

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

NOTICE OF CONTRACT AWARD

TO: KIMLEY-HORN & ASSOC., INC.	DATE ISSUED:	08/16/2018
11400 COMMERCE PARK DR, STE 400	CURRENT REFERENCE NO:	17-084-RFP-8
RESTON, VA 20191	CONTRACT TITLE:	ENGINEERING SVCS

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. 17-084-RFP-8 including any attachments or amendments thereto.

EFFECTIVE DATE: IMMEDIATELY

EXPIRES: JULY 31, 2020

RENEWALS: FOUR (4) ONE (1) YEAR RENEWAL OPTIONS FROM AUGUST 1, 2020 UNTIL JULY 31, 2024

EMPLOYEES NOT TO BENEFIT:

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

<u>VENDOR CONTACT:</u> JOHN MARTIN	<u>VENDOR TEL. NO.:</u>	<u>(703) 674-1305</u>
<u>EMAIL ADDRESS:</u> JOHN.MARTIN@KIMLEY-HORN.COM		

<u>COUNTY CONTACT:</u> ADIL CHAUHAN (DES-ENG)	<u>COUNTY TEL. NO.:</u>	<u>(703) 228-3540</u>
<u>COUNTY CONTACT EMAIL:</u> ACHAUHAN@ARLINGTONVA.US		

ISSUED BY:

NAME: SHARON T. LEWIS

TITLE: PURCHASING DIVISION CHIEF

EMAIL: SLEWIS1@ARLINGTONVA.US

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

AGREEMENT NO. 17-084-RFP-8

THIS AGREEMENT is made, on the date of execution by the County, between Kimley-Horn and Associates, Inc., 11400 Commerce Park Drive, Suite 400, Reston, VA 20191 ("Contractor") a North Carolina corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Attachment A – Scope of Work
- Attachment B – Contract Pricing
- Attachment C – Nondisclosure and Data Security Agreement (Contractor)
- Attachment D – Nondisclosure and Data Security Agreement (Individual)

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 "Scope of Work" (Attachment A), the primary purpose of the Work is to provide on-call professional engineering services for **Specialization Area D2 – Intelligent Transportation Systems (ITS)**. 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 July 31, 2020 ("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 four additional 12-month periods, from August 1, 2020 to July 31, 2024 (each a "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 in accordance with the terms of the Payment section below and of Attachment B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Attachment 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 Attachment B unless otherwise agreed by the parties in writing.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will remain firm for the first two years of the Contract. To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to in the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12-month period ending in February of each year of the Contract.

If the Contractor and the County do not agree on unit prices by the thirtieth (30th) calendar day prior to the final day of the Initial Contract Term or any Subsequent Contract Term, the County may in its sole discretion terminate the Contract. The Contract Amount/unit price(s) that changed as a result of this procedure shall become effective on the start date of the next Subsequent Contract Term and shall be binding on the parties for the duration.

7. PAYMENT

The County will pay the Contractor monthly according to the provisions of this section. By the tenth day of each month, the Contractor will submit to the Project Officer an invoice describing the total work done during the preceding month, broken out by task. The Project Officer will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an approved invoice.

The invoice must be based on an estimated percentage of the total work under each task that was completed during the month, subject to the Project Officer's acceptance of the work and the estimate. If the Contractor has already been paid 90% of the total amount allocated for any task and work under that task is not complete, the County will pay the remaining amount due for that task only upon completion of the task. The County will not pay more than amount allocated for any task, regardless of the number of hours spent or the amount of expenses incurred by the Contractor to complete the task.

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

8. ADJUSTMENTS FOR CHANGE IN SCOPE

The County may order additions, deletions and other revisions in the Work within the general scope of the project. If the Contractor believes that any change is not within the scope of the project or warrants additional compensation, the Contractor must notify the Project Officer as soon as the County requests the change; and the Contractor must then provide written notice of its position to the Project Officer within ten calendar days. The Contractor's notice must detail and document the basis for the claimed amount of additional compensation. The Contractor will not receive any additional compensation pursuant to this paragraph unless and the parties execute a written Contract amendment and the County issues a purchase order consistent with the amendment.

9. REIMBURSABLE EXPENSES

Only reasonable project-related expenses identified in Attachment B will be reimbursed. The Contractor will charge allowed reimbursable expenses on a unit-price basis and must provide verified invoices.

10. 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.

11. CODE AND REGULATORY COMPLIANCE

The Contractor is responsible for completing and designing any project and administering the construction phase of any project under this Contract in accordance with Virginia Uniform Statewide Building Code, the Arlington County DES Infrastructure Standards and Specifications, Arlington County Telecommunication Cabling Standards, the ANSI Commercial Building Telecommunication Standards, and other applicable federal state and/or local regulatory requirements. If any Contractor violation of a Code,

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

12. STANDARD OF CARE

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

The Contractor will be responsible for the professional quality, completeness, technical accuracy and coordination of all designs, drawings, specifications, costs estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's sub-consultants. The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, plans, drawings, specifications and other documents will be structurally sound, and a complete and properly functioning facility that is suitable for the purposes for which it is intended.

The Contractor is responsible for all costs and expenses incurred by the County, including increased construction costs, to the extent such costs and expenses are the result of any violation of this Standard of Care section. The County's review, approval or acceptance of or payment for any services required under this Contract does not release the Contractor from any liability or operate as a waiver by the County of any rights or of any cause of action arising out of the Contract.

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 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.

14. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

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

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

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. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors 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 and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

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

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

17. 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.

18. 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.

19. 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.

20. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

21. 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 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, 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.

22. 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 arising out of the Contractor's negligent acts or omissions, including the negligent 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.

23. 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.

24. 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 subcontractors 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 subcontractors or third parties related to this Contract.

25. 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 subcontractors 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 subcontractors or other third parties.

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

26. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors 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 subcontractors are informed of and abide by this requirement. The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the Non-Disclosure Agreements (NDA) (Attachments A and B) 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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)

34. 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.

35. 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.

36. AMENDMENTS

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

37. 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.

38. 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.

39. 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.

40. ARBITRATION

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

41. 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.

42. 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.

43. 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.

44. ATTORNEY'S FEES

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

45. 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.

46. 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.

47. 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.

48. NOTICES

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

TO THE CONTRACTOR:

R. John Martin
Kimley-Horn and Associates, Inc.
11400 Commerce Park Drive, Suite 400
Reston, VA 20191

TO THE COUNTY:

Adil Chauhan, Project Officer
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201

AND

Sharon T. Lewis, Purchasing Division Chief
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

49. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. ACCESSIBILITY OF WEB SITE

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

51. ADA COMPLIANCE

The Contractor is solely responsible for its compliance with the Americans with Disabilities Act (ADA) and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

The Contractor shall ensure that all services provided under this Agreement are completed in accordance with the requirements of the Americans with Disabilities Act (ADA).

If performing Construction Administration or Inspection Services, the Contractor must monitor Work performed by the construction contractor and inform the County and the construction contractor immediately of any Work that does not conform with the ADA.

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

52. 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).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for damages arising out of negligent errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.

- e. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Claims-Made Coverage - Any “claims made” policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- h. Contract Identification - All insurance certificates must state this Contract's number and title.

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

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

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

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor’s insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

AUTHORIZED
SIGNATURE: _____

NAME: SHARON T. LEWIS
TITLE: PURCHASING DIVISION CHIEF

DATE: 8-16-2018

KIMLEY-HORN AND ASSOCIATES, INC.

AUTHORIZED
SIGNATURE: _____

NAME AND
TITLE: R. JOHN MARTIN, SENIOR VICE PRESIDENT

DATE: 8/2/18

ATTACHMENT A

SCOPE OF WORK

PROJECT TASKS

The Contractor will be assigned task orders within **Specialization Area D2 – Intelligent Transportation Systems (ITS)**. Project tasks will vary depending on the nature of the specific project. The Contractor may be asked to perform one or more of the Project Support Services described below. The Contractor must perform the tasks described under the Specialization Areas in-house, however, the Contractor may use sub-consultant(s) for tasks described under the Project Support Services.

All work shall be completed in accordance with all applicable Arlington County, Federal Highway Administration, Virginia Department of Transportation (VDOT), or other State standards and regulations.

The types of work that may be assigned are described below. These work descriptions are intended to be examples and not an all-inclusive listing.

D. TRAFFIC SYSTEMS ENGINEERING

2. Intelligent Transportation Systems (ITS)

Tasks under the Intelligent Transportation Systems Services may include, but are not limited to the following:

- Preparation of ITS planning documents such as the ITS Master Plan
- Design of Fiber-optic outside plant infrastructure including network engineering
- Design of variable messaging signs and travel time information systems
- Design of data collection systems such as permanent count stations
- Design of signal priority systems such as transit signal priority and emergency vehicle priority
- Design of traffic monitoring and CCTV networks and systems
- Design of adaptive traffic signal systems, signal design modification
- Preparation of standards and specifications for Intelligent Transportation Systems

PROJECT SUPPORT SERVICES

The types of work that may be assigned under Project Support Services for any of the Specialization Areas are described below. These work descriptions are intended to be examples and not an all-inclusive listing. Work assignments may combine Project Support Services tasks with Specialization Area tasks.

1. SURVEY AND RIGHT-OF-WAY (ROW) SERVICES

Survey and Right-of-Way Services include the preparation of accurate topographic, boundary, and ROW surveys and assistance with acquiring land and easements. All work shall be completed to Arlington County standards and are subject to Arlington County Real Estate Bureau approval.

Examples of potential work tasks include, but are not limited to:

- **Boundary Surveys**
Locate the property boundaries, adjacent public rights-of-way, and any easements for the area identified by the Project Officer in Virginia Coordinate System of 1983 (VCS 83) with coordinate values shown in feet.
- **Planimetric and Topographic Surveys**
Planimetric surveys of features including but not limited to curb & gutter, sidewalks/ trails and edge of pavement. Topography in the form of two-foot, one-foot, or one-foot interpolated from two-foot contour lines (as requested by the County Project Officer), key spot elevations such as high and low points, and drainage channels. Obtain finished floor elevations for buildings and structures. Also locate the boundary of any Resource Protection Area (as defined in the County's revised Chesapeake Bay Ordinance).
- **Tree Surveys**
Locate all existing trees 3" at diameter breast height (DBH) or greater. Identify each tree on the drawing by its DBH and species type (i.e. 10" Oak). Field locate the boundaries of the extent of the drip line of the tree. Where there are stands of onsite trees, the actual drip line/canopy may be combined to reflect the total canopy coverage of the onsite trees.
- **Utility Location**
Locate all existing overhead and underground utilities by field-locating above-ground elements, and obtaining and reviewing the records of all utility companies operating in Arlington County.
- **Preparation of Right-Of-Way or Easement Plats**
Perform necessary land record research, prepare right-of-way acquisition plats sealed by a licensed surveyor, and obtain plat signature approval from the County's Department of Environmental Services (DES). Easement Plats shall be prepared according to County plat preparation procedures and per Virginia State Library and Archives Regulation 137.6 (Standards for Plats), and current Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) rules and regulations. The Contractor shall prepare temporary access easements in accordance with County plan preparation procedures including area calculations.
- **Construction Stakeout**
Provide construction stake out and cut sheet preparation.

2. GENERAL CIVIL ENGINEERING DESIGN SERVICES

The County may require assistance to provide a full range of civil engineering design services.

Examples of potential work tasks include, but are not limited to:

- **Plan preparation including but not limited to the following elements:**
 - Cover Sheet
 - Legend
 - Existing Conditions
 - Geometric Control Plan
 - Erosion and Sediment Control Plan
 - Erosion and Sediment Control Notes
 - Demolition Plan

- Pollution Prevention Plan
- Road Plan & Profile
- Grading Plan
- Sight Distance Plan & Profile
- Road Typical Sections
- Details
- Accessible Ramp Details
- Curb Return Profiles
- Drainage Divides & Storm Computations
- Storm Sewer Profiles
- Storm Sewer Details
- Stormwater Management Plan
- Stormwater Management Details
- Watermain Plan & Profiles
- Watermain Details
- Sanitary Sewer Plan & Profiles
- Sanitary Sewer Details
- Signals Plan
- Signals Detail
- Streetlight Plan
- Landscape Plan
- Tree Preservation Plan
- Cross Sections
- Pavement Marking Plan
- Signage Plan
- Transportation Management Plan
- Turning Templates
- Permitting including but not limited to the following:
 - Environmental Permits
 - Land Disturbance Permits including SWPPPs
 - Virginia Stormwater Management Permit (VSMP)
 - VDOT Permit
- Dry utility coordination with utility companies including but not limited to Dominion Virginia Power (DVP), Verizon, Comcast, MCI & Washington Gas Light (WGL), Arlington County Department of Technology Services (DTS)
- Bid document preparation including but not limited to:
 - Specifications including any special provisions
 - Cost estimates
- Procurement services including but not limited to:
 - Assisting with preparing Invitation to Bid (ITB) documents
 - Preparing an itemized project quantities list for bidding purposes
 - Attending pre-bid meetings
 - Preparing and delivering presentations for pre-bid meetings
 - Responding to Requests for Clarification (RFC) during bidding
 - Assisting the County in bid selection
- Exhibits for easement and right-of-way acquisitions purposes

- Exhibits and presentations for public communication and project outreach to County Residents, Businesses, Pentagon, National Parks Service, Washington Metropolitan Transit Authority (WMATA), Metropolitan Washington Airports Authority (MWA), Northern Virginia Regional Park Authority (NVRPA), VDOT & various other stakeholders
- Public meeting participation and outreach support
- Participate in meetings with stakeholders within the County including meeting with the Project Officer
- Peer review of plans prepared by others for constructability and value engineering

3. CONSTRUCTION ADMINISTRATION (CA) SERVICES

The County may require assistance to provide Construction Administration Services during the construction phase of a project.

Examples of potential work tasks include, but are not limited to:

- Attend and participate in pre-construction meetings
- Prepare meeting summaries
- Responding to Request for Information (RFI's)
- Review and approve submittals including shop drawings, product data, samples, As-Built & test results
- Attend and participate in progress meetings
- Resolve conflicts during construction
- Provide solutions to unforeseen conflicts during construction
- Review, evaluate and approving Potential Change Orders (PCOs)
- Prepare Change Orders (COs)
- Assist the County to determine whether work has been performed in accordance with the plans and specifications
- Field inspections to support the County construction manager
- Construction phasing analysis

4. CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

Tasks under the Construction Management and Inspection Services may include, but are not limited to the following:

- Daily inspection of the work
- Filling in daily reports
- Quantity measurement
- Reviewing and interpreting construction drawings and specifications for urban infrastructure projects
- Administering and interpreting construction contracts
- Conducting meetings such as pre-construction, progress and stakeholder meetings as well as preparing meeting minutes
- Performing field inspections and coordinating tests to ensure Contractor's compliance with contract documents
- Monitoring construction progress, reporting on Contractor's activities, identifying and resolving construction issues, and analyzing schedule updates
- Preparing daily reports, documenting installed quantities and responding to general inquiries

- Analyzing and processing change orders and payment requests
- Coordinating project work with utility companies, affected businesses, residents, community groups, and other stakeholders
- Monitoring and enforcing safe working conditions and compliance with environmental regulations
- Review correspondence and respond when appropriate
- Constructability review of construction plans prepared by others at various stages of design
- Review, or forward to the designer, shop drawings
- Set progress meeting and publish their minutes
- Negotiate claims and issue change orders
- Review construction schedule
- Review and approve monthly invoices
- Check As-Built drawings
- Coordinate with stakeholders
- Verify expiration dates on permits
- Set up walkthroughs
- Issue punch list
- Process final payment

STAFF AUGMENTATION: The Contractor may be required to provide a qualified individual to act as the County's Project Manager and/or Project Engineer for a duration requested by the County under the specialization awarded to the Contractor. The individual may be contracted to work on a specific project or on multiple projects. The individual may be required to perform design work or manage the work of the consultants and the construction contractor, who will be under separate contracts with the County, coordinate the design/construction with County user groups and facilitate the review and approval of the design/construction by County regulatory staff. The Work required may include everything described in the specialization awarded to the Contractor and the project support services.

The assigned individual shall work in the County's facilities under the direct supervision of the County staff. All office space and office equipment will be provided by the County. Compensation will be paid for actual hours worked, excluding County holidays.

PROCEDURES FOR TASK ORDER PROJECT ASSIGNMENT

The Contract will be used mainly by Arlington County Engineering Bureau; however, it may be used by any other County Agency that needs the services covered by this solicitation.

The following are procedures that the County will follow to assign work to selected Contractors. However, the County reserves the right to issue separate solicitations, waive requirements set forth below in part or whole, if the County Purchasing Agent determines that is in the best interest of the County.

1. The County will determine the appropriate Specialization Area for the task order project assignment and will send a Scope of Work to the Contractor that has been awarded a Contract for that Specialization Area and will request a proposal from that Contractor verbally, in

writing or via an in-person meeting. The scope of work shall include a description of the project, the deliverable items, and identify permits, licenses, and approvals required.

2. The Contractor shall submit a Fee and Schedule Proposal for the work within ten (10) business days (unless the assignment specifies a different deadline) of receiving a request for proposal from the County. The proposals shall include the Contractors proposed methodology to perform the work, identify key issues and propose solutions, propose the specific project team and provide their resumes that highlights their key qualifications and skills and describe their responsibilities. The proposal shall also include a not-to-exceed amount, derived from the fully burdened hourly rates identified in the contract along with the identification of all required tasks and the estimated number of hours necessary to complete each task and the entire assignment.
3. The County then will engage in negotiation with the Contractor, if the negotiation fails to bear result, then the County will formally terminate the negotiation process with the Contractor and may at its discretion choose to request a proposal from another Contractor that was awarded another specialization in the same umbrella category.
4. The Contractor will only be authorized to proceed with work on an assignment as approved by the County Project Officer and upon receipt of a County Purchase Order.
5. The Contractor shall be responsible for securing all necessary permits, licenses, and approvals from local, state and Federal authorities unless otherwise agreed to in writing. The County will be responsible for payment of permit fees.

ATTACHMENT B

CONTRACT PRICING

The services under this Contract will be paid for using fully loaded hourly rates listed below. Those rates shall include all costs and expenses of providing to the County the services described in this Contract.

Kimley-Horn & Associates, Inc.

<u>Position</u>	<u>Field Office Rate</u>	<u>Home Office Rate</u>
Senior Technical Specialist	\$263.32	\$280.82
Project Manager	\$194.24	\$207.15
Senior Engineer	\$161.86	\$172.62
Project Engineer	\$132.94	\$141.77
Junior Engineer	\$105.44	\$112.45
Clerical / Administrative	\$87.13	\$92.92
Engineering Technician	\$120.94	\$128.97
Professional Landscape Architect	\$173.38	\$184.89
Landscape Architect	\$105.63	\$112.64

ATCS, PLC

<u>Position</u>	<u>Field Office Rate</u>	<u>Home Office Rate</u>
Construction Manager	\$171.25	
Sr. Inspector	\$111.83	

ERM & Associates, LLC

<u>Position</u>	<u>Field Office Rate</u>	<u>Home Office Rate</u>
Sr. Project Manager		\$192.71
Project Manager		\$160.59
Acquisition Specialist II		\$147.21
Acquisition Specialist I		\$100.37

Rice Associates, Inc.

<u>Position</u>	<u>Field Office Rate</u>	<u>Home Office Rate</u>
Licensed Land Surveyor		\$178.40
Survey Computer		\$110.83
Survey Coordinator		\$101.10
Survey 2-Person Field Crew		\$149.15
Survey 3-Person Field Crew		\$202.99

The County will reimburse the Contractor at cost for the use of heavy equipment, drones, traffic controls and other exceptional measures, if required to perform the work under this Contract, and approved in advance by the County Project Officer. The County may require the Contractor to obtain three quotes for such exceptional measures and equipment prior to approval.

No overtime pay will be allowed under this Contract.

The County will pay (or reimburse the Contractor at Contractor's cost, as required) for all required permit and inspection fees.

Reimbursement of the cost of mileage between the County offices and the project site is allowable for staff augmentation assignments. Such reimbursements will be made at the US General Services Administration privately owned vehicle mileage reimbursement rate current at the time of travel.

ATTACHMENT C

NONDISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of Kimley-Horn and Associates, Inc. ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 17-084-RFP-8 (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work site or the

County's physical facility, if the Contractor is working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, or running the latest version of an industry-standard virus protection program. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

The Contractor agrees that all duties and obligations enumerated in this Agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that its employees, agents and subcontractors are aware of and abide by the terms and conditions of this agreement and related data security provisions in the Main Agreement.

It is the intent of this *NonDisclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices in place to ensure confidentiality, protection, privacy and security of County information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *NonDisclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

At the conclusion of the Project, the Contractor agrees to return all County Information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the Main Agreement.

Authorized Signature: _____

Printed Name and Title: _____

Date: _____

ATTACHMENT D

**NONDISCLOSURE AND DATA SECURITY AGREEMENT
(INDIVIDUAL)**

I, the undersigned, agree that I will hold County-provided information, documents, data, images, records and the like confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 17-084-RFP-8 (the "Project" or "Main Agreement") or which may be accessed through County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

I agree that I will maintain the privacy and security of County Information and will not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized to do so by the County Project Officer. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, or that otherwise affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

I agree that I will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly authorized and associated with my designated duties on the Project. I understand and agree that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal law/s, subjecting me and/or my employer to civil and/or criminal penalties.

I also agree that I will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person for any purpose of the Information obtained directly, or indirectly, as a result of my work on the Project. I agree to view, retrieve or access County Information only to the extent concomitant with my assigned duties on the Project and only in accordance with the County's and my employer's access and security policies or protocols.

I agree that I will take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. I will also ensure that any device or media on which County Information is stored, even temporarily, will have strict security and access control and that I will not remove, facilitate the removal of or cause any Information to be removed from my employer's worksite or the County's physical facility without written authorization of the County Project Officer. If so authorized, I understand that I am responsible for the security of the electronic equipment or paper files on which the Information is stored and agree to promptly return such Information upon request.

I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network is free of all computer viruses or running the latest version of an industry-standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. I will not download any County Information except as authorized by the County Project Officer and then only onto a County-approved Device. I understand that downloading onto a personally-owned Device or service, such as personal e-mail, Dropbox etc., is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. I will fully cooperate with the County to help regain possession of any County Information and to prevent its further disclosure, use or dissemination.

It is the intent of this *NonDisclosure and Data Security Agreement* to ensure that the highest level of administrative safeguards and best practices are in place to ensure confidentiality, protection, privacy and security of County Information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *NonDisclosure and Data Security Agreement* conflicts with the underlying Main Agreement or any local, state or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

Upon completion or termination of my work on the Project, I agree to return all County Information to the County Project Officer. I understand that this agreement remains in full force and effect throughout my work on the Project and shall survive my reassignment from the Project, termination of the above referenced Project or my departure from my current employer.

Signed: _____

Printed Name: _____

Date: _____

Witnessed:

Contractor's Project Manager: _____

Printed Name: _____

Date: _____

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT