



DEPARTMENT OF MANAGEMENT AND FINANCE  
Office of the Purchasing Agent

2100 Clarendon Blvd., Suite 501 Arlington, VA 22201  
TEL 703-228-3410 FAX 703-228-3409 EMAIL [purchasing@arlingtonva.us](mailto:purchasing@arlingtonva.us) [www.arlingtonva.us](http://www.arlingtonva.us)

June 10, 2019

**VIA E-MAIL AND US MAIL**

Mr. Martin Boyle, Executive Vice-President  
2722 Merrilee Drive  
Suite 350  
Fairfax, Virginia 22031-4427

**RE: Arlington County Sole Source Contract No. 18-089-9, entitled, "Transit Operations, Facilities, Planning, Engineering, Design and Project Management Services on an On-Call, Task Order Basis"**

Dear Mr. Boyle:

Enclosed for your files is the fully executed Contract for your file.

Should you have any questions, please feel free to contact me at 703-228-3424 or via e-mail at [stdiamond@arlingtonva.us](mailto:stdiamond@arlingtonva.us). Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Shirley Diamond".

Shirley Diamond  
Procurement Officer

Enclosure

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

**CONTRACT NO. 18-089-9**

**THIS Contract is made, on the date of execution by the County, between STV Incorporated, dba STV Group Incorporated ("Contractor") a Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:**

**1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Services
- Exhibit B – Federal Transit Administration FTA Clauses and Certifications
- Exhibit C – Disadvantaged Business Enterprise (DBE) Provisions and Forms
- Exhibit D– Fixed Billable Rates
- Exhibit E- Reimbursable Expenses

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

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

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). The primary purpose of the Work is to provide Transit Operations and Facilities Planning, Design & Construction and Project Management Services for County Capital Transit and Operation projects, on an as necessary basis for up to a Five (5) year period.

It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

**3. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

**4. CONTRACT TERM**

The Contract Term shall be One (1) Base Year with Four (4) One-Year Option provisions.

**5. OPTION TO EXTEND SERVICES**

The County may require continued performance of any services with the limits and at the rates specified in the Price Schedule. This option provision may be exercised more than once, but the total extension hereunder shall not exceed Six (6) months. The Procurement Officer may exercise the option by written notice to the Contractor within Thirty (30) calendar days of contract expiration.

**6. CONTRACT AMOUNT**

This is a Fixed Unit-Price Contract. The County will pay the Contractor in accordance with the terms of the Price Schedule (Exhibit D) for the Work as required and specified by the Contract Documents.

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

**7. CONTRACT PRICE ADJUSTMENTS**

The Contract Unit Price(s) will remain firm through the One (1) Year Base Period.

To request a Price Adjustment for an Option year, the Contractor or the County must submit a written request to the other party not less than Sixty (60) consecutive calendar days before expiration of the Base Year Period. Increases in the Contract Unit Price(s) will not exceed: i) the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the Twelve (12) month period ending November of each Contract Year; or ii) Five percent (5%); whichever percentage is lower.

Any Contract Unit price(s), that result from this Provision, will become effective if or when the County exercises an Option Year. The Price Adjustment will be binding for a Twelve (12) month period.

If the Contractor and the County have not agreed on a requested adjustment by Thirty (30) consecutive calendar days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

**8. CODE AND REGULATORY COMPLIANCE**

The Contractor is responsible for completing the design Work and administering the construction phase of any project in accordance with the Department of Environmental Services (DES) Contractor Safety Standards, Virginia Uniform Statewide Building Code, the Arlington County DES Infrastructure Design Standards, the Arlington County DES Construction Standards and Specifications, the Arlington County Telecommunication Cabling Standards, the ANSI Commercial Building Telecommunication Standards and other applicable federal, state, and/or local regulatory requirements.

If any Contractor violation of a Code, standard or regulation results in a construction Change Order, the Contractor will be liable for any additional costs to the County, including costs of re-design, any additional construction costs and costs of delay.

**9. STANDARD OF CARE**

The County is entering into this Contract in reliance on the Contractor's experience and abilities with respect to performing the services hereunder. In performing the Work, the Contractor will ensure that it and its agents and employees exercise the degree of skill and care that is normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Contractor will re-perform, without additional compensation, any services not meeting this Customary Standard of Care.

The Contractor will be responsible for the professional quality, completeness, technical accuracy and coordination of all designs, drawings, specifications, costs estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's consultants.

The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, complete and appropriate for the purposes intended; and the project, if constructed in accordance with such plans, drawings, specifications, and other documents, will be structurally sound and complete and a properly functioning facility suitable for the purposes for which it is intended.

The Contractor is responsible for all costs and expenses incurred by the County, including increased construction costs, when such costs and expenses are the result of any violation of this Standard of Care section. The County's review, approval or acceptance of or payment for any services required under this Contract does not release the Contractor from any liability for breach of this Standard of Care.

**10. NOT-TO-EXCEED PROJECT COST**

The County will provide the Contractor with a description of the project Scope of Work, including information on Specifications, design/construction intent, space requirements, special features, aesthetic requirements and authorized square footage and a "Design-Not-to-Exceed" construction budget.

The Contractor will submit a cost estimate with each design phase submittal. If any such cost estimate indicates a potential problem in securing a bid within the County's construction budget, the Contractor will notify the County within Five (5) business days of the issue becoming apparent and will, at no additional cost to the County, Work with the County to redefine the design concepts (such as space, project size, utilization, building efficiencies and materials of construction) so that the estimated cost of construction does not exceed the construction budget.

**11. PAYMENT**

The County will pay the Contractor monthly according to the provisions of this Section. By the Tenth (10<sup>th</sup>) day of each month, the Contractor shall submit, to the Project Officer, a "pencil" invoice describing the percentage of Work in-place and completed during the preceding month.

The Project Officer shall approve, modify or require corrections to the invoice within Ten (10) consecutive calendar days upon receipt of the "pencil" invoice. If the Contractor has been paid Ninety Percent (90%) of the total amount allocated under a Task Order/Work payment will be made on the remaining balance only upon completion of the Work.

The County will not pay more than the approved Task Order amount for the Work, regardless of number of hours spent or amount of expenses incurred by the Contractor to complete the task.

The County shall pay the Contractor within Thirty (30) calendar days after receipt of an approved invoice.

The Purchase Order number, by which shipments have been made or services have been performed, must appear on all invoices.

**12. ADJUSTMENTS FOR CHANGE IN SCOPE**

The County may order additions, deletions and other revisions in the Work, if the additions, deletions or revisions are within the original general Scope of Work under the Task Order/project.

The Contractor shall provide documentation, that a proposed addition, deletion or revision is not within the original Scope of Work. The Contractor shall also provide documentation detailing the compensation amount for the changed Work. The Contractor shall notify the Project Officer, in writing, of the compensation amount required for the County's requested change. The foregoing notification must be in the form of a written notice within Ten (10) calendar days for the County change request.

The Contractor's notice must detail and document the basis for the claimed amount of additional compensation. The Contractor will not receive any additional compensation pursuant to this paragraph unless the parties execute a written Contract amendment and the County issues a purchase order consistent with the amendment.

**13. REIMBURSABLE EXPENSES**

Only reasonable project-related expenses identified in Exhibit E will be reimbursed. The Contractor will charge allowed reimbursable expenses on a unit-price basis and must provide verified invoices. The total amount paid for project-related expenses will not exceed the amount shown in Exhibit E.

**14. PAYMENT OF SUB-CONTRACTORS**

The Contractor is obligated to take one of the Two (2) following actions within Seven (7) 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.

**15. 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 the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without a termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

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

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract. 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.

**17. 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 and/or Work. 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.

**18. BACKGROUND CHECK**

All employees or sub-contractors whom the Contractor assigns to Work on this Contract must pass the County's standard background check. The background check will include fingerprinting by the County Sheriff's Office and a credit check.

**19. REPLACEMENT OF PERSONNEL AND SUB-CONTRACTORS**

The County has the right to reject staff or sub-contractor(s) whom the Contractor assigns to the project. The Contractor must then provide replacement staff or sub-contractor(s) satisfactory to the County in a timely manner and at no additional cost to the County.

Day-to-day supervision and control of the Contractor's, its sub-contractor(s), Contractor employees is the sole responsibility of the Contractor.

The Contractor may not replace Key Personnel, sub-contractors identified in the Offeror's proposal, including but not limited to, the approved Project Manager, without written approval, from the County Project Officer.

The Contractor must submit in writing any request to remove or replace Key Personnel or sub-contractor(s) to the County Project Officer within Fifteen (15) consecutive calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his/her qualifications.

If the approved, the Project Manager must be absent for an extended period, the Contractor shall provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval within Fifteen (15) consecutive calendar days.

**20. 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.

**21. 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.

**22. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must:

- (i) Provide a drug-free Workplace for its employees;

- (ii) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's Workplace and specifying the actions that will be taken against employees for violating such prohibition;
- (iii) State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free Workplace, and
- (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

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

**23. SAFETY**

The Contractor must ensure that it and its employees and sub-contractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including 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 and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

**24. 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. 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 a minimum of Fifteen (15) consecutive days' termination 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, 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.

#### **25. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)**

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 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.

**26. 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 the following:

- 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.

**27. 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.

**28. OWNERSHIP OF WORK PRODUCT**

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

All Work product, in any form, that results from this Contract is the 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 allow others to use the Work product for any purpose other than performance of this Contract without the written consent of the County.

The Work product is confidential, and the Contractor may neither release the Work product nor share its contents. The Contractor will refer all inquiries regarding the status of any Work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must 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.

**29. 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.

**30. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or 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.

**31. 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.

**32. 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.

**33. 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.

**34. RELATION TO 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.

**35. 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.

**36. 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 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)

**37. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 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) consecutive days of the County's request, reimburse the County for the overcharge(s) 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.

The County may, at its sole discretion, deduct the overcharge(s) 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 final payment under this Contract, the Contractor must allow the County a minimum of Thirty (30) consecutive calendar days' notice and must not dispose of the documents if the County objects.

**38. 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.

**39. AMENDMENTS**

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

**40. 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.

**41. 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) consecutive calendar days after the final payment.

The time limit for a final written decision by the County Manager is Thirty (30) consecutive calendar 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.

**42. 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.

**43. ARBITRATION**

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

**44. 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.

**45. 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.

**46. 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.

**47. ATTORNEY'S FEES**

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

**48. 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 OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION, ATTORNEY'S FEES, and CONFIDENTIAL INFORMATION.**

**49. 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.

**50. 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.

**51. NOTICES**

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

**TO THE CONTRACTOR:**

**Jose Bustamante, Vice-President  
Principal In-Charge  
STV Incorporated, Inc.  
2722 Merrilee Drive  
Suite 350  
Fairfax, Virginia 22031-4427  
Telephone – 703-633-2220**

**TO ARLINGTON COUNTY**

**Pierre Holloman, Assistant Transit Bureau Chief  
Department of Environmental Services  
2100 Clarendon Boulevard  
Suite 900  
Arlington, Virginia 22201  
Telephone-703-2283790**

**AND**

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

**52. ARLINGTON COUNTY BUSINESS LICENSES**

The Contractor 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 Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

**53. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**54. LIMITED ENGLISH PROFICIENCY**

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

**55. ACCESSIBILITY OF WEB SITE**

If any Work performed under this Contract results in the design, development or maintenance of or responsibility for the content or format of any County web sites or for the County's presence on third-party web sites, the Contractor must perform such Work in compliance with ADA.

**56. ADA COMPLIANCE**

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- The Contractor must design the project to meet all ADA requirements.
- The Contractor must monitor Work performed by the construction contractor and inform the County and the construction contractor immediately of any Work that does not conform with the ADA.

Neither the Arlington County Inspection Services Division, nor any County staff and/or third-party inspection service, is responsible for verifying that the Project's design complies with the ADA.

**57. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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 Attachment A. All FTA-mandated terms control in the event of a conflict with any other provisions of this Agreement. The Contractor must not perform any act, fail to perform any act or refuse to comply with any County requests if doing so would cause the County to violate the FTA terms and conditions.

The Contractor must include this clause without modification in each subcontract(s) that is financed in whole or in part by the FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor(s) who will be subject to the provisions.

**58. INSURANCE REQUIREMENTS**

Before beginning Work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory Workers Compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be provided with the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except Workers Compensation and automotive and professional liability; and the additional insured endorsement must be provided with the certificate.
- f. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.



- g. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- h. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for 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 Work. The Contractor's insurance shall be the primary non-contributory insurance for any Work performed under this Contract.

The Contractor is 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 whom the Contractor employs directly.

#### **59. CONTRACTOR PERFORMANCE EVALUATION**

The County will perform written Contractor evaluations of Contractor performance at various levels throughout the life of this Contract. At a minimum, evaluations will be completed at Fifty Percent (50%) completion of the Work and within Sixty (60) calendar days from Final Completion and prior to Final Payment to the Contractor.

The evaluation will address the Contractor's Work quality, cost controls, schedule, delivery timeliness, sub-contractor management and Quality Assurance/Quality Controls (QAQC). The Project Officer shall be responsible for completing the evaluations and providing a copy to the Contractor and the Procurement Officer.

#### **60. VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION (VDRPT) 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 (VDRPT) Master Agreement for the Use of

Commonwealth Transportation Funds with the County Board of Arlington County VA dated May 30, 2012 and shall be made expressly a part of any subcontracts executed by the Contractor and shall be binding on all sub-contractors, vendors, their agents and employees.

B. Contractor shall name Commonwealth of Virginia, DRPT, the Virginia Department of Transportation 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 for losses to the extent caused by the negligence or willful misconduct of such entity or person, from Third Party claims that are directly related to or arise out of the following:

(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 Task, or any breach by Contractor of its representations or warranties in this Task;

(b) Any actual or willful misconduct or negligence of the 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.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

CONTRACTOR

AUTHORIZED  
SIGNATURE:



AUTHORIZED  
SIGNATURE:



NAME: SHIRLEY DIAMOND  
TITLE: PROCUREMENT OFFICER

NAM: Jose Bustamante *Martin Boyle*  
TITLE: Vice-President *EVP*

DATE: 6-10-19

DATE: 5/21/19