

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

CONTRACT NO. 20-110-9-6

COUNTY NUMBER PO2D

THIS AGREEMENT is made, on the date of execution by the County, between (“Contractor”) Ardent Company, LLC, a Limited Liability Company, 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 Contract document and the following:

- Exhibit A1 – Attachment A-1 – Construction Drawings
- Exhibit A2 – Attachment A-2- Erosion and Sediment Details
- Exhibit A3 – North Fairfax Drive
- Exhibit B – Construction Specifications
- Exhibit C – Price Schedule
- Exhibit D– Federal Transit Administration (FTA) Provisions and Requirements
- Exhibit E – Disadvantaged Business Enterprise Provisions
- Exhibit F – Davis Bacon Wage Determination
- Exhibit G – Geotechnical Report, June 2015
- Exhibit H – Bid Form

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

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

2. SCOPE OF WORK

The Contractor will furnish all labor, materials, and equipment for the construction of Ballston Metro Station Area Improvements, (the “Project”) and all other Work shown, described and required by the Contract Documents (hereinafter “the Work”).

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

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer identified in Section 53, Notices, unless the Contractor is otherwise notified in writing.

4. TIME FOR COMPLETION

Work under this Agreement shall achieve Final Completion no later than Four Hundred Thirty (430) consecutive calendar days after the commencement date given in a Notice to Proceed provided by the County to the Contractor subject to any Modifications made as provided for in the Contract Documents.

The Four Hundred Thirty (430) day period shall be the Contract Term. The Contractor agree that the Time for Completion/Contract Term shall govern unless the Time for Completion/Contract Term is specifically modified and/or amended in writing in the Contract document. No claims for early completion are allowed to be presented by the Contractor, unless specifically provided for in the Contract documents.

No Work shall be deemed complete until the Release and Request for Final Payment has been approved by the Project Officer.

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Progress Payments and Retainage and Payment Terms sections below and at the prices shown in Exhibit C (Price Schedule) for the Contractor's completion of the Work as required by the Contract Documents provided the Work is performed to the satisfaction of and is accepted by the Project Officer.

The Contractor will complete the Work for the total amount specified in this Section ("Contract Amount") unless such amount is modified as provided in this Agreement. The Contract Amount includes all of the Contractor's costs and fees (profit), is inclusive of all anticipated or known site conditions, anticipated or known materials, labor, and equipment costs, or any other costs which should reasonably have been expected by the Contract Documents.

6. PROGRESS PAYMENTS AND RETAINAGE

The County will make monthly progress payments to the Contractor upon written application by the Contractor on the basis of a written estimate of the Work performed during the preceding calendar month as approved by the Project Officer. Five Percent (5%) of each progress payment shall be retained by the County until Final Completion and acceptance of all Work covered by the Agreement.

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

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

7. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor Forty-Five (45) calendar days after approval of an invoice for completed work which is reasonable and allocable to the Contract. The number of the County Purchase Order pursuant to work has been performed must appear on all invoices.

8. PAYMENT OF SUB-CONTRACTORS

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 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 subcontracts, 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.

9. RELEASE AND REQUEST FOR FINAL PAYMENT

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

10. LIQUIDATED DAMAGES

Time is of the essence under this Contract. The Work must be completed within the Time for Completion. The County and the Contractor agree that damages for failure to achieve Final Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that \$1,445.00 per calendar day is in proportion to the actual loss that the County would suffer from such delay.

Therefore, the Contractor will pay the County as Liquidated Damages \$1,445.00 per calendar day for each and every day beyond the time for Final Completion that the County determines Final Completion has not achieved. The County and the Contractor also agree that damages for failure to achieve Final Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination

but that \$1,445.00 per calendar day is in proportion to the actual loss the County would suffer from such delay. Therefore, the Contractor will pay the County as Liquidated Damages \$1,445.00 per day for each and every day beyond the time for Final Completion until Final Completion is achieved.

11. DAVIS-BACON PREVAILING WAGE RATES

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

12. PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall perform on site, and with its own organization, a minimum of Seventy Percent (70%) of the total direct labor and work in place to be performed under this Contract.

The self-performance percentage may be reduced by an Amendment to the Contract, if during performance of the Work, the Contractor requests a reduction and the Project Officer determines that the reduction would be to the advantage of the County.

13. 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 termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever occurs first.

14. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

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

15. 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.

16. LIEN

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

17. VALUE ENGINEERING PROPOSAL (VEP)

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

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

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

The County will process the VEP in the same manner as prescribed for any other proposal that would necessitate issuance of an Amendment. The County may accept a VEP in whole or part by issuing an Amendment that will identify the VEP on which it is based. The County will not be liable to the Contractor for failure to accept or act on any VEP submitted pursuant to these requirements or for delays in the Work attributable to any VEP.

Until a VEP is put into effect by an Amendment, the Contractor shall remain obligated to the terms and conditions of the existing Agreement. If an executed Amendment has not been issued by the date on which the Contractor's proposal specifies that a decision should be made or such other date as the Contractor may subsequently have specified in writing, the VEP shall be deemed rejected.

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

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

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

The County may adopt a VEP for general use in contracts administered by the County if it determines that the VEP is suitable for application to other contracts. A VEP identical with or similar to a previously submitted VEP will be eligible for consideration and compensation under these provisions if it has not been previously adopted for general application to other contracts administered by the County.

When a VEP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VEP was submitted prior to the date of adoption of the VEP. If a VEP is based on or is similar to a change in the Plans, Specifications, or Special Provisions adopted by the County prior to submission of the VEP, as determined by the County, the County will not accept the VEP.

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

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

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

18. 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.

19. 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.

20. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

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

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

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

21. PROJECT STAFF

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

22. FAILURE TO DELIVER

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

23. UNSATISFACTORY WORK

If any of the Work done, or material, goods, or equipment provided by the Contractor, is unsatisfactory to the County the Contractor must, upon notice from the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County.

If the Contractor fails to do so after Fifteen (15) calendar days the County shall have the right to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor and offset the expense and administrative costs against any sums owed to the Contractor.

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

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. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

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

2. **Termination for Breach or Default.** If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of

termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its sub-contractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

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

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor, a minimum of, Fifteen (15) calendar days' notice in writing.

The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

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

25. INDEMNIFICATION

The Contractor covenants for itself, its employees and its sub-contractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees, vendors, delivery drivers and/or sub-contractors, in performance or nonperformance of the Contract.

This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor's discharge or disposal

of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to contractor's operations herein.

26. DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION (DRPT) 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, Virginia, dated May 30, 2012 and shall be made expressly a part of any sub-contracts executed by the Contractor and shall be binding on all sub-contractors, vendors, their agents and employees.
- B. Contractor shall name the Commonwealth of Virginia, DRPT, the Virginia Department of Transportation and their officers, employees and agents as additional insured 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.

27. INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

The Contractor covenants for itself, its employees and its sub-contractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract.

If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

28. 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.

29. OWNERSHIP AND RETURN OF RECORDS

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

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

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

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

The provisions of this Section will survive any termination or cancellation of this Contract.

30. 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.

31. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement.** The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or sub-contractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Exhibit____) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.
- (b) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that

support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.

- (e) **Conclusion of Contract**. Within Thirty (30) days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its sub-contractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- (f) **Notification of Security Incidents**. The Contractor must notify the County Chief Information Officer and County Project Officer within Twenty-Four (24) hours of the discovery of any unintended access to or use or disclosure of County Information.
- (g) **Sub-contractors**. If sub-contractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the sub-contractor. If the sub-contractor will have access to County Information, each sub-contractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

32. ETHICS IN PUBLIC CONTRACTING

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

33. 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.

34. 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.

35. 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.

36. RELATION TO THE COUNTY

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

37. 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.

38. 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)

39. AUDIT

The Contractor must provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within Two (2) months after the close of Contractor's fiscal year. If a Management Letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within Fifteen (15) calendar days of the County's receipt of the findings. All accounts of the Contractor are subject to audit.

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

during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within Fifteen (15) days of the request, at the Contractor's expense.

Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within Thirty (30) days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor.

If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within Five (5) years after the Final Payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least Thirty (30) days' notice and must not dispose of the documents if the County objects.

40. 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.

41. AMENDMENTS

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

42. 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.

43. 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.

44. 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.

45. ARBITRATION

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

46. 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.

47. 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.

48. 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.

49. 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.

50. SURVIVAL OF TERMS

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

51. 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.

52. 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.

53. NOTICES

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

**TO THE CONTRACTOR:
Arash Hooshangi
Managing Director
Ardent Company, LLC
P.O. Box 879
McLean, Virginia 22101**

TO THE COUNTY:
Mark Mainardi, Project Officer
Department of Environmental Services
Arlington County Government
2210 Clarendon Boulevard
Suite 900
Arlington County, Virginia 22201
Telephone: 703-228-3392

AND

Shirley Diamond, Procurement Officer
Office of the Purchasing Agent
Arlington County Government
2201 Clarendon Boulevard
Suite 500
Arlington County, Virginia 22201
Telephone: 703-228-3424

54. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

55. INSURANCE, PAYMENT AND PERFORMANCE BONDS

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

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

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

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

56. 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.

57. CONTRACTOR PERFORMANCE EVALUATION

Arlington County will perform written evaluations of the Contractor's performance at various intervals throughout the life of this contract. At a minimum, evaluation will be completed at Fifty Percent (50%) completion of the work and within Sixty (60) calendar days from final completion of the project and prior to final payment being made to the Contractor. The evaluations will address the Contractor's work quality, cost controls, schedule and timeliness, and subcontractor management. The Project Officer will be responsible for completing the evaluations and will provide a copy of the Contractor and the County Procurement Office.

WITNESS these signatures:

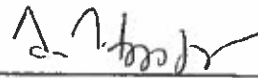
**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

CONTRACTOR

**AUTHORIZED
SIGNATURE:**



**AUTHORIZED
SIGNATURE:**



**NAME Shirley Diamond
TITLE: PROCUREMENT OFFICER**

**NAME: Arash Hooshangi
TITLE: Managing Director**

DATE: 1-14-20

DATE: 1/14/2020