Meeting options**

Bid Surety in the amount of not less than 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 REQUIRES PROVISION OF BRAND NAME ITEMS. SUBSTITUTIONS WILL NOT BE ALLOWED FOR THE FOLLOWING ITEMS:**

**YOU MAY DOWNLOAD AN ELECTRONIC COPY OF THE SPECIFICATIONS, DRAWINGS AND CONSTRUCTION NOTES FOR THIS SOLICITATION AT NO COST FROM VENDOR REGISTRY.**

**PRE-BID CONFERENCE- A PRE-BID CONFERENCE WILL NOT BE HELD FOR THIS SOLICITATION**

**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 to waive any informalities or irregularities in procedure. A Bidder's submission of a bid indicates acceptance of these terms.

Arlington County, Virginia  
Office of the Purchasing Agent

Shirley Diamond  
Procurement Officer  
stdiamond@arlingtonva.us

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## **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 via Vendor Registry.**

**For a question to be considered, the question must be entered in the Question Section of the ITB No. 20-269-7. Vendors must be registered to respond and/or submit questions to this ITB.**

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 3:00 PM EASTERN DAYLIGHT SAVINGS ON JULY 16, 2020 TO BE CONSIDERED FOR INCLUSION IN AN ADDENDUM.**

**ALL ADDENDA WILL BE RESPONDED TO WITHIN VENDOR REGISTRY AND POSTED FOR ALL BIDDERS. THE SYSTEM WILL NOT ACCEPT ANY QUESTIONS AFTER THE ABOVE DATE AND 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 subsequently 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 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"). However, 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 sub-division 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](http://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 (12) 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. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

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

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

**9. BID FORM SUBMISSION**

The Bidder must submit its bid on the form provided in this solicitation. The Bid Form must be signed and marked "ORIGINAL". The Bid Form must be uploaded electronically via Vendor Registry no later than the date and time deadline specified in this solicitation. The Vendor Registry System will not accept responses after the close date and time. The Vendor name on the electronic bid submittal shall be the same as the Vendor name as the registration in Vendor Registry for the upload to be considered a valid response.

**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 Bids 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 non-responsive. 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.

**10. ERRORS IN EXTENSION**

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

**11. DEDUCT ITEMS-THIS PROVISION IS NOT BEING UTILIZED IN THIS SOLICITATION**

**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. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stage, tides, or similar physical conditions at the site;
- d. The conformation and conditions of the ground; and
- e. The 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 responsible, Bidders shall have the experience described below, and provide the supporting documentation as instructed.

**COMPANY QUALIFICATIONS:**

Bidders shall have 5 continuous years of experience conducting public Works infrastructure and roadway 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:

- Primary contractor for the construction of public works infrastructure and street improvement projects in an urban environment

Bidders shall provide a list of 3 similar projects recently completed projects that involving 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.

**STAFFING QUALIFICATIONS:**

The Superintendent assigned to this Work shall have at least 5 years of experience in overseeing projects of similar type and size. 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.

**19. ALTERNATE BID-THIS PROVISION IS NOT BEING UTILIZED IN THIS SOLICITATION**

**20. 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.

**21. USE OF BRAND NAMES/SUBSTITUTES**

Unless identified as a "No Substitute" 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.

For those items not identified as "No Substitute", 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 proposed item.
- 4) All pages of the submission shall be marked with the name, address and contact information of the Bidder, and sent 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](mailto: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 forwarded to all Bidders of record.
- 2) Bidders whose item(s) have not been approved will be so advised in writing simultaneously with the issuance of the Addendum.

**22. 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.

**23. BID WITHDRAWAL PRIOR TO BID OPENING**

No bid can be withdrawn after it is filed with the Bid Clerk unless the Bidder makes a request in writing to the Purchasing Agent prior to the time set for the opening of bids.

**24. 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 notice in writing to the Arlington County Purchasing Agent of a claim of right to withdraw a bid and provide all original 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.

**25. METHOD OF AWARD**

The County will award to the lowest priced Responsive/Responsible Bidder.

**26. 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.

**27. 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 least 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.

**28. SURETY REQUIRED**

**A. BID BOND:**

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 Bond will be retained until after the award to the successful Bidder.

The Bid Bond 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) consecutive calendar days after Notice of Award will cause cancellation of the award and the forfeiture of the Bid Bond to the County.

**C. PERFORMANCE BOND:**

A fully completed and properly executed original Performance Bond in the amount of One-Hundred Percent (100%) of the bid amount 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 bid amount, 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.

**29. EXECUTION OF CONTRACT**

Within three days after the Contract is presented to the successful Bidder for signature, the Contractor must deliver to the County Purchasing Agent the original of the executed Agreement. Within ten days the Contractor must deliver 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.

**30. EXPENSES INCURRED IN PREPARING BID**

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

**31. OPTIONAL ESCROW AGREEMENT-THIS PROVISION IS NOT BEING UTILIZED IN THIS SOLICITATION**

**32. 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.

**33. 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

### **AGREEMENT NO. 20-269-7** **PROJECT NO. P26D**

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. 20-269-7, and all modifications properly incorporated into the Agreement
- Exhibit A – Arlington County Invitation to Bid No. 20-269-7, including DES General Conditions, Special Conditions, and Supplementary Specifications
- Exhibit B – Specifications, Drawings and Construction Notes
- Exhibit C – Price Bid of Contractor
- Exhibit D – Federal Highway Administration/Virginia Department of Transportation Requirements and Provisions
- Exhibit E – Current VDOT Road and Bridge Specifications
- Exhibit F – Current VDOT Standard Details

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 streetscape improvements at Two (2) intersections at 18<sup>th</sup> Street North, North Glebe Road and North Wakefield Street (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 53, 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:

The County will notify the Contractor after contract award of the specific roles and responsibilities of the Consultant(s).

**4. CONTRACT TERM**

The term of this Agreement will commence upon the issuance of the Notice Proceed and shall be completed no later than One-Hundred Ninety (190) consecutive calendar days from the days from the issuance of the Notice to Proceed, subject to any written modifications as provided for in the Contract Documents.

**5. TIME FOR COMPLETION**

Work under this Agreement shall achieve Substantial Completion no later than One-Hundred Sixty (160) 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.

This One-Hundred Sixty (160) 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 Thirty (30) 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 Terms as set forth in the Sections below and at the prices shown in Exhibit \_\_\_\_\_, for the Contractor's completion of the Work as required by the Contract Documents provided the Work is performed to the satisfaction of and is accepted by the Project Officer.

The Contractor will complete the Work for the total amount specified in this section ("Contract Amount") 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. CONTRACT PRICE ADJUSTMENTS 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. All materials 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 the 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 the 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 Forty-Five (45) calendar 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 (2) following actions within Seven (7) consecutive calendar 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 nonpayment.

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 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 \$1038.00 per 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 \$1038.00 per 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 \$1038.00 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 \$1038.00 per day for each and every day beyond the time for Final Completion until Final Completion is achieved.

**12. DAVIS-BACON PREVAILING WAGE RATES -THIS PROVISION IS NOT UTILIZED IN THIS SOLICITATION**

**13. BONUS FOR EARLY COMPLETION -THIS PROVISION IS NOT UTILIZED IN THIS SOLICITATION**

**14. BACKGROUND CHECK- THIS PROVISION IS NOT UTILIZED IN THIS SOLICITATION**

**15. PERFORMANCE OF WORK BY THE CONTRACTOR-THIS PROVISION IS NOT UTILIZED IN THIS SOLICITATION**

**16. NON-APPROPRIATION**

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

**17. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

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

quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

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

**18. 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.

**19. 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.

**20. VALUE ENGINEERING PROPOSAL (VE)-THIS PROVISION NOT UTILIZED IN THIS SOLICITATION**

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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 non-conforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

**26. 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) 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.

**27. TERMINATION**

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

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

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

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

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

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

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

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

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant Work performed by the Contractor or its 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 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.

**28. 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.

**29. 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.

### **30. 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.

### **31. 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.

**32. 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.

**33. 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 kickbacks 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.

**34. 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.

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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)

**40. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term.

The Contractor must provide any requested documents to the County for examination within Fifteen (15) calendar 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) calendar days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor.

If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, 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 30 days' notice and must not dispose of the documents if the County objects.



**41. 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.

**42. AMENDMENTS**

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

**43. 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.

**44. DISPUTE RESOLUTION**

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

**45. 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.

**46. ARBITRATION**

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

**47. NONEXCLUSIVITY OF REMEDIES**

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

**48. 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.

**49. 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.

**50. 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.

**51. 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.**

**52. 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.

**53. 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.

**54. 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:**

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**TO THE COUNTY:**

\_\_\_\_\_, Project Officer

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**AND**

**Shirley Diamond, Procurement Officer  
Office of the Purchasing Agent  
Arlington County Government  
2100 Clarendon Boulevard  
Suite 500  
Arlington, Virginia 22201  
Telephone: 703-228-3424**

**55. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**56. 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.

**58. 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: \_\_\_\_\_**