

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

NOTICE OF AWARD OF CONTRACT

TO:	DATE ISSUED:	March 10, 2016
V/BEI JV, LLC	CURRENT CONTRACT NO:	713-13-3
6850 Versar Center, Suite 201	CONTRACT TITLE:	DES/Engineering – Bridge Design and Rehabilitation Services
Springfield, VA 22151	PRIOR CONTRACT NO:	

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**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on December 31, 2016.

This is the FIRST year award notice of a possible FIVE year contract.

The contract documents consist of the terms and conditions of Agreement No. 713-13-3 including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

- 1) REFER TO ATTACHMENT A TO AGREEMENT No. 713-13-3
- 2) PRICING FIRM UNTIL DECEMBER 31, 2017. OPTIONAL PRICE INCREASE THEREAFTER BASED ON JULY CPI-U.

ATTACHMENTS:

- 1) AGREEMENT No. 713-13-3

EMPLOYEES NOT TO BENEFIT:

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

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VENDOR CONTACT: <u>Hersel Myer</u>	TELEPHONE NO.:	<u>703 642 6824</u>
	EMAIL ADDRESS:	<u>hmyer@versar.com</u>
COUNTY CONTACT: <u>Rami Natour</u>	TELEPHONE NO.:	<u>703-228-0789</u>
	EMAIL ADDRESS:	<u>rnatour@arlingtonva.us</u>

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CONTRACT AUTHORIZATION

DISTRIBUTION

Krystyna Hepler  
Krystyna Hepler, CPPB  
Procurement Officer

3/10/2016  
Date

VENDOR: 1  
BID FOLDER: 2

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

AGREEMENT NO. 713-13-3

This Agreement (hereinafter "Agreement") is made, on the date of execution by the County, between V/BEI JV, LLC, 6850 Versar Center, Suite 201, Springfield, VA 22151 ("Contractor"), a Limited Liability Company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of the following:

- Agreement No. 713-13-3
- Attachment A (Scope of Services)
- Attachment B (Contract Rates)
- Attachment C – County Nondisclosure and Data Security Agreement (Contractor)
- Attachment D – County Nondisclosure and Data Security Agreement (Individual)
- Attachment E (Arlington County Infrastructure Design and Construction Standards, Current Edition, incorporated herein by reference)

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 shall prevail over the other Contract Documents, and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall 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 of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"), especially in Attachment A. The primary purpose of the Work is to acquire project commissioning and project management services for Arlington County's facility construction and renovation projects. The Scope of Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient to fulfill the purposes of the Work set forth in the Contract Documents. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

3. STANDARD OF CARE

In the performance or furnishing of professional services hereunder, the Contractor and all its agents shall exercise the degree of skill and care normally accepted as professional practices and procedures by

members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care").

4. QUALITY OF THE WORK

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies in the Work as defined in Attachment A (Scope of Services) or services provided, which are discovered within a twelve-month period of final completion of Work.

5. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

The County's review, approval, or acceptance of, or payment for, any services required under this Contract shall not be construed to operate as a waiver by the County of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to the County for the accuracy and competency of plans, specifications, or other documents, within the Customary Standard of Care.

6. CONTRACT TERM

The Work shall commence upon execution of this Agreement by the County and shall continue until December 31, 2016 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents. Upon satisfactory performance by the Contractor and with the concurrence of the Contractor, the County may, through issuance of an amendment executed by the parties, authorize continued operations of the Contractor under the same contract unit prices for not more than four (4) additional twelve (12) month periods (from January 1, 2017 to December 31, 2020. Each such period shall be referred to as "Subsequent Contract Term").

7. CONTRACT EXTENSION WITH PRICE ADJUSTMENTS NEGOTIATED UP TO CPI-U

The Contract unit prices shall remain firm until December 31, 2017. Possible Contract price changes for any one or more Subsequent Contract Terms, if the County elects to extend the Contract, shall be negotiated by the County and the Contractor, and shall become effective on the start date of the next Subsequent Contract Term. Changes in the Contract unit prices for ensuing years shall apply to the Contract base rates only, and shall 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 twelve (12) month period ending in July of each year of the Contract.

If the Contractor and the County do not agree on a Contract Amount for a Subsequent Contract Term using the procedure set forth above by the thirtieth (30th) calendar day prior to the end of the Initial Contract Term or any Subsequent Contract Term, the County may, in its sole discretion, terminate the Contract whether or not the County has previously elected to extend the Contract's term.

8. NOT-TO-EXCEED PROJECT COST

The Contractor shall create and provide to the County cost estimates that will be used by the County to obtain competitive bids that shall not exceed the Contractor's final cost estimate by more than ten Percent (10%). This amount shall be referred to as the Not-to-Exceed Project Cost. If the lowest competitive bid exceeds the Not-to-Exceed Project Cost, and the County's negotiations with the lowest responsible bidder fail to result in a price within the Not-to-Exceed Project Cost, the Contractor shall provide cost estimates based on revised construction drawings and specifications at no additional cost to the County for a re-bid that will result in competitive bids that fall within the Not-to-Exceed Project Cost.

The Contractor's final cost estimate shall be commensurate with the level of design approved by the County, as requested by the County. If any such cost estimate indicates a potential problem in securing a bid within the County's construction budget, the Contractor shall notify the County.

**9. PAYMENT**

The Contractor will be paid monthly upon its submission of a complete invoice satisfactory to the Project Officer that meets the requirements of this section and other applicable provisions of the Contract. Within ten (10) days after the last day of each month the Contractor shall submit, for approval by the Project Officer, invoices for individual Work. Each invoice shall concern a separate project, and shall include the County Purchase Order number, the task for which time is being charged by the Contractor's employee and the balance remaining to complete the assignment. The Project Officer shall either approve the invoice or require corrections. The County will pay the Contractor within thirty (30) days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the Project Officer. The amount paid shall be based on the estimate of the percentage of the total Work under each Task completed during the month, subject to the Project Officer's acceptance of the Work and the estimate. If the Contractor has been paid ninety percent (90%) of the Contract Amount for any Task and Work under that Task is not complete, the remaining amount due for that Task will be paid to the Contractor only after all Work on that Task is completed. The total amount paid for each Task shall not exceed the amount allocated for the Task, regardless of the number of hours spent or the amount of expenses incurred by the Contractor in the performance of the Work. The number of the Purchase Order by which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate.

**10. ADDITIONAL SERVICES**

The Contractor shall not be compensated for any goods or services provided except those included in Attachment A and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by the County and the Contractor, and a County Purchase Order is issued covering the expected cost of such services.

Additional services agreed upon by the parties will be billed at the rates set forth in Attachment B unless otherwise agreed by the parties in writing.

**11. REIMBURSABLE EXPENSES**

No reimbursable expenses are allowed under this Contract. The Contract Amount includes all costs and expenses of providing to the County the services described in this Contract.

**12. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington County Department or agency request the Work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

**13. ADJUSTMENTS FOR CHANGE IN SCOPE**

The County may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed unless such adjustments have been made by a written amendment to the Contract signed by the County and the Contractor. If the Contractor believes that any

particular work is not within the scope of the Work or is a material change, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by the County and the Contractor and a County purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

#### 14. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor 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 (7) 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 shall accrue on such outstanding balances at the rate of one percent (1%) per month.

The Contractor shall 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.

#### 15. NON-APPROPRIATION

All funds for payments by the County under this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia, for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

**16. COUNTY PURCHASE ORDER REQUIREMENT**

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

**17. PROJECT STAFF**

The County will have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor through the duration of the contract. If the County reasonably rejects staff or subcontractors pursuant to this section, the Contractor must 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 employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

**18. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS**

The key personnel and sub-contractors submitted by the Contractor in its Proposal and thereafter accepted by County not be replaced, substituted or augmented without prior written approval of the County. A request to replace, remove, or substitute any key personnel or subcontractor for any reason, shall be provided to the County Project Officer at least fifteen (15) calendar days in advance of such proposed replacement, removal, or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by the County.

If a specific project or task may require the services of a specialized sub-contractor not on the approved sub-contractors list. The County Project Officer may authorize the use of such specialty sub-contractors at hourly rates comparable to the ones of the Prime Firm, and with the overhead costs not exceeding the overhead cost percentage approved for the Prime Firm, if in his or her judgment that service is necessary for the successful completion of the project.

**19. REGISTRATION OF PROFESSIONAL SERVICE PROVIDERS**

A person, corporation, partnership or other entity offering or engaging in the practice of the professions of architecture, professional engineering, land surveying, or certified landscape architecture, or any combination thereof, shall not offer to provide or provide such services to the County unless they are registered with the Commonwealth of Virginia State Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects ("Board") in accordance with the Code of Virginia, §§ 54.1-411 (business entities) or 13.1-549 (professional corporations), or unless they are exempt from registration because of their status as a sole proprietorship as defined in the statute. Proof of registration or exemption may be required to be provided to the County within 24 hours of demand by the County. For further information on the requirement for registration, contact the Board at the Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia, 23230, telephone number (804) 367-8500.

**20. SUPERVISION BY CONTRACTOR**

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

**21. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its Work pursuant to this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. 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. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**22. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with § 2.2-4311.1 of the Code of Virginia, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

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

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's 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 violations of 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 over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County in accordance with the Arlington County Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**24. SAFETY**

The Contractor shall comply with, and ensure that the Contractor's personnel and subcontracted personnel comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, 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, the Federal Environmental Protection Agency standards and the applicable standards of the Virginia Department of Environmental Quality.

**25. VIRGINIA UNIFORM STATEWIDE BUILDING CODE**

All improvements or construction of County buildings and facilities shall be designed in compliance with the most current edition of the Virginia Uniform Statewide Building Code (VUSBC). The cover sheet of all plans developed shall clearly indicate this requirement and shall indicate the applicable edition of the VUSBC utilized by the designer.

**26. ADA 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), and any other applicable regulations and standards. The parties agree that ADA compliance is a vital part of this contract.

The Contractor shall monitor Work performed by the construction contractor during the construction phase, and inform the County and construction contractor of any Work performed that does not conform with the ADA or other applicable requirements, to enable corrective action to be taken.

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance with accessibility requirements under the ADA, and other applicable regulations and standards, under this Agreement. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

Neither the Arlington County Inspection Services Division, nor any County staff and/or their third party inspection services, are responsible for verifying the design is in compliance with Contract Documents, the ADA, or other applicable requirements.

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

The Contract shall remain in force for the Contract Term and until the County determines that all of the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

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 such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.



If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due to the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found by any court of competent jurisdiction to be improper or invalid, then such termination shall be deemed to have been a termination for convenience.

**28. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The performance of work under this Contract may be terminated by the County's Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts, and settle all outstanding liabilities and claims.

**29. INDEMNIFICATION**

The Contractor covenants for itself, its employees, and 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" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

**30. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract price includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

**31. COPYRIGHT**

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the County all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the County may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the County by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph.

Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

**32. OWNERSHIP AND RETURN OF RECORDS**

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose the County's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of the County's request for services under this Contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to County upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the County. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

**33. CONFIDENTIAL INFORMATION**

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall 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 NDA (Attachments C and D) 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.

**34. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, 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 offer was made without collusion or fraud and 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.

**35. COUNTY EMPLOYEES**

No employee of Arlington County, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

**36. FORCE MAJEURE**

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, acts of terrorism, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

**37. AUTHORITY TO TRANSACT BUSINESS**

The Contractor shall pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of the County.

**38. RELATION TO COUNTY**

The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, 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, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

**39. ANTITRUST**

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under this Contract.

**40. REPORT STANDARDS**

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to the County, the Contractor shall comply with the following guidelines:

- a. All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- b. All copies shall be double-sided;
- c. Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- d. The use of plastic covers or dividers should be avoided; and

Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

**41. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five (5) years after final payment and must allow the County or its authorized agents to examine the documents during this period and during the Initial Contract Term and any Subsequent Contract Term. The Contractor must provide any requested documents to the County for examination within 15 business days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must reimburse the County for the overcharges and for the reasonable costs of the County's examination; 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 records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor must give the County at least thirty (30) days' notice and must not dispose of the documents if the County objects.

**42. ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

**43. AMENDMENTS**

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

44. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

45. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract, shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

46. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION; COMPLIANCE WITH LAW

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

47. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

48. NONEXCLUSIVITY OF REMEDIES

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

49. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

50. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

51. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or

governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

**52. SURVIVAL OF TERMS**

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT, INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; and CONFIDENTIAL INFORMATION.

**53. HEADINGS**

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

**54. AMBIGUITIES**

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**55. NOTICES**

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

**TO THE CONTRACTOR:**

Hersel Myer  
V/BEI JV, LLC  
6850 Versar Center, Suite 201  
Springfield, VA 22151

**TO THE COUNTY:**

Richard Krumenacker, County Project Officer  
Arlington County, Virginia  
1400 North Uhle Street, Suite 403  
Arlington, Virginia 22201

**AND**

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**56. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

57. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers 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, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers 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 - \$2,000,000 combined single limit coverage with \$5,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall 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 injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation



insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and 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 contracted work.

The Contractor shall be 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 directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

**58. ACCESSIBILITY OF WEB SITE**

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any County websites, or County's presence on other third party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

V/BEI, JV

AUTHORIZED  
SIGNATURE: 

AUTHORIZED  
SIGNATURE: 

NAME: <sup>for</sup> MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT

NAME: HERSEL MYER  
TITLE: CONTRACTS MANAGER

DATE: 3/9/16

DATE: 3/2/16