

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

NOTICE OF CONTRACT AWARD

TO: POWERSECURE, INC. 3900 MARINER DRIVE CHESAPEAKE, VIRGINIA 23321	DATE ISSUED: CURRENT REFERENCE NO: CONTRACT TITLE:	<u>7/29/2015</u> <u>780-15</u> <u>Monitoring and Maintenance of Power Generation Facility at WPCB</u>
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE
VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

This is your notice that the above referenced contract has been renewed. The contract term covered by this Notice of Award is effective August 1, 2015 and expires on May 31, 2020.

CONTRACT PRICING:

1) REFER TO AGREEMENT NO. 780-15 (Attached)

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: <u>GEORGE IMEL</u>	TELEPHONE NO.: <u>757-284-9187</u>
VENDOR PAYMENT TERMS: <u>NET 30 DAYS</u>	EMAIL ADDRESS: <u>GIMEL@POWERSECURE.COM</u>
COUNTY CONTACT: <u>MARY STRAWN</u>	TELEPHONE NO.: <u>703-228-6829</u>
	EMAIL ADDRESS: <u>MSTRAWN@ARLINGTONVA.US</u>

VENDOR: 1
BID FOLDER: 1

Igor Scherbakov
Igor Scherbakov
Purchasing Officer

7/29/15
DATE

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

AGREEMENT NO. 780-15

THIS AGREEMENT (hereinafter "Agreement" or "Contract") is made, on the date of execution by the County, between PowerSecure, Inc, of 1609 Heritage Commerce Court ("Contractor"), a Delaware Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The contract documents consist of this Agreement, Exhibit A (Scope of Work), and Exhibit B (Pricing Schedule) referred further as "Contract Documents".

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

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

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to PROVIDE REMOTE MONITORING, MAINTENANCE, AND EMERGENCY REPAIR SERVICES FOR GENERATOR SYSTEM, SWITCHGEAR, SWITCHBOARD, AND 35KV DISTRIBUTION SYSTEM AT WATER POLLUTION CONTROL PLANT, AND AN OPTION TO ENROLL IN VIRGINIA POWER'S ("DVP") DEMAND-SIDE MANAGEMENT ("DSM") PROGRAM. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

3. CONTRACT TERM

The Work shall commence on contract execution by the County, and the Work shall be completed no later than May 31, 2020 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

4. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, and Exhibit B for the Contractor's completion of the Work described and required in the Contract Documents. The Contractor agrees that it shall complete the Work for the total amount specified in this section ("Contract Amount") unless such amount is modified as provided in this Agreement.

5. PRICE ADJUSTMENTS

The Contract unit price(s) shall remain firm throughout the Contract Term, unless the Contractor requests a price adjustment, and the County approves such an adjustment, in accordance with the following procedure:

- A. The Contractor may submit a written request for price adjustment to the County not less than sixty (60) days prior to June 1 of any given year of the contract ("Anniversary Date").
- B. Requests for adjustment(s) to unit price(s) shall not exceed the percentage of escalation/de-escalation in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the twelve (12) month period ending on December of each year of the Contract.

Any adjustment(s) to unit price(s) approved by the County as a result of the procedure set forth in A and B above, shall become effective the day after the current Anniversary Date and shall be binding on both parties for the remainder of the Contract Term unless an adjustment is requested the Contractor and approved by the County in a subsequent year, as set forth above.

If the Contractor and the County do not agree on the requested adjustment using the procedure set forth in A and B above by the thirtieth (30th) calendar day prior to the Anniversary Date, the County may in its sole discretion terminate the Contract.

6. PAYMENT

Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice for work done which is reasonable and allocable to the Contract and which has been performed to the satisfaction of the Project Officer. Amounts on invoices shall not include amounts allocated to tasks (as shown in Exhibit A) on which no work has been done. The Project Officer will either approve the invoice or require corrections. The number of the

County Purchase Order pursuant to which authority goods or services have been performed or delivered shall appear on all invoices.

7. PROJECT OFFICER

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

8. ADJUSTMENTS FOR CHANGE IN SCOPE

The County may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by the County and the Contractor. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by the County and the Contractor and a County purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

9. ADDITIONAL SERVICES

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

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

10. REIMBURSABLE EXPENSES

No reimbursable travel-related expenses shall be allowed for employees of firms located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget (OMB). If approved by the County for employees of firms outside this area, the County's policy for reimbursement of travel-related expenses will be as follows:

Meals: The County will reimburse a contractor for the actual out-of-pocket expenses for employee meals, excluding alcoholic beverages at the per diem rate not to exceed \$41.00 or the individual meal rates not to exceed of \$8.00 for breakfast, \$11.00 for lunch, and \$22.00 for dinner. Receipts are required.

Lodging: The County will reimburse lodging expenses incurred for lodging at a reasonably priced commercial facility in the immediate area of the work, where feasible. Complete and legible itemized receipts shall accompany any request for reimbursement. No reimbursement shall be made for ineligible expenses including room service, laundry, telephone and in-room movies. If a room is shared with another person not connected with the work being performed for the County, including a spouse, the County will reimburse a contractor for no more than the cost of a single room.

Transportation:

General

Reservations shall be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. Receipts must be submitted for any inter-city public transportation used. Reimbursement for the use of personal or company vehicles, if allowed, shall not exceed the then current mileage rates paid by the County to its employees and personal use must be excluded from the request for reimbursement. Parking expenses are reimbursable up to \$7.00 per day.

Rental of vehicles or use of taxicabs, in lieu of the use of a personal or company vehicle, may be approved if the Contractor can justify a cost savings by renting a car or using a taxicab, and obtains approval in advance from the Project Officer. For rental vehicles, the Contractor will be reimbursed for only those rental charges, insurance and/or fuel fees allocable to the Work. The Contractor will not be reimbursed for the purchase of liability insurance and/or collision/comprehensive insurance if their existing insurance coverage provides protection. Receipts are required for reimbursement.

Air Travel

Air Travel shall be booked in Economy class, unless otherwise approved.

Time limit: Requests for travel reimbursement covering the above submitted more than sixty (60) days after completion of the travel shall not be honored.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement:

1. Alcoholic beverages
2. Personal phone calls
3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)

4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
6. Auto repairs, maintenance and insurance costs for personal vehicles
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.
8. If the County adopts different rates for its employees, the adopted rates shall prevail.

12. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within sixty (60) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

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

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after sixty (60) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

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

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

13. NON-APPROPRIATION

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

14. REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)

During the Initial Contract Term or any Subsequent Contract Term, the Contractor will furnish all of the items or services described in the Contract Documents if so requested by the County. The Contractor understands and agrees that this is a requirements contract and the County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, 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 Contractor further understands that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices set forth in this Contract.

15. COUNTY PURCHASE ORDER REQUIREMENT

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

16. PROJECT STAFF

The County will, throughout the Initial Contract Term and any Subsequent Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the County reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

17. BACKGROUND CHECK

Any Contractor employee or subcontractor assigned by the Contractor to work under this Agreement at the County's site or remotely as determined by the County Project officer, shall be subject to a County standard background check, including fingerprinting by the County Sheriff's Office and a credit check. Permission to work onsite or remotely shall be contingent on an outcome of the background check acceptable to the County. Prior to commencing work related to this Agreement, such employee or subcontractor shall sign the documents set forth in Exhibit C.

18. SUPERVISION BY CONTRACTOR

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

19. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

20. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

21. TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

22. SAFETY

The Contractor shall comply with, and ensure that the Contractor's employees and subcontractors comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry, the Federal Environmental Protection Agency standards and the applicable standards of the Virginia Department of Environmental Quality.

The Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the work specified to be performed by the Contractor and subcontractor(s).

The Contractor shall identify to the County Project Officer at least one (1) on-site person who is the Contractor's competent, qualified, and authorized person on the worksite and who is, by training or experience, familiar with and trained in policies, regulations and standards applicable to the work being performed. The competent,

qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the work site.

The Contractor shall provide to the County, at the County's request, a copy of the Contractor's written safety policies and safety procedures applicable to the scope of work. Failure to provide this information within seven (7) days of the County's request may result in cancellation of this Contract.

23. WARRANTY

The Contractor warrants services and equipment provided which are self-performed to furnish the services described herein at the times and places and in the manner and subject to the conditions set forth. The Contractor shall enter upon and complete the performance of services with all due diligence and dispatch and shall exercise the highest degree of skill and competence.

Subcontractor warranty - Contractor hereby passes through to OWNER manufacturer's warranty on parts, materials, and equipment supplied under this contract.

24. UNSATISFACTORY WORK

If any of the work done, or material or equipment provided, by the Contractor is unsatisfactory to the County, the Contractor shall, on being notified by the County, immediately remove at the Contractor's expense such unsatisfactory work or material or equipment and replace the same with work or material or equipment satisfactory to the County and, in the event the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work or material or equipment and replace it with suitable and satisfactory work or material or equipment, the County shall have the right, but not the obligation, to remove the rejected work or material or equipment and replace it with proper work or material or equipment at the expense of the Contractor. This paragraph applies during the Initial Contract Term, any Subsequent Contract Term, and during any warranty or guarantee period. The County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract. If the Project Officer and the County deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate adjustment to the Contract Amount may be made therefor.

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

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

satisfactorily the Work required, as determined by the County in its discretion.

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

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

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

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

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction

then such termination shall be deemed to have been a termination for convenience.

26. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

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

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

27. INDEMNIFICATION

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

28. INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

29. COPYRIGHT

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

Further, the Contractor agrees that the rights granted to the County by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part

of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

30. OWNERSHIP AND RETURN OF RECORDS

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

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

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

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

31. DATA SECURITY AND PROTECTION

The Contractor shall hold County Information in the strictest confidence and comply with all applicable County security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted County Information received from, created or maintained on behalf of the County and strictly control access to County Information. For purposes of this provision, and as more fully described in this Contract and the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" (also referred to as "County Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records,

personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, County networked resources, and County databases, software and security measures which is created, maintained, transmitted or accessed to perform the work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement (NDA)**. The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at County facilities or otherwise performing non-incidental work under this Contract, sign the NDA (attached as an Exhibit C hereto) prior to performing any work or permitting access to County networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to the County Project Officer upon request.
- (b) **Use of Data**. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to County Information and County networked resources shall not occur in an unauthorized manner. Use of County Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of County Information and any non-compliance with this DATA SECURITY AND PROTECTION provision or any NDA.
- (c) **Data Protection**. The Contractor agrees that it will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by the County, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Data Sharing**. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclosure, sell or grant access to County Information to any third party without the express written authorization of the County's Chief Information Security Officer or designee.
- (e) **Security Requirements**. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data at rest encryption. Significant

deviation from these standards must be approved by the County's Chief Information Security Officer or designee, The downloading of County information onto laptops or other portable storage medium is prohibited without the express written authorization of the County's Chief Information Security Officer or designee.

- (f) **Data Protection Upon Conclusion of Contract.** Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all County Information to the County unless the County requests that such data be destroyed. This provision shall also apply to all County Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement and shall certify completion of this task, in writing, to the County Project Officer.
- (g) **Notification of Security Incidents.** The Contractor agrees to notify the County Chief Information Officer and County Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of County Information.
- (h) **Subcontractors.** To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing County Information and a copy of their disaster recovery plan/s.

32. ETHICS IN PUBLIC CONTRACTING

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

33. COUNTY EMPLOYEES

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

34. FORCE MAJEURE

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

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

35. AUTHORITY TO TRANSACT BUSINESS

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

36. RELATION TO COUNTY

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

37. ANTITRUST

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

38. REPORT STANDARDS

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

39. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

40. ASSIGNMENT

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

41. AMENDMENTS

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

42. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

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

43. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after final payment. The time limit for final written decision by the County Manager in the event of a

contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

44. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

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

45. ARBITRATION

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

46. NONEXCLUSIVITY OF REMEDIES

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

47. NO WAIVER

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

48. SEVERABILITY

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

49. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

50. SURVIVAL OF TERMS

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

51. HEADINGS

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

52. AMBIGUITIES

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

53. NOTICES

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

TO THE CONTRACTOR:

George Imel
PowerSecure, Inc.
3900 Mariner Drive
Chesapeake, VA 23321

TO THE COUNTY:

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

54. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

55. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. 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 replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.

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

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

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

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

damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

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

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

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

AUTHORIZED
SIGNATURE:



NAME AND RICHARD D. WARREN, JR.
TITLE: PURCHASING AGENT

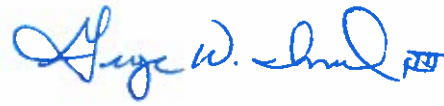
DATE: 7/29/15

POWERSECURE INC

84-1557738

TAXPAYER ID:

AUTHORIZED
SIGNATURE:



NAME AND GEORGE W. IMEL, III
TITLE: PRESIDENT OF VA

DATE: 7/29/15

AGREEMENT NO. 780-15

EXHIBIT C

NONDISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of PowerSecure, Inc (Contractor) hereby agree that the Contractor will hold County provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 780-15 (the "Project" or "County Agreement" as applicable) or which may be accessed through other County owned or controlled databases (all of the above collectively referred to herein as "information" or "County information").

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

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

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

Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which information is stored, even temporarily, will have strict security and access control. Any information that is accessible will not leave the Contractor's work site or the County's physical facility, if working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized,

Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County, and connected to the County network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded expect as agreed to by the parties and then only onto a County approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the County Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, the County Contract, County policy, Contractor's security policies, or any other breach of Project protocols. The Contractor will fully cooperate with the County to regain possession of any information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

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

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

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

Authorized Signature: _____
Printed Name and Title: _____
Date: _____

AGREEMENT NO. 780-15

EXHIBIT C

NONDISCLOSURE AND DATA SECURITY AGREEMENT

(INDIVIDUAL)

I, the undersigned, agree that I will hold County provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 780-15 (the "Project" or "County Agreement", as applicable) or which may be accessed through County owned or controlled databases(all of the above collectively referred to herein as "information" or "County information").

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

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

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

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

such information upon request.

I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network shall be free of all computer viruses or running the latest version of an industry standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. No information may be downloaded except as authorized by the County Project Officer and then only onto a County-approved Device. Downloading onto a personally owned Device is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery, becoming aware of or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, County policy, my employer's security system or any other breach of Project protocols. I will fully cooperate with the County to help regain possession of any information and to prevent its further disclosure, use or dissemination.

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

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

Signed: _____

Printed Name: _____

Date: _____

Witnessed:

Contractor's Project Manager: _____

Printed Name: _____

Date: _____

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT

Exhibit A to Arlington County Agreement
SCOPE OF WORK

Generator System Switchgear, Switchboard and 35 kV Distribution 2015 System Annual
Maintenance
Revision 05 022515

The purpose of this agreement is to define the means by which the Water Pollution Control Plant's (COUNTY'S) Standby Generation Facility (SGF) is maintained and monitored by PowerSecure (CONTRACTOR) as a rider (Schedule DG-CM) to the main Virginia Energy Purchasing Governmental Association (VEPGA) agreement. Maintenance is required on an ongoing basis in order to call the generators into service when needed and to ensure compliance with state mandated air quality permit conditions.

Secondarily, the COUNTY, at its sole discretion, may choose to enroll the SGF in Dominion Virginia Power's (DVP) demand-side management (DSM) program. In this instance, the CONTRACTOR shall provide the service of interfacing with DVP and operating the generators remotely if they are called into service by DVP.

SCOPE OF WORK

Switchgear Maintenance

CONTRACTOR will provide COUNTY a total maintenance program on the generator system switchgear including DC35 switchgear, 5 kV switchgear and MCC as follows and 35 kV distribution system:

Program guidelines:

1. Provide a quarterly switchgear walkthrough and system check.
2. Provide annual maintenance of each piece of switchgear equipment.
3. Provide annual maintenance as prescribed below for the 35 kV distribution system and equipment.
4. Maintenance will be performed based on the below table:

	Mechanical Operation Inspection	Visual Inspection Energized	Testing De-energized	Recommended Annual Infrared Inspection By Others
Metal-Clad Switchgear				
Outdoor		Quarterly	3 Years	
Circuit Breakers				
Vacuum type Drawout	1 Year	1 Year	3 Years	

In addition, when the quarterly switchgear is performed, all filters will be changed and any damaged light bulbs will be replaced as well as the emergency lighting tested.

All maintenance will be performed to meet the requirements of the equipment manufacturer as well as applicable national and local requirements. See EXHIBIT A for additional details on switchgear inspection and maintenance activities.

Generator Monitoring and Maintenance

1. Generator Remote Monitoring Services

CONTRACTOR will provide their Remote Monitoring/Dispatch Service for the duration of this Agreement.

- a. Provide communications to each Generator System Enclosure.
- b. Receive Utility signals and start/stop the Generator Systems accordingly.
- c. In the event that the Generator System is not called into service, provide a weekly test run of the units to ensure their continued availability. The test run shall last one (1) hour unless another duration is agreed to by COUNTY and CONTRACTOR.
- d. Interactively monitor generator sites and provide status reports.
- e. Supply monthly summary reports to COUNTY in an agreed-upon format.

2. Generator Maintenance Services

- a. Two (2) site visits per year to perform the following:
 - (1) Visual inspection of the general condition of the generator set
 - (2) Visual inspection of the air filter condition and oil filter for leaks
 - (3) Verification and top off of all fluid levels (unscheduled fluid replacement is at COUNTY cost outside of warranty period)
 - (4) Visual inspection of all belts and hoses
 - (5) Visual inspection for loose or broken fittings and leaks of any kind
 - (6) Sampling and testing of engine lubricating oil once each year (COUNTY to perform).
 - (7) Inspection of engine starting battery physical and operating condition
 - (8) Check and adjust engine block heaters for proper operation
 - (9) Start and operate engine under load for a minimum of 30 minutes to verify:
 - (a) Oil Pressure
 - (b) Crankcase Oil Levels
 - (c) Frequency and Voltage Control
 - (d) Inspect for Abnormal Leaks and Noises
 - (e) Battery Starting Voltages
 - (10) After shutdown:
 - (a) Verify Battery Charger Operation
 - (b) Correct Shutdown Operations
- b. One (1) oil change as directed by COUNTY based on COUNTY oil sampling. Oil changes more frequently than once every two years will be a time and materials charge.
- c. One (1) belt change every three years.

Additional Maintenance Services

Environmental Controls Maintenance – Selective Catalytic Reduction (SCR's) and Bi-fuel

System

CONTRACTOR will provide complete SCR and Bi-fuel maintenance and service for the Generator System(s), and notify COUNTY when service is required and scheduled. All maintenance and service performed by sub-contractors will be at CONTRACTOR'S actual cost as supported by invoices from sub-contractors. COUNTY shall pay CONTRACTOR at the unit rates listed in Exhibit B for the actual time spent managing the subcontractor.

The CONTRACTOR will provide meter or other testing, calibration and certifications as required by the COUNTY. All testing, calibration and certifications services performed by sub-contractors will be billed at CONTRACTOR'S actual cost as supported by invoices from sub-contractors. COUNTY shall pay CONTRACTOR at the unit rates listed in Exhibit B for the actual time spent managing the subcontractor.

Emergency Services

On an as-needed basis, PSI or their sub-contractors will perform additional maintenance or emergency repair services not covered under the routine maintenance programs described above. A not-to-exceed funding allocation has been set aside for such services. COUNTY shall reimburse for the actual cost of these services as supported by invoices from sub-contractors. COUNTY shall pay CONTRACTOR at the unit rates listed in Exhibit B for the actual time spent managing the subcontractor.

On-site Services Notification and Reporting Procedure

For all non-emergency on-site services, the COUNTY shall be given five (5) working days' notice prior to CONTRACTOR performing services. The CONTRACTOR or their subcontractors shall notify the COUNTY when they have arrived on site to arrange for access to the facility. No access shall be provided without proper advance notice. The COUNTY shall provide a staff person to oversee any work being performed. The CONTRACTOR shall provide a written report within 10 days after maintenance is performed with the following details:

1. Who performed the maintenance
2. Date
3. Time
4. Tasks performed
5. Results of inspections, tests, and actions
6. Recommendations for correcting any deficiencies not performed during the maintenance activities
7. If emergency corrections were performed, these will be filed in the maintenance report.

For emergency services the CONTRACTOR shall notify the COUNTY as far in advance as possible and obtain approval for site access, if five (5) days is not possible. The rest of the requirements for site access and reporting remain the same.

COST OF MAINTENANCE AND MONITORING PROGRAM

Annual cost of Maintenance and Monitoring for the Generator Systems is broken down as described below. Monitoring and program administration shall be billed according to the fee schedule shown. Maintenance cost estimates are provided, but shall be paid following completion of the work and submittal of required paperwork. Every third year a relay test will be conducted on system circuit breakers for an estimated additional \$31,250.

- A. Costs of system monitoring and program administration will be as follows:
 - 1. A fee of \$1,500 per month (\$18,000 annually) for 24/7 system monitoring will be charged by the CONTRACTOR.
 - 2. A management fee of \$3,500 monthly (\$42,000 annually) will be charged based on the contractor's hourly rates as shown in Exhibit B and consisting of 10 Program Manager and 10 Project Manager hours per month. The following duties will be performed by the project and/or program manager:
 - a. Scheduling, negotiations, and dispatch of all vendors required for service including contractor resources
 - b. Maintaining service and maintenance records and providing to the COUNTY as needed
 - c. Attendance of required meetings and conference calls
 - d. Problem resolution
 - e. Additional Program and/or Project Manager hours in excess of 10 hours each will be billed using the hourly rates shown in Exhibit C.
- B. Switchgear and generator maintenance including DC35, all noted switchgear and switchboards, cables, generators and cooling system for the generators will be billed when maintenance is completed and performed. Annual Estimates for maintenance work on all Generator and Switchgear components are as follows:
 - a. DC35 Quarterly maintenance \$3,750 per quarter (\$15,000 annually).
 - b. Generator maintenance will be performed on each generator 2 times annually. Estimated cost for this maintenance is \$9,000 per maintenance cycle (\$18,000 annually).
- C. 35 kV distribution system estimated annual cost is \$29,956. Maintenance services will be billed as performed.
- D. Selective Catalytic Reduction (SCR) system maintenance, bi-fuel system maintenance, meter calibration, and Nitrous Oxides (NO_x) probes replacement, have an estimated annual cost of \$38,000 as follows:
 - a. SCR's - \$9,000
 - b. Bi-fuel - \$2,000
 - c. Metering - \$12,000
 - d. Miscellaneous including NO_x probes replacement - \$15,000
- E. Emergency services (by PSI and subs) – Estimated at approximately \$24,000 annually
- F. Warranty Extensions for SGF hardware and/or software shall be managed by the contractor on an as-needed basis.

The total estimated annual cost for all maintenance and monitoring programs is \$184,596, with the exception of Year 3, for which the estimated annual cost is \$216,206.

CONTRACTOR will invoice the COUNTY on a quarterly basis within 30 days of end of the previous quarter.

Note:

Warranty coverage will be based on manufacturer pass through of warranty from PowerSecure to the county and may apply deductibles if the manufacturer policy is to require deductible payments.

Contact Information

PowerSecure Contact

George Imel, President of VA – gimel@powersecure.com and 757-284-9187

County Authorized Personnel

Carol Smithers - main contact	703-228-6880	csmithers@arlingtonva.us
Dennis Dobbs	703-228-6827	ddobbs@arlingtonva.us
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Wilbur Brown	703-228-6866	wbrown@arlingtonva.us
Stephen Cameron	703-228-7941	scameron@arlingtonva.us
Jim Honaker	703-228-6849	jhonaker@arlingtonva.us
Shift Supervisors: - Ed Coburn - Ron Taylor - Jarvis Koonce - Zahid Yousaf	703-585-6851	ecoburn@arlingtonva.us rtaylor@arlingtonva.us jkoonce@arlingtonva.us zyousaf@arlingtonva.us

Contractor Hourly Rate and Equipment Rate Schedule

See Exhibit B.

EXHIBIT A - 35 kV Distribution System Annual Maintenance

The Work provided by the CONTRACTOR is for the facilities identified as follows:

- A. Facilities - These facilities under this proposal are COUNTY owned and extend on the north and south sides of Glebe Road at the ACWPCP Glebe Road Facility and are as follows:
1. One (1) primary circuit fed from DVP circuit 336 out of Glebe substation consisting of 3 – 600 kcmil, 1/C, 35kV jacketed LC Shield 345mil aluminum conductor from a primary meter on the South side of the ACWPCP at Glebe Road. These conductors are installed inside duct bank.
 2. One (1) primary circuit fed from DVP circuit 341 out of Glebe substation consisting of 3 – 600 kcmil, 1/C, 35kV jacketed LC Shield 345mil aluminum conductor from

a primary meter on the South side of the ACWPCP at Glebe Road. These conductors are installed inside duct bank.

3. Total length of three (3) phase primary and 6 inch conduit – 1/0 cable approximately 3100 feet and 600 kcmil cable 14085 feet.
4. Three (3) 35kV, 600 amp, 4-way dead-front tie VFI switches.
5. One (1) 35kV, Siemens main switchgear DC35A and DC35B consisting of 6, 1200 ampere circuit breakers and in a walk-in cubicle housing. The two (2) existing genset breakers will be tested by test set as they do not have any load on them currently.
6. 34.5 kV primary side transformers rated as follows:
 - a. 2 each, 34.5 kV – 480 volt, 1000 kVA
 - b. 6 each, 34.5 kV – 480 volt, 1500 kVA
 - c. 6 each, 34.5 kV – 480 volt, 2500 kVA
 - d. 2 each, 34.5 kV – 4.16 kV, 3750 kVA
 - e. 1 - 500 kVA transformer as service to generation building
 - f. 2- 7500/9375 kVA; 34.5 kV – 4.16 kV transformers
7. Twenty-nine (29) existing manholes.

B. Maintenance Services performed on an annual basis are as follows:

1. Transformers

- A. Visually inspect transformers connections and remove debris.
- B. Test and megger grounding.
- C. Visually inspect all fusing.
- D. Visually inspect all pressure relief valves and oil levels.

2. VFI Switches

- A. Visually inspect switch connections and remove debris.
- B. Test and megger grounding.
- C. Visually inspect all pressure relief valves and SF6 levels.

3. Manholes

- A. Inspect manholes for toxic gases.
- B. Test and megger grounds and grounding loops in each manhole.
- C. Check and clean debris and pump water from each manhole.
- D. Test sump pump operation (repairs can be arranged via the emergency repair provision below).

4. Any material supplied for COUNTY owned facilities during the performance of routine or emergency services, will be billed, to the COUNTY, at Contractor's actual cost, including all applicable taxes, as supported by invoices from Contractor's suppliers COUNTY shall pay CONTRACTOR at the unit rates listed in Exhibit B for the actual time spent administering the material purchase and delivery. CONTRACTOR will not be obligated to perform material purchases valued greater than \$50,000. When any such purchases are required to complete routine services or

emergency repair work, CONTRACTOR shall present to the COUNTY the list of material to be purchased and the list of suggested vendors. COUNTY will then furnish the material to the Contractor.

5. Infrared inspections will be accomplished annually by others for the COUNTY.

EXHIBIT B – 2015-16 Contractor Hourly Rate Schedules

<u>Classification</u>	<u>Hourly Rates</u>
Program Manager	\$ 200.00
Project Manager/Quality Manager	\$ 150.00
Environmental Support	\$ 200.00
Senior Engineer	\$ 290.00
Engineer	\$ 215.00
Lead Technician	\$ 275.00
Senior Technician	\$ 220.00
Technician	\$ 160.00
Manager Construction	\$ 101.20
Crew Foreman	\$ 85.00
Supervisor	\$ 76.00
Electrician	\$ 70.00
Electrician Apprentice	\$ 50.00
Lineman	\$ 59.00
Lineman apprentice	\$ 51.00
Groundman	\$ 40.00
Equipment Operator	\$ 44.00
Truck Driver	\$ 39.00
Helper	\$ 31.00
Mechanical Technician	\$ 55.00
Mechanical Helper	\$ 35.00
IT Programmer and Integrator	\$ 175.00

<u>Equipment</u>	<u>Hourly Rates</u>
4x4 Crew Cab Pickup	\$ 28.00
Line/Auger Truck	\$ 41.00
Bucket Truck 55 foot	\$ 51.00
Utility Trailer	\$ 12.00
Manhole Equipment	\$ 12.00
Generator	\$ 4.20
Manhole Pump	\$ 4.20

- Note 1 - Additional equipment required will be at Contractor's actual cost as supported by invoices from equipment providers. COUNTY shall pay CONTRACTOR at the unit rates listed above for the actual time spent administering the equipment rental and delivery.
- Note 2 - For any work performed by Subcontractors, COUNTY shall reimburse CONTRACTOR for the actual cost of these services as supported by invoices from subcontractors. COUNTY shall pay CONTRACTOR at the unit rates listed in Exhibit B for the actual time spent managing the subcontractor

- Note 3 -The Billing rates shown in Exhibit C may increase on an annual basis at a rate not to exceed the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in December of each Contract Year. Any such increase must be mutually agreed upon, and included in a written Amendment to the Agreement executed by both parties.

