



DEPARTMENT OF MANAGEMENT AND FINANCE
Office of the Purchasing Agent

2100 Clarendon Blvd., Suite 501 Arlington, VA 22201
TEL 703-228-3410 FAX 703-228-3409 EMAIL purchasing@arlingtonva.us www.arlingtonva.us

April 15, 2020

VIA E-MAIL AND US MAIL

Mr. John Matthews, Senior Vice-President
First Transit, Inc.
16253 SE 130th Avenue
Clackamas, Oregon 97105

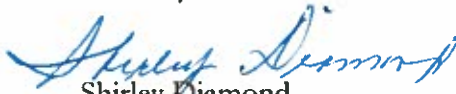
RE: Arlington County Sole Source Contract No. 20-827, entitled, "STAR Call Center Services"

Dear Mr. Matthews:

Enclosed for your files is the fully executed Contract for your file. Should you have any questions, please feel free to contact me at 703-228-3424 or via e-mail at stdiamond@arlingtonva.us.

Thank you for your assistance in this matter.

Sincerely,


Shirley Diamond
Procurement Officer

Enclosure

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

SOLE SOURCE CONTRACT NO. 20-827

THIS AGREEMENT ("Agreement") is made on the date of execution by the County between the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA ("County") and First Transit, Inc., with a principal place of business located at 600 Vine Street, Suite 1400, Cincinnati, Ohio, 45202-000 ("Contractor").

- 1. The Contractor agrees to provide the following services in accordance with the Scope of Work. (Exhibit A)**
- 2. The County will have no obligation to the Contractor if no services are required.**
- 3. The Contractor's provision of these services is subject to review and approval by the County's Project Officer.**
- 4. The Contractor shall provide the services covered by the Contract commencing January 1, 2020 through August 31, 2020 unless terminated as provided below.**
- 5. The County will pay the Contractor for services at the current rates.**

Each invoice must certify that the invoice submitted is a true and accurate accounting of the Work performed and provided. The invoice must be signed, attested to by the Contractor or authorized designee.

The County will pay the Contractor net Forty-Five (45) days from receipt of an invoice the Project Officer approves for payment.

- 6. The Contractor is an independent contractor. The County will not withhold, from the Contractor's compensation, any federal or Virginia unemployment taxes, federal or Virginia income taxes, Social Security tax or any other amounts for benefits to the Contractor or its agents or employees.**
- 7. The Contractor is obligated to take one of the Two (2) following actions within Seven (7) calendar days after receipt of amounts paid to the Contractor by the County for Work performed by any sub-contractor under this Agreement:**
 - a. Pay the sub-contractor for the proportionate share of the total payment received from the County attributable to the work performed by the sub-contractor under this Agreement; or**
 - b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the sub-contractor's payment, with the reason for nonpayment.**

The Contractor is obligated to pay interest to any sub-contractor on all amounts owed by the Contractor to the sub-contractor that remain unpaid after Seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the sub-contractor under this Agreement. The exception is for amounts withheld as allowed in Section (b) above. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of One Percent (1%) per month.

The Contractor shall include in each of its sub-contracts a provision requiring each sub-contractor to include or otherwise be subject to the same payment and interest requirements as those contained in this Agreement with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a sub-contractor pursuant to the above provisions 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. The County may terminate this Agreement by Thirty (30) days' written notice whenever the Purchasing Agent determines that termination is in the County's best interest. The Contractor will be entitled to receive compensation for all services the County accepted before the termination notice.
9. The County may terminate this Agreement by Forty-Eight (48) hours' written notice if the Contractor fails to provide satisfactory services in the determination of the Project Officer. The notice will be effective upon receipt by the Contractor or Three (3) days after the County notice is mailed, whichever is sooner.

The Contractor will be entitled to receive compensation only for services the County accepted before the County mailed the notice. The Contractor will be liable to the County for all costs that the County incurs after the termination takes effect to complete the Work covered by the Contract, including delay costs and costs to repair or replace any unsatisfactory work. The County may deduct these costs from any amount that it owes the Contractor or require that the Contractor pay the costs on demand.

10. Time is of the essence and the Contractor agrees that failure to provide timely service will render this Agreement null and void.
11. The Contractor must provide a certificate of proof of the insurance coverages before the start of work:
 - Workers Compensation-Standard Virginia Workers Compensation Policy.
 - Commercial General Liability (CGL)- \$500,000 combined single limit with \$1,000,000 aggregate coverage to include Personal Injury, Completed Operations, Contractual Liability and, where applicable to the services, Products and Independent Contractors. "The County Board of Arlington County, Virginia, and its officers, employees and agents" must be additional named insureds on the CGL policy.
 - Automobile Bodily Injury and Property Damage Liability - \$500,000 Combined Single Limit (Owned, non-owned, or hired, as applicable)

12. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or on any other basis prohibited by Virginia or federal law and must post in this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.
- b. The Contractor must state that it is an Equal Opportunity Employer in all solicitations or advertisements for employees that it places or causes to be placed.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall meet the requirements of this section.
- d. The Contractor must include the provisions of the foregoing paragraphs a), b), and c) in every subcontract or Purchase Order in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor and/or supplier.

13. The Contractor must 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 publicly- and privately-provided services and activities.

14. The Contractor must (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 marijuana or any other controlled substance 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 in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor or supplier. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

15. The Contractor acknowledges that it does not, and will not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

16. This Agreement is governed by the Arlington County Purchasing Resolution, which is incorporated by reference. The time limit for decision by the County Manager in Contractual Disputes, as that term is used in the Purchasing Resolution, is thirty (30) days.

17. This Agreement is not effective until the County issues a valid County Purchase Order covering the amount of the Agreement.

18. 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.

19. 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 sub-contractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

20. 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
21. The County does not discriminate against faith-based organizations.
22. The Contractor and its employees, agents and sub-contractors will hold as confidential all County Information that they obtain under this Agreement. Confidential Information includes, but is not limited to, nonpublic personal information; personally identifiable health information; security numbers; addresses; dates of birth; 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. The Contractor must comply with the provisions of Chapter 11 of the Arlington County Code covering business licenses as applicable.
24. The Contractor must remain authorized to transact business in the Commonwealth of Virginia during the term of this Agreement.
25. This Agreement is governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction and venue for any litigation is in the Circuit Court for Arlington County, Virginia, and in no other court.
26. 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 sub-contractors, in performance

or nonperformance of the Contract. T

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.

27. Notices will be effective when made in writing and either (a) delivered in person, (b) delivered to an overnight delivery service or (c) deposited in the United States mail, certified or registered. Notices should be addressed as follows:

TO THE CONTRACTOR:

**John Matthews, Senior Vice-President
First Transit, Inc.
16253 SE 130th Avenue
Clackamas, Oregon 97015
Telephone: 503-572-0926**

TO THE COUNTY:

**William Jones, Transit Services Manager
Department of Environmental Services
Arlington County Government
2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201
Telephone: 703-228-3424**

AND

**Shirley Diamond, Procurement Officer
Office of the Purchasing Agent
Arlington County Government
2100 Clarendon Boulevard
Suite 500
Arlington, Virginia 22201
Telephone: 703-228-3424**

28. 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 Fifteen (15) calendar days of the request, at the Contractor's expense.

Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within Thirty (30) calendar days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within Five (5) years after the Final Payment, the Contractor must give the County a minimum of Thirty (30) calendar days' notice and must not dispose of the documents if the County objects.

29. The Contractor must comply with all applicable legislative and regulatory requirements of the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). If applicable, the Contractor shall be designated a business associate pursuant and will be required to execute an Arlington County Business Associate Agreement, included in this Agreement as Exhibit C pursuant to 45 C.F.R. §164.502(e) and §164.504(e).
30. The Contractor shall not assign or transfer this Agreement, or any of its rights or interests, without the County's prior written consent.
31. This Agreement may be modified only by written amendment.
32. All remedies available to the County under this Agreement are cumulative, and no remedy is exclusive of any other that is available to the County at law or in equity.
33. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable; and if any part is held to be invalid, the rest of the Agreement will remain in effect.
34. Arlington County will perform written evaluations of the Contractor's performance at various intervals throughout the term of this Contract. At a minimum, evaluations will be completed at Fifty Percent (50%) completion of the Work within Sixty (60) calendar days from Final Completion of the services and prior to Final Payment being made to the Contractor. The evaluations will address the Contractor's Work quality, cost controls, schedule timeliness, sub-contractor management. The Project Officer shall be responsible for completing the evaluations and will provide a copy of the evaluation to the Contractor and the County Procurement Officer.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE AFFIXED THEIR SIGNATURES.


THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

CONTRACTOR'S NAME

SIGNED:



SIGNED:



PRINTED NAME: Shirley Diamond
PRINTED TITLE: Procurement Officer

PRINTED NAME: John Matthews
PRINTED TITLE: Senior Vice-President

DATE:

4-15-20

DATE:

3-2-20

EXHIBIT – A

SCOPE OF WORK

Arlington STAR Paratransit Management Services (PSM)

This Scope of Work describes the management of Arlington County's Para-transit operation - Arlington STAR. The work shall include the operation of a call intake center with trip scheduling functions, providing trip requests to contract service providers, verification of compliance of contract service providers with the service delivery requirements of their contracts, and related administrative functions. The actual transportation service will be provided by taxi and minivan operators under separate contract with the County.

The STAR service area includes Washington DC, Fairfax County, Arlington County, the cities of Alexandria, Falls Church and Fairfax in Virginia, and Montgomery County and Prince George's County in Maryland. Current service is provided from 5:30 a.m. to 12 midnight, seven (7) days a week.

The Contractor shall provide the STAR project management services under direct supervision of the County's Project Officer. The Project Officer may, if necessary, modify the existing STAR policies; approve operational procedures; and provide general directions and guidelines to Contractor. Where the terms and provisions of the existing STAR policies vary from the terms and provisions of the Scope of Work of this contract, the terms and provisions of this contract shall prevail. Contractor shall oversee the daily operations of the STAR project and their assigned staff.

1. PROGRAM OVERVIEW

1.1. The Paratransit operation for Arlington County residents is called Arlington STAR. The STAR service area includes:

- Arlington County;
- Washington, D.C.;
- Fairfax County;
- Cities of Alexandria, Falls Church and Fairfax in Virginia;
- Montgomery County, Maryland; and
- Prince George's County, Maryland (No service on Saturday, Sunday, and Holidays).

Service area may be modified by the County at any time during this Contract.

1.2. The work shall include the operation of a call intake center with trip scheduling functions, providing trip requests to contract service providers, verification of compliance of contract service providers with the service delivery requirements of their contracts, and related administrative functions. The actual transportation service will be provided by taxi and minivan operators under separate contract with the County.

1.3. A copy of STAR Policies and Procedures is available for inspection in the Purchasing Office, 2100 Clarendon Blvd., Suite 500, Arlington, VA 22201.

1.4. The Contractor shall provide the STAR operation management services under direct supervision of the County's Project Officer. The Project Officer may, if necessary, modify the existing STAR policies; approve operational procedures; and provide general directions and guidelines to the Contractor. Where the terms and provisions of the existing STAR policies vary from the terms and provisions of the Scope of Work of this contract, the terms and provisions of this contract shall prevail. The Contractor shall oversee the daily operations of the STAR project and their assigned staff.

2. CONTRACT DESCRIPTION AND EVALUATION

- 2.1. The payments for the provision of STAR operation management services shall be on a 'cost-plus-fixed-fee' basis. All costs and expenses, including project start-up costs and the fixed fee ("Management fee" which includes the General and Administrative Costs and Management fee), shall be shown in the proposed budget submitted to the County Project Officer by the Contractor.
- 2.2. The County provides all office equipment and office space needed for this contract. Currently, the County leases office space in South Arlington at 2301 Columbia Pike, Suite 120, Arlington, VA 22204. This office space is available to the Contractor and is approximately 2,300 square feet. All office equipment, computers, telephones and furniture are property of the County, and will convey to the successful bidder.
- 2.3. The contract shall be a sole source contract for a four-month period with any extension request subject to County approval upon mutual agreement of both parties.
- 2.4. Contractor shall demonstrate experience and understanding of Paratransit Operations, Customer Service delivery, financial reporting and evaluations and quality assurance practices.

3. DESCRIPTION OF CURRENT STAR OPERATIONS

- 3.1. STAR is Arlington County's pre-arranged reserved-trip shared-ride service. STAR is not an ADA service provider but is an alternative for residents of Arlington to use instead of the regional Metro Access service. Arlington residents who are approved by Metro Access for service are automatically approved for STAR service. Several other programs are managed by the PSM for other county departments.
- 3.2. STAR clients must call at least one day in advance for trip requests (but may call up to one week in advance). Currently, trip requests for Saturday, Sunday and Monday must be received by the Friday before. Same day trips are generally not allowed; however, errors and emergencies dictate that occasional same day trips be scheduled.
- 3.3. STAR currently contracts with Red Top Cab and Diamond Transportation Services ("STAR Operators"), to provide trips for clients. These STAR Operators perform under separate contracts with Arlington County. First S.T.E.P.S. training (train the trainer program) will be extended to the transportation providers by the Arlington Star Contractor.

- 3.4. The County owns the entire office suite equipment (cubicles, computer/server system, telephone system, etc.) and will provide this space and equipment for the contractor to operate the call center and other project management functions.
- 3.4.1. The software used to schedule trips, print out manifests, and re-enter actual trip data for statistical reports is to be provided by the Contractor, and shall be an "off the shelf system Trapeze. Easylink Utility which allows automated electronic updates and transfer of trip manifests, last minute cancellations or same day trips to the trip provider.
- 3.4.2. Current trip history and billing information will be available to Contractor. This information is proprietary, confidential, and will remain the property of the County. Contractor will not use or release any of this information except as requested directly by the County Project Officer.
- 3.4.3. Currently, STAR call center oversees several transportation systems, working with the Division of Transportation, Dept. of Parks, Recreation and Community Services, Department of Human Services and the DHS Agency on Aging. The call center experiences approximately 6,500 telephone calls monthly for all services, which includes calls not associated directly with STAR, but offered by the County). Those services are:
- 3.4.4. STAR - provides approximately 10,000 trips per month. The STAR program (for persons with disabilities certified eligible under the regional Metro Access program) is the bulk of the service provided within this contract. Included in this portion of the program are 300 trips a month for Temporary, Interim and Assisted STAR. Trips are provided by all STAR Operators.
- 3.4.5. Temporary STAR - The Arlington County Department of Human Services will certify individuals with short-term disabilities to use STAR on a temporary basis in coordination with the STAR Call Center.
- 3.4.6. Interim STAR - The Arlington County Department of Human Services will certify individuals to use STAR while they wait for the Washington Metropolitan Area Transit Authority to certify their eligibility for Metro Access, in coordination with the STAR Call Center.
- 3.4.7. Senior Loop - approximately 800 trips per month. Clients call to book space on a continuous loop shuttle, operated by Diamond Transportation, 4 days a week, from senior residences.
- 3.4.8. SCAT - senior center shared ride cab trips - approximately 50 trips a month. STAR schedules the Red Top shared ride cabs for this service.
- 3.4.9. Senior Center Nutrition Program Cab Trips- These are scheduled by the three (3) senior centers participating in the Senior Center Nutrition Program:
- Arlington Mill,
 - Walter Reed
 - Langston-Brown.
- The Senior Center Directors inform the STAR taxi-dispatch vendor by 12:00 P.M.(noon) the prior Day.
- 3.4.10. Walter Reed Adult Day Health Care Center – The Health Care Center Director informs the STAR Call Center provider by 12:00 P.M.(noon) which clients will need transportation between home and the Health Care Center that evening and the next morning. Rides for consumers with a Medicaid Elderly & Disabled Waiver are coordinated with the STAR Call Center and scheduled with the STAR dedicated vehicle vendor. The Health Care Center Director also schedules weekly field trips with the STAR dedicated vehicle Contractor(s).

3.4.11. Regional Older Adult Facilities Mental Health Support Team (RAFT) – Transportation from residences in or just beyond the Arlington County line to Walter Reed Adult Day Health Care Center for individuals relocated from or at risk of commitment to a state psychiatric hospital.

4. MANAGEMENT OF PROJECT

- 4.1. Tasks and functions to be performed by the Contractor are envisioned to be those duties customarily associated with managing a Paratransit operation, including, but not limited to:
- 4.1.1. Manage and evaluate the entire program, developing procedures to contain costs while ensuring a high level of customer satisfaction. This includes expansion of the current Quality Assurance Plan as well the extension of the Mystery Rider Program to Arlington STAR.
 - 4.1.2. Maintain client database information to include verification of eligibility through Metro Access provided lists as well internal verification of current Arlington Residency, change of address, etc.
 - 4.1.3. Answer telephone calls from clients concerning trip intake requests, scheduling and requests for general information on the day of the call or e-mail requests.
 - 4.1.4. Prepare route manifests for Diamond and individual and shared-ride manifests for Red Top Cab
 - 4.1.5. Transfer the trip manifests to assigned carriers
 - 4.1.6. Monitor daily service delivery by all carriers. Accident the Incident reporting will be part of the monitoring as well as the dispatching of a replacement vehicle(s) as needed.
 - 4.1.7. Respond and investigate customer comments/complaints within 3-5 business days.
 - 4.1.8. Perform data entry of actual trip information (such as pick up time, drop off time, miles, no shows and cancellations) as received from carriers. Contractor will continue to expand the data communication with Red Top Cab which will produce increased data reliability, trackable data elements and should decrease the need for as much manual data entry and trip reconciliation for each entity.
 - 4.1.9. Evaluate bi-weekly or monthly carrier invoices for proper billing, client trip assignment, etc. and forward to Project Officer. The use of Pass Port, a customized web portal will be made available to the providers. This will facilitate the Invoicing and account reconciliation.
 - 4.1.10. Perform quality assurance functions such as: client interviews, field inspections of trip delivery, this will include the expansion of the current Quality Assurance Plan as well the extension of the Mystery Rider Program to Arlington STAR, etc. and complaint resolution
 - 4.1.11. Produce monthly statistical reports and evaluate for trends and other problems/highlights. Improved reporting will enable the County to request specialized/new reports based on changing needs
 - 4.1.12. Produce monthly reports highlighting operations accomplishments and goals and objectives
 - 4.1.13. Prepare annual budget submissions by dates set by Project Officer
 - 4.1.14. Corporate Staff Support availability.

5. Produce and apply for (as STAR) annual awards, sponsored by the Virginia Transit Association, Virginia Department of Rail and Public Transit and national associations

6. Daily Operations of STAR Call Center:

- 6.1. Contractor will staff the Call Center between 7:00 a.m. and 7:00 p.m. Monday through Friday and Saturdays 8:30 a.m.-5:30 p.m. When the call center will be closed on a Monday holiday, the STAR Call Center will be staffed that Sunday from 11:00 a.m. to 3:00 p.m. Trip request calls are accepted between 8:30 a.m. and 6:30 p.m. Monday through Friday and Saturdays 9:00 a.m.-5:00 p.m. When the call center will be closed on a Monday holiday, the STAR Call Center will be open that Sunday from 11:00 a.m. to 3:00 p.m. (except Christmas Day and New Year's Day). When the Call Center is closed, Red Top Cab and Diamond Transportation will handle trip inquiry information (Where's my ride) calls, as well as complete the scheduling of will-call trips already arranged through the STAR Call Center and forward them to Contractor for inclusion in the software. Contractor will be responsible for ensuring that the Call Center is staffed during the assigned times, Should the County wish to change or expand Call Center hours, Contractor and the County Project Officer will negotiate cost of same on a per hour basis.
 - 6.2. The STAR call intake center will be closed on Arlington County Government Holidays.
 - 6.3. If inclement weather occurs, STAR follows Federal Government's OPM operating policy, unless notified by the County's Project Officer.
7. PROJECT STAFFING
- 7.1. The Contractor shall designate for this contract a Paratransit Manager who will be the point-of-contact to make operations decisions or provide coordination as may be requested by the County. The Contractor may, at its option, designate an additional person(s) as contact(s) for contract issues.
 - 7.2. The Paratransit Manager shall demonstrate competency in all aspects of the type of service covered by this contract and a general knowledge of public transit issues, policies and procedures.
 - 7.3. The Paratransit Manager shall be available to respond to the Project Officer during STAR business hours.
 - 7.4. The Contractor shall provide adequate staff to answer telephone calls, schedule trips, enter trip data, respond to customer information requests and perform quality assurance functions. All staff shall be trained to operate scheduling software and other office equipment. Training shall include proper customer service functions.
 - 7.5. Further staff time shall be provided to perform back office functions such as producing statistical reports, monthly highlights and goal and objectives reports, reviewing service contractor's invoices, and other related duties.
 - 7.6. During service hours when the call center is closed, a system for the service carriers to contact the assigned staff for assistance with emergencies shall be set up (cell phones).
8. County Project Officer
- 8.1. The performance of the Contractor under this contract is subject to the review, supervision and approval of the County Project Officer, to be appointed by the Director, Arlington County Division of Transportation, or designee. The initial Project Officer shall be William Jones.
 - 8.2. The County may, at its option, designate additional persons as official contacts, in reference to fulfilling the contract obligations. Such persons will be identified to the Contractor in writing.
 - 8.3. The Project Officer shall be responsible for the following issues:
 - 8.3.1. Overall project budgeting functions
 - 8.3.2. Service contracts with the STAR Operator
 - 8.3.3. Modification of STAR Policies and Procedures and Call Center Operating hours, if necessary
 - 8.3.4. Receiving reports, inquiries, and notices as required in this contract

8.3.5. Providing official notices, giving instructions, conducting inspections and addressing public comments and complaints

9. PROJECT EQUIPMENT AND OFFICE SPACE

- 9.1. Arlington County provides the telephone system, voicemail system, fax and copier machines, as well as the computer hardware and software for scheduling, networking, internet access, and general office work. Arlington County also provides modular workspace furniture for the Contractor's staff.
- 9.2. The software used to schedule trips, print out manifests, and re-enter actual trip data for statistical reports is to be provided by the Contractor, and shall be an "off the shelf" system Trapeze, Easylink Utility and Pass Port (a proprietary program) will also be provided. Maintenance of all software is the responsibility of the Contractor.
- 9.3. The Contractor shall, in their proposed budget, provide a budget line item for an automobile lease, to be used for field inspections and delivery services. Adequate insurance coverage for this vehicle, with Arlington County identified as additionally insured (and last payee if leased or purchased by Arlington County), shall be provided as a budget line item.
- 9.4. The Contractor shall provide their staff with cellular telephones and pagers, as needed and approved by the Project Officer, for this operation. Arlington County will reimburse the Contractor for the capital costs for this equipment when purchased as authorized by the Project Officer. A budget line item shall be included for monthly operating costs.
- 9.5. The Contractor may suggest to the Project Officer improvements or replacements of current equipment as needed. Contractor may also suggest enhancements, (IVR, Interactive Voice Response), equipping of transportation providers (Diamond and ATS,) with NavTrack) Costs of this would be outside of this scope of work and not included in the current contract or budget.
- 9.6. The County owns the entire office suite equipment (cubicles, computer/server system, telephone system, etc.) and will provide this space and equipment for the contractor to operate the call center and other project management functions.
- 9.7. The Contractor shall provide insurance coverage on all County property while in care and custody of the Contractor and used under this contract. Arlington County shall be named additional insured and loss payee for all property used under this contract.

10. PROJECT BUDGET AND INVOICING

- 10.1. Arlington County provides the necessary equipment and supplies to operate the service. The Contractor shall submit to the Project Officer a proposed budget for the annual expenses of the operation. The proposed budget may be altered by the Project Officer.
- 10.2. The expenses of operation shall include but not be limited to all expenses incurred by Contractor directly in connection with the STAR operation management services. This may include, by way of illustrations and not limitation, the cost of payroll, payroll taxes, payroll related insurance and employee welfare costs, permit and license fees, all taxes related to the operation of the STAR Center, compliance with all legal requirements, auto lease, pager and cellular phone monthly service costs, office and maintenance supplies, accounting and bookkeeping costs, and insurance premium costs directly related to the services. The Contractor shall meet the County's current living wage requirement.
- 10.3. A monthly Management Fee, (which includes the Management Fee and General and Administrative costs) as identified in the contract, shall be included in the budget.

11. Project Budget Cycles

11.1. Each twelve-month period (fiscal year) ending June 30 is referred to as an Accounting Period. The Contractor shall, not later than the 30th of October of each year of the Contract Term, prepare and submit to the County a proposed budget of estimated expenses of operation for the next Accounting Period. The proposed budget must be prepared in a form agreed to in advance by the County. The budget, upon written approval by the County (Approved Budget), shall be used by the Contractor as a guide for the actual operation of the STAR operation management services and as an upper limit on expenses to be incurred on the County's behalf under this contract.

11.2. The first fiscal year budget may be prorated, depending on the actual start date of this contract. start-up costs associated with this project will be negotiated with the successful Contractor prior to execution of the contract.

12. Project Invoices:

12.1. The Contractor shall provide monthly invoices to the Project Officer by the tenth (10th) day of each month. These invoices shall detail the monthly expenses of operation and request reimbursement for approved purchases. Payment by the County to the Contractor shall be made within twenty (20) days after receipt by the County's Project Officer of a correct invoice for work done to the satisfaction of the County. All equipment and other items purchased and reimbursed under this contract shall remain the property of Arlington County, and shall be returned in good condition at the end of the Contract Term.

12.2. Payments of the expenses of operation shall be made by Contractor, subject to the Approved Budget. Contractor shall make a careful analysis of all bills received for services, work, and supplies ordered in connection with STAR operations management services and shall pay all expenses of operation determined to be in order when due and not later than twenty (20) days after Contractors receipt of such bills.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between First Transit, Inc., (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

RECITALS

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, Business Associate and Covered Entity, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting**. "Accounting" means a record of disclosures of protected health information made by the Business Associate.

- b) **Breach.** "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA, which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.

- k) **Individual.** "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.
 - l) **Protected Health Information.** "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
 - m) **Remuneration.** "Remuneration" means direct or indirect payment from or on behalf of a third party.
 - n) **Required By Law.** "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
 - o) **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
 - p) **Security Incident.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
 - q) **Underlying Agreement.** "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
 - r) **Unsecured Protected Health Information.** "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.
- 2) **Obligations and Activities of Business Associate**
- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
 - b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
 - c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement

policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.

- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.
- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;

3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
 4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
 5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 1. Disclosure is Required by Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality;
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) Obligations of Covered Entity

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.

- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.
 - e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.
- 6) Miscellaneous
- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
 - b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
 - c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
 - d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or First Class mail, postage prepaid at:

(1) Marcy Foster,
Arlington County Privacy Officer
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(2) Stephen Mac Isaac
County Attorney
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(3) County Project Officer
William Jones, Transit Services Manager

Department of Environmental Services

2100 Clarendon Boulevard -Suite 900

Arlington County, Virginia 22201

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Attn: _____

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This Indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right,

upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.

- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

Business Associate

By:

By:

(Signature)

(Signature)

Name
:

Name:

Title: County Privacy Officer

Title: _____

Date: _____

Date: _____

SOLE SOURCE CONTRACT NO. 20-827

INSURANCE CHECKLIST

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"		
REQ'D	COVERAGES REQUIRED	LIMITS (FIGURES DENOTE MINIMUMS)
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, \$1 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
	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
	11. Personal and Advertising Injury Liability	\$1 Million each offense, \$1 Million annual aggregate
x	12. Umbrella/Excess Liability	\$1 Million Bodily Injury, Property Damage and Personal Injury
	13. Per Project Aggregate	\$ _____
	14. Professional Liability	
	a. Architects and Engineers	\$1 Million per occurrence/claim
	b. Asbestos Removal Liability Medical	\$2 Million per occurrence/claim
	c. Medical Professional Liability	\$1 Million per occurrence/claim
x	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. Garage Keepers Liability	500,000 Comprehensive, \$500,000 Collision
	20. Inland Marine-Bailee's Insurance	\$ _____
	21. Moving and Rigging Floater	Endorsement to CGL
	22. Dishonesty Bond	\$ _____
	23. Builder's Risk	Provide Coverage in the full amount of contract
	24. XCU Coverage	Endorsement to CGL
	25. USL&H	Federal Statutory Limits
x	26. Carrier Rating shall be Best's Rating of A-VI or better or its equivalent	
x	27. Notice of Cancellation, nonrenewal or material change in coverage shall be provided to County at least thirty (30) days prior to action.	
x	28. The County shall be named Additional Insured on all policies except Workers Compensation and Auto.	
x	29. Certificate of Insurance shall show the 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.	
CONTRACTOR'S STATEMENT: If awarded the contract, I will comply with contract insurance requirements.	
CONTRACTOR NAME:	AUTHORIZING SIGNATURE: