

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

AGREEMENT NO. 17-312-RFP

THIS AGREEMENT is made, on the date of execution by the County, between HGS, LLC, 5367 Telephone Road, Warrenton VA 20187 ("Contractor") a Virginia Limited Liability Company, authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Attachment A – Scope of Work
- Attachment B - Insurance Requirements

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 carry out the implementation of stream restoration and watershed retrofit projects, to include design, permitting, construction, and maintenance, on private property in Arlington in order to deliver nutrient and sediment credits. 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. Work under this Agreement will commence on the date of the execution of the Agreement by the County. All Work defined in Attachment A, shall be completed no later than 5 (five) calendar years following the commencement date, subject to any written modifications as provided for in

the Contract Documents.

5. CONTRACT AMOUNT

County will pay for each Task Order on fixed-price, lump-sum basis. The Contractor agrees that the total payment for the Work will not exceed the amount negotiated for each task order, regardless of the number of hours spent in the performance of the Work.

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.

6. PAYMENT

As set forth on in Section 4.3 of Attachment A (Scope of Work), and, if applicable, at the completion of each Task Order and acceptance of work by the County, the Contractor will submit an invoice to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. PAYMENT OF SUBCONTRACTORS

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

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

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

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

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

8. NO WAIVER OF RIGHTS

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

9. NON-APPROPRIATION

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

10. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; 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 quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this 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 those contract(s).

11. 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.

12. 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 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.

13. 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.

14. 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.

15. 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.

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

16. 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.

17. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

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

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its 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, which shall include payment for that portion of the Work performed prior to the notice of termination, based on Contractor's reasonable costs and rates, 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.

18. INDEMNIFICATION

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

19. 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.

20. 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.

21. OWNERSHIP OF WORK PRODUCT

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

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

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

22. 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.

23. 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.

24. 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.

25. FORCE MAJEURE

Neither party will be held responsible for delay or failure to perform the duties and responsibilities imposed by this Contract if such delay or 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 timely performance impossible or illegal, unless otherwise specified in the Contract.

26. 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.

27. 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.

28. 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.

29. 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)

30. 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.

31. 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.

32. AMENDMENTS

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

33. 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.

34. 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.

35. 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.

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36. ARBITRATION

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

37. 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.

38. 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.

39. 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.

40. ATTORNEY'S FEES

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

41. SURVIVAL OF TERMS

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

42. 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.

43. 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.

44. NOTICES

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

TO THE CONTRACTOR:  
Don Seaborn, Region General Manager  
HGS, LLC  
5367 Telephone Road  
Warrenton, VA 20187

TO THE COUNTY:  
Jason Papacosma, Project Officer  
Department of Environmental Services  
21000 Clarendon Blvd,

AND

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia

2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

45. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

46. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

HGS, LLC

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

Igor Scherbakov for  
NAME: MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT

DATE: January 8, 2018

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

David Joyce  
NAME AND  
TITLE: COO of Resource Environmental Solutions, its Manager

DATE: January 5, 2018

AGREEMENT NO. 17-312-  
RFP  
ATTACHMENT A  
SCOPE OF WORK

4.1. GENERAL REQUIREMENTS

The Contractor shall deliver nutrient and sediment reduction credits resulting from stream restoration projects on private properties within Arlington County.

4.1.1. Each project shall meet the definitions, qualifying conditions, and protocols for defining pollutant reductions in the following documents approved by U.S. Environmental Protection Agency's Chesapeake Bay Program:

- o *Final Recommendations of the Expert Panel to Define Removal Rates for Individual Stream Restoration Projects*<sup>1</sup> ("Stream Restoration Protocol").  
<http://chesapeakestormwater.net/training-library/urban-restoration-techniques/stream-restoration/>

4.1.2. Each project shall satisfy the project definition, pollutant removal accounting, and reporting requirements of:

- o The Virginia Department of Environmental Quality's *Chesapeake Bay TMDL Special Condition Guidance*<sup>2</sup>. ("DEQ Guidance")  
<http://www.deq.virginia.gov/Portals/0/DEQ/Water/Guidance/152005.pdf>
- AND
- o Arlington County's approved *Chesapeake Bay TMDL Action Plan*<sup>3</sup> ("Arlington Action Plan").  
<https://projects.arlingtonva.us/plans-studies/environment/chesapeake-bay-tmdl-action-plan/>

4.1.3. The nutrient and sediment credits, and any other credit types (e.g., wetland or stream mitigation banking credits), generated from any project under the Contract shall be under the sole ownership of the County. The Contractor or property owner may not resell or use these credits in any way. Notwithstanding anything to the contrary herein, if the County terminates the Contract for convenience, the County shall have no right to any credits associated with any project for which the County has not provided payment, and there shall be no restriction on Contractor, property owner, or any other party's rights to sell or use the credits.

4.1.4. If a specific task order proposal identifies the potential for additional nutrient credits that could be delivered by including work on public land or rights-of-way, this option will be evaluated as part of the County's review and approval of the task order proposal.

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4.2. PROJECT TASK ORDERS

<sup>1</sup> Or successor document.

<sup>2</sup> Or successor document.

<sup>3</sup> Or successor document.

4.2.1. PROCEDURES FOR TASK ORDER PROJECT ASSIGNMENT. The following are procedures that the County will follow to assign work to the Contractor.

4.2.1.1. The Contractor shall submit a Task Order proposal to the County that identifies and describes a specific project or group of projects, and include the following information:

- a. Documentation that the project meets the qualifying conditions of the stream restoration protocol and DEQ Guidance.
- b. Identification of which protocols (1-4) from the Stream Restoration Protocol apply.
- c. Calculation of the estimated number of nitrogen, phosphorus, and sediment credits each project will generate, with supporting details (e.g., drainage area, land use, linear footage, etc.) following the computational methods of the stream restoration protocol, DEQ Guidance, and Arlington Action Plan (and related calculation spreadsheets, etc.).
- d. A lump sum cost to deliver the nutrient and sediment credits) calculated for each project. The lump sum cost shall include all work and expenses necessary to deliver nutrient and sediment reduction credits, including but not limited to land acquisition, easements, and utility relocation and repair. For Type 1 projects as described under 4.2.2, a lump sum cost for post-project completion inspection, reporting, and maintenance to ensure ongoing viability of nutrient and sediment credits.
- e. Identification of permitting and other regulatory requirements.
- f. Description of plan for obtaining maintenance agreement or permanent easements granted to County (as applicable – see 4.2.2 below).
- g. Overall construction methodology, including proposed access and staging areas.
- h. Documentation that key personnel match the team identified in the response to RFP 17-312.
- i. Schedule for completing the project with key milestones, including: completion of design, permitted drawings, start of construction, construction substantial completion, and project certification.

4.2.1.2. The County shall be the sole arbiter as to whether to proceed to negotiation with the Contractor. The cost per pound of nutrient and sediment credits generated relative to these costs for municipal projects will be a key factor in deciding whether to proceed to negotiation.

4.2.1.3. If the County proceeds to negotiation and the negotiation fails to bear result, the County will formally terminate the negotiation process with the Contractor by issuing a written notice.

4.2.1.4. 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.

4.2.1.5. 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.

4.2.1.6. The Contractor shall submit the first Task Order proposal no later than 60 calendar days from the date of the contract execution by the County.

4.2.2. OTHER QUALIFYING CONDITIONS. Each stream restoration project shall meet the following minimum qualifying conditions.

At least 500 linear feet of stream channel must be included in the proposed project. Projects with less linear footage may be considered on a case-by-case

basis.

Type 1: For streams located on single-family (or similar, e.g., townhouse) residential properties (including properties that are part of a 'homeowner's association' or similar entity), in addition to making qualified improvements, the Contractor shall be responsible for obtaining a permanent maintenance easement granted by the property owners to the County of sufficient area to allow for County access and maintenance of the stream and associated vegetation.

For a two (2) year period following construction, the Contractor is responsible for maintenance of the project and shall submit an annual inspection report for the purposes of documenting that the project meets or exceeds its functional restoration objectives and is hydraulically and vegetatively stable. The report shall also describe and document any maintenance activities performed. The Contractor will be required to post a bond in the amount of 10% of Task Order value to guarantee these required inspection, maintenance, and reporting actions occur.

After the two (2) year period, and contingent upon County acceptance of the second annual inspection report, the bond shall be released, and the County will be responsible for inspection and maintenance.

Type 2: For other property types, the Contractor shall be responsible, in addition to making qualified improvements, for the execution by the property owner of a permanent Maintenance Agreement similar in form to the County's [Maintenance and Monitoring Agreement \(https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/38/2016/09/Stormwater-Facility-Maintenance-and-Monitoring-Agreement.docx\)](https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/38/2016/09/Stormwater-Facility-Maintenance-and-Monitoring-Agreement.docx) to cover the required ongoing maintenance of the stream restoration project(s).

1. The County will draft the specific form of the Maintenance Agreement within two (2) weeks of receiving a Task Order proposal. Any changes to the draft Maintenance Agreement proposed by the Contractor shall be at the County's sole discretion to approve.
2. The Maintenance Agreement shall be executed before a Purchase Order will be issued and any work under the Contract begins.
3. The Maintenance Agreement will require that the property owner submit an annual inspection report for the purposes of documenting that the project meets or exceeds its functional restoration objectives and is hydraulically and vegetatively stable. The report shall also describe and document any maintenance activities performed. The specific requirements will be established in the Maintenance Agreement.

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Approval of a Type 1 maintenance responsibility proposed for a Type 2 project, or vice versa, shall be at the discretion of the County during the task order proposal review and approval process. If there are projects that involve both types of properties, the County will determine which maintenance responsibility (or combination of responsibilities) apply.

#### 4.2.3. PROJECT SUBMITTAL REQUIREMENTS

4.2.3.1 The Contractor shall submit project construction drawings to the County Project Officer for review and comment at the 30% design stage. The County shall deliver any comments within 10 business days of receipt of the construction drawings. Regardless of any comments provided by the Project Officer, the Contractor is responsible for the delivery of qualifying nutrient and sediment credits.

4.2.3.2 The Contractor shall submit the 100% construction drawing for Project Officer review and comment (this review is separate from official County permitting review). The County shall deliver any comments within 10 business days of receipt of the construction drawings. Regardless of any comments provided by the Project Officer, the Contractor is responsible for the delivery of qualifying nutrient and sediment credits.

4.2.3.3 The Contractor is responsible for applying for and submitting copies to the Project Officer of any local, State, and Federal permits required for construction.

4.2.3.4 The Contractor shall submit an as-built survey (specific requirements to be established during the task order approval process) to document that the project was constructed according to the approved design. For stream restoration projects, the Contractor shall also provide a post-construction certification that the stream restoration project was installed properly, meets or exceeds its functional restoration objectives and is hydraulically and vegetatively stable, as required by the Stream Restoration Protocol.

4.2.3.5 With the as-built survey, the Contractor shall submit for County review and comment the project documentation required by the relevant protocol, the DEQ Guidance, and the Arlington Action Plan, including final calculation of actual nutrient and sediment credits delivered.

#### 4.3. CONTRACT PRICING

The services under this Contract will be paid for on a per project basis – with payment provided after County approval and acceptance of the project documentation required by the relevant protocol, the DEQ Guidance, and the Arlington Action Plan upon completion of the construction of the project.

If a project generates more or fewer nutrient credits than the credits approved with the lump sum cost for the Task Order, a new lump sum amount will be negotiated. The basis of negotiation would be using the 'per pound removed' unit costs associated with the original approved project scope from the approved Task Order – adjusting the lump sum accordingly if the 'pounds removed' amount increases or decreases.

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If any technical specifications or standards change after a task order is approved that affect cost, a new task order cost will be negotiated.

Arlington Country Agreement 17-312-RFP

Attachment B

INSURANCE REQUIREMENTS

The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the County and the Contractor.

1. General

- 1.1 The Contractor shall provide insurance as specified in the Insurance Checklist attached hereto as Exhibit A.
- 1.2 The Contract with the Contractor will not be executed by the County until the Contractor has obtained, at its own expense, all of the insurance called for hereunder and such insurance has been approved by the County; additionally, the Contractor shall not allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. The Contractor shall submit to the County Purchasing Agent copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the County's request, certified copies of the required insurance policies in compliance with the insurance requirements. All endorsements and documentation shall state this Contract's number and title.
- 1.3 The Contractor shall require all subcontractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation, Employers' Liability insurance, or any other insurance required by the Contract in the same manner and form as specified for the Contractor. The Contractor shall furnish subcontractors' evidence of insurance and copies of endorsements to the County Purchasing Agent immediately upon request by the County and/or prior to the subcontractor's performance of work related to this Contract.
- 1.4 If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. 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 immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract Term is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium). A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.

- 1.5 No acceptance and/or approval of any insurance by the County shall be construed as relieving or excusing the Contractor, any surety, or any bond, from any liability or obligation imposed under this Agreement.
- 1.6 Arlington County, and its officers, elected and appointed officials, employees, and agents are to be named as additional insureds under all coverages except Workers' Compensation, Professional Liability, and Automobile Liability, and the endorsement must clearly identify the County as an additional insured permitted to enjoy all the benefits under the applicable policy of insurance. The certified policy, if requested, must so state coverage afforded under this paragraph shall be primary as respects the County, its officers, elected and appointed officials, agents and employees. The following definition of the term "County" applies to all policies issued under the Contract and to all applicable endorsements:
- "The County Board of Arlington County and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; and Arlington County Constitutional Officers."
- 1.7 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.
- 1.8 The insurance coverage required shall remain in force throughout the Contract Term or as otherwise stated in the Contract Documents or these Insurance Requirements. If the Contractor fails to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor.
- 1.9 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising or inspecting the work as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.
- 1.10 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work, such policy shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.
- 1.11 All policies shall include the following language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy."

- 1.12 All policy forms must “Pay on behalf of” rather than “Indemnify” the insured.
- 1.13 Nothing contained in these Insurance Requirements or the Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the County. 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.
- 1.14 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its work under the Contract.
- 1.15 For any claims related to this work, The Contractor’s insurance shall be deemed primary and non-contributory to all other applicable coverage and in particular with respect to Arlington County, its representatives, officials, employees, and agents. Any insurance or self-insurance maintained by Arlington County shall be excess and noncontributory of the Contractor’s insurance. The Contractor shall waive its right of subrogation for all insurance claims.
- 1.16 If the Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the Purchasing Agent, may be considered. Written requests for consideration of alternate coverages including the Contractor’s most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the County Purchasing Agent at least ten (10) working days prior to the date set for receipt of bids or proposals. If the County denies the request for alternate coverages, the specified coverages will be required to be submitted. If the County permits alternate coverage, an amendment to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.
- 1.17 All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia. The insurers must also have a policyholders' with a rating of “A-VII” in the latest edition of the A.M. Best Co.’s Insurance Reports, unless the County grants specific approval for an exception, in the same manner as described in 1.16 above.
- 1.18 The Contractor shall be responsible for payment of any deductibles applicable to the coverages.
- 1.19 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, 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 additional protection for the County.

2. Contractor's Insurance:

2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Insurance Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
- v. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract;
- vi. Personal Injury Liability;
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Business Automobile Liability, including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by Virginia law or the U.S. Longshoremen's and Harbor Workers' Compensation Act, or other laws as required by labor union agreements, including standard Other States coverage; Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or employees of the general contractor to which the insured is subcontracted; or employees of the insured's subcontractor.

2.1.4 General Environmental Remediation Projects

In addition to the Insurance Requirements specified in the general provision or elsewhere in the Contract Documents, the Contractor shall not commence work under this Contract until all insurance as required hereafter has been obtained, and certified copies, naming the County as an additional insured, of such insurance have been submitted and accepted by the Purchasing Agent.

- i. An environmental remediation contractor or subcontractor shall be responsible for purchasing and maintaining Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance as described in 2.1.1, 2.1.2 and 2.1.3.

- ii. Acceptance by Arlington County of insurance submitted by the Contractor does not relieve or decrease in any manner the liability of the Contractor for performance of environmental remediation Work under the Contract.
- iii. The Contractor is responsible for any losses, claims, and costs of any kind, which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies. The limits and coverage requirements may be revised at the option of the Arlington County Risk Manager. The requirements outlined shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of work under the Contract.

2.1.5 Contractors Pollution Liability (CPL) Policy

- i. Minimum liability limits required shall be \$1,000,000 Per Loss and \$2,000,000 Total All Losses, including, but not limited to, property damage, bodily injury, loss of use, and clean up costs.
- ii. Limits must be dedicated to work performed under this Contract only, unless prior approval by the Arlington County Risk Manager has been obtained. The policy of insurance shall contain or be endorsed to include the following:
  - a. Pollution coverage as respects asbestos, lead, and PCB's.
  - b. "Covered Operations" designated by the CPL policy must specifically include all work performed under this contract. (This would include and not be limited to excavation, off-site incineration of soils, demolition, asbestos abatement, drum removal and disposal, in-situ vapor extraction, etc.) and exclusions or limitations affecting work performed under this contract must be deleted. (i.e., lead, asbestos, pollution, testing, underground storage tanks, radioactive matter, etc.)
  - c. Contractor must comply with all applicable DOT and EPA requirements.
  - d. Premises/Operations.
  - e. Broad form property damage.
  - f. Products/Completed Operations coverage for a minimum of five (5) years after Final Payment.
  - g. Contractual liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.

- i. The scope of work and all related activities under this Contract shall be scheduled as "Covered Operations" under this policy.
- j. Coverage is included on behalf of the insured for covered claims arising out of the actions of independent contractors. If insured is utilizing subcontractors, the CPL policy must use "By or On behalf of" language with regards to coverage.
- k. Loading and unloading exclusions must be amended so as to include coverage for mobile equipment and automobiles.

3. Commercial General or other Liability Insurance - Claims-made Basis:

- 3.1 If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Insurance Checklist remain the same. The Contractor must either:
- i. Agree to provide insurance, copies of the endorsement and certified documentation evidencing the above coverages and naming the County as an additional insured for a period of five (5) years after final payment under the Contract. Such documentation shall evidence a retroactive date, no later than the beginning of the Contractors or subcontractors' work under this Contract, or
  - ii. Purchase an extended (minimum five [5] years) reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a copy of the endorsement itself. The extended reporting period will begin upon final payment under the Contract.

**INSURANCE CHECKLIST**

**CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS MARKED "X".**

**COVERAGES REQUIRED**

**COVERAGE MINIMUM(S)**

- \_x\_1. Workers' Compensation ..... Statutory limits of Virginia
- \_x\_2. Employer's Liability..... \$100,000 accident, \$100,000 disease, \$500,000 disease policy limit
- \_x\_3. Commercial General Liability ..... \$1,000,000 CSL BI/PD each occurrence, \$2 Million annual aggregate
- \_x\_4. Premises/Operations.....\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- \_x\_5. Automobile Liability ..... \$1 Million BI/PD each accident, Uninsured Motorist
- \_x\_6. Owned/Hired/Non-Owned Vehicles ..... \$1 Million BI/PD each accident, Uninsured Motorist
- \_x\_7. Independent Contractors.....\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- \_x\_8. Products Liability .....\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- \_x\_9. Completed Operations.....\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
- \_x\_10. Contractual Liability (Must be shown on Certificate)..... \$500,000 CSL BI/PD each occurrence,  
\$1 Million annual aggregate
- \_x\_11. Personal and Advertising Injury Liability. .... \$1 Million each offense, \$1 Million annual aggregate
- \_x\_12. Umbrella Liability ..... \$1 Million Bodily Injury, Property Damage and Personal Injury
- \_X\_13. Per Project Aggregate
- \_X\_14. Professional Liability
  - \_a. Architects and Engineers ..... \$1 Million per occurrence/claim
  - \_b. Asbestos Removal Liability..... \$2 Million per occurrence/claim
  - \_c. Medical Malpractice ..... \$1 Million per occurrence/claim
  - \_d. Medical Professional Liability ..... \$ Limits as set forth in Virginia Code 8.01.581.15
- \_15. Miscellaneous E&O ..... \$1 Million per occurrence/claim
- \_16. Motor Carrier Act End. (MCS-90) ..... \$1 Million BI/PD each accident, Uninsured Motorist
- \_17. Motor Cargo Insurance
- \_18. Garage Liability .....\$1 Million Bodily Injury, Property Damage per occurrence
- \_19. Garagekeepers Liability ..... \$500,000 Comprehensive, \$500,000 Collision
- \_20. Inland Marine-Bailee's Insurance ..... \$ \_\_\_\_\_
- \_21. Moving and Rigging Floater..... Endorsement to CGL
- \_22. Crime and Employee Dishonesty Coverage..... \$ \_\_\_\_\_
- \_23. Builder's Risk .....Provide Coverage in the full amount of Contract, including any amendments
- \_X\_24. XCU Coverage..... Endorsement to CGL
- \_25. USL&H..... Federal Statutory Limits
- \_X\_26. Carrier Rating shall be A.M. Best Co.'s Rating of A-VII or better or equivalent
- \_X\_27. Notice of Cancellation, nonrenewal or material change in coverage shall be provided to County at least 30 days prior to action.
- \_28. The County shall be an Additional Insured on all policies except Workers Compensation and Auto and Professional Liability.
- \_X\_29. Certificate of Insurance shall show Contract Number and Contract Title.
- \_30. OTHER INSURANCE REQUIRED: \_\_\_\_\_

**INSURANCE AGENT'S STATEMENT:**

I have reviewed the above requirements with the bidder named below and have advised the bidder of required coverages not provided through this agency.

AGENCY NAME: \_\_\_\_\_

AUTH. SIGNATURE: \_\_\_\_\_

**BIDDER'S STATEMENT:**

If awarded the Contract, I will comply with all Contract insurance requirements.

BIDDER NAME: \_\_\_\_\_

AUTH. SIGNATURE: \_\_\_\_\_