

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

CONTRACT AWARD COVERPAGE

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| TO: CREATIVE EMPIRE LLC, d/b/a MANGO LANGUAGES 30445 NORTHWESTERN HWY FARMINGTON, MICHIGAN 48334 | DATE ISSUED: CONTRACT NO: CONTRACT TITLE: | <u>10/9/2020</u> <u>20-725-EP</u> <u>MANGO LANGUAGES SERVICES</u> |
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 20-725-EP including any attachments or amendments thereto.

EFFECTIVE DATE: 10/9/2020
EXPIRES: 6/30/2021
RENEWALS: FOUR (4) ONE (1) YEAR RENEWALS REMAINING
COMMODITY CODE(S): 99818
LIVING WAGE: N

ATTACHMENTS:
AGREEMENT No. 20-725-EP
EXHBIT A – TERMS OF SERVICE

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

| | | |
|--|-------------------------|----------------------------|
| VENDOR CONTACT: MALIKA ABDUL-MALIK | VENDOR TEL. NO.: | <u>(248) 2547450 x 834</u> |
| EMAIL ADDRESS: MALIKA.ABDULMALIK@MANGOLANGUAGES.COM | | |
| COUNTY CONTACT: JUSTIN MARTIN (LIB) | COUNTY TEL. NO.: | <u>(703) 228-6332</u> |
| COUNTY CONTACT EMAIL: JBMARTIN@ARLINGTONVA.US | | |

PURCHASING DIVISION AUTHORIZATION

Lucas Alexander Title PROCUREMENT OFFICER Date 10/9/2020

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

AGREEMENT NO. 20-725-EP

THIS AGREEMENT is made, on the date of execution by the County, between Creative Empire LLC, dba Mango Languages ("Contractor" or "Mango"), a Michigan Limited Liability Company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). 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 –Terms of Service

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

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

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Mango Languages Library Edition Terms of Service" (Exhibit A), the primary purpose of the Work is to provide access to services provided through Mango's website. 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

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than June 30, 2021 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement

under the same contract prices for not more than one (1) additional 12-month period, from July 1, 2021 to June 30, 2022 ("Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor for the Contractor's completion of the Work as required by the Contract Documents in accordance with the terms of the Payment section below and of Exhibit A.

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

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. PAYMENT OF SUBCONTRACTORS

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

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

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

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

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

9. NON-APPROPRIATION

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

10. COUNTY PURCHASE ORDER REQUIREMENT

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

11. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

12. 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.

13. 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.

14. 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 at least 15 days or any longer 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 subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

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

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, 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.

15. INDEMNIFICATION

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

16. INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

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

17. CONFIDENTIAL INFORMATION

Each Party (Contractor and County) and its employees, agents and subcontractors will hold as confidential all of the other Party's 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 Parties must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

18. ETHICS IN PUBLIC CONTRACTING

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

19. 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.

20. 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.

21. 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.

22. RELATION TO COUNTY

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

23. 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, reports 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)

24. AUDIT

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

25. 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.

26. AMENDMENTS

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

27. 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.

28. 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.

29. 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.

30. ARBITRATION

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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. NOTICES

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

TO THE CONTRACTOR:

legal@mangolanguages.com
30445 Northwestern Highway
Farmington, Michigan 48334

TO THE COUNTY:

Justin Martin, Project Officer
1015 N Quincy Street
Arlington, Virginia 22201

AND

Lucas Alexander, Procurement Officer
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

39. 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.

40. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

41. 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 typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- a. 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 typed on the certificate.
- b. 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.
- c. 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.
- d. 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 subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

42. 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

MANGO LANGUAGES

AUTHORIZED DocuSigned by:
SIGNATURE: Lucas Alexander
5D2342428F9D4B4...

AUTHORIZED DocuSigned by:
SIGNATURE: Steve Parakis
345A7180ADF042E...

NAME: LUCAS ALEXANDER
TITLE: PROCUREMENT OFFICER

NAME AND Steve Parakis
TITLE: cfo

DATE: 10/9/2020

DATE: 10/6/2020

Exhibit A Terms of Service

1. SERVICES; TERM

Subject to the satisfaction of the terms and conditions of the parties' Agreement and solely during the Contract Term, Mango shall provide the County access to certain services identified as Library Edition. Library Edition shall include the current version of Mango Conversations courses included in the Library Edition and all included supplemental content, activities, and exercises included in the Mango Conversations courses that are part of the Library Edition for all language offerings as of the date of execution, and shall also include any new languages, courses or updates made to Library Edition from time to time (collectively, "Services"). The County is purchasing Services on behalf of and for the benefit of Arlington Public Library ("Library").

2. FEES

The County shall pay Mango \$14,035.83 for the Services during the Initial Contract Term (the "Initial Payment Amount"). Prior to the commencement of each Successor Term(s), County and Mango shall agree upon the amount County shall pay Mango for the upcoming Subsequent Contract Term (the "Successor Payment Amount").

While Mango attempts to insure that its Website is normally available 24 hours a day, Mango shall not be liable if for any reason its Website is unavailable at any time or for any period; provided however, that Mango shall use its best efforts to provide adequate capacity and bandwidth to support the Library's needs and provide service on a 24 hour basis except for routine maintenance (for which the Library is pre-notified). In the event that Mango fails to provide such service for five days within a 30-day period, Mango shall provide a pro rata refund for the 30 day period in question;

3. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE SERVICES AND SERVICES PURCHASED BY LIBRARY FROM MANGO ARE PROVIDED "AS IS". MANGO DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. To the maximum extent permitted by applicable law, neither Mango nor its licensors or distributors shall be liable to the Library for any lost profits, cost of substitute goods or services, or any form of indirect, special, incidental, consequential or punitive damages from any causes of action arising with respect to the Services that Library purchases from Mango, whether arising in tort (including negligence), contract, strict liability or otherwise, whether or not such party has been advised of the possibility of such damage. In no event shall Mango's aggregate liability under this Agreement exceed the amount actually paid by Library for the applicable Services. THE LIMITATIONS OF THIS SECTION DO NOT APPLY TO CLAIMS OF PERSONAL INJURY, DEATH OR INTELLECTUAL PROPERTY INDEMNIFICATION.

4. WEB-SITE/SOFTWARE ACCESS

To the extent that any Services are accessed through Mango's website ("Website") or software programs (collectively "Website"), Mango hereby grants the Library's Authorized Users a limited license to access and make use of such Services. "Authorized Users" means users who are registered borrowers of the Library, those that are walk-ins, and those who are remote users accessing the Services through the Library's website. Library will make reasonable efforts to protect Mango's proprietary information (including but not

limited to Mango's intellectual property and other similar Content (as defined below) and will promptly notify Mango if Library discovers there is unauthorized use of Mango's Services and will cooperate reasonably with Mango to mediate the situation.

5. WEB-SITE LICENSE AND CONDITIONS

As a condition of the Website license granted in paragraph 3 above, Library agrees:

- a. not to download or modify any part of the Website, except with the express and prior written consent of Mango;
- b. not to download or copy any account information for the benefit of another merchant;
- c. not to resell or make any commercial use of the Website or its Content;
- d. not to reproduce, duplicate, copy, sell, resell or otherwise exploit the Website for any commercial purpose without the express written consent of Mango;
- e. not to make any derivative use of the Website or its Content;
- f. not to frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Mango except for the purposes of this Agreement and for promoting the Services;
- g. not to use any meta tags or any other "hidden text" utilizing the Mango name or trademarks without the express written consent of Mango;
- h. Access to Mango's Website may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons beyond Mango's control;
- i. Certain Content, including without limitation Mango Premiere Library Edition, may be owned by Mango and/or its licensors. Library therefore acknowledges and agrees that such Content may be added, removed or unavailable from time to time (the "Unavailability"), and such Unavailability shall not be deemed breach of this agreement by Mango;
- j. Neither the Library nor any of its Authorized Users shall show any Content, including without limitation any video clips or movies which are included in the Contents, to any public group or other third parties who are not Authorized Users, and Library and its Authorized Users shall abide by all Movie Regulations listed at <https://mangolanguages.com/legal/movie-regulations.cfm>.

6. SUPPORT

Mango shall support the Library by responding to emails and phone calls from the Library. Mango shall make reasonable efforts to respond to all customer support issues during normal business days between the hours of 9 a.m. and 7p.m. Eastern Time, Monday through Thursday, and 9 a.m. and 5 p.m. Eastern Time on Fridays.

7. UPDATES

Mango shall from time to time update Library Edition at Mango's sole and absolute discretion. The Library shall only receive updates to the Library Edition, and any changes or enhancements to Mango's consumer edition and/or other editions will not necessarily be made to the Library Edition.

8. ACCESS

Mango intends to provide Authorized Users unlimited access to the Mango Library Edition. In the event that the Library's Authorized Users exceed what Mango deems reasonable usage during the term of this Agreement (i.e., Mango determines that usage of the Website and Services is being excessively abused by a particular user id and password), Mango shall assume that either the number of cardholders in the Library was grossly underestimated or there is piracy of Mango's Service from outside sources. Under such circumstances, Mango reserves the right to restrict or limit access to the Services and/or the Website. In

the event of such circumstances, Mango shall make every effort to provide notice to and cooperate with Library prior to Mango's restriction or limitation of access to its Website and Services.

9. INTELLECTUAL PROPERTY

All materials on the Mango Website or Services, including without limitation, text, images, logo, software, audio content and video clips, databases, e-mails, and posted comments and reviews (collectively, the "Content") are owned or controlled by Mango and/or its licensors, who retain all right, title, and interest in and to the Content. The Website and Content are protected by the copyright and trademark laws of the United States and other countries, international conventions, and other applicable laws. Library shall use all reasonable efforts to ensure that all Authorized Users are appropriately notified of the importance of respecting Mango's intellectual property rights.

10. LICENSE OF LIBRARY'S TRADEMARKS

Library agrees to grant Mango a non-exclusive, non-transferable, royalty-free, right and license, solely during the Initial or any Successor Terms of the Agreement, to reproduce, display, and otherwise use the trademarks, service marks, logos, and trade names of Library solely in connection with the advertising and promotion of Mango's language learning business