

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

NOTICE OF AWARD OF CONTRACT

TO: MILLENNIUM POOLS AND SPAS, LLC  
8927 BRADDOCK DRIVE  
BURKE, VA 22015

DATE ISSUED: MARCH 28, 2013

CURRENT REFERENCE NO: 602-13

CONTRACT TITLE: INTERACTIVE WATER FEATURES  
MAINTENANCE SERVICES

PRIOR REFERENCE NO: N/A

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

Your firm is awarded the above referenced contract in accordance with the response submitted by you on MARCH 13, 2013. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on March 31, 2023.

The contract documents consist of the terms, conditions, and specifications of Invitation to Bid No. 602-13 and the bid of the Contractor, incorporated herein by reference.

**CONTRACT PRICING ATTACHMENTS:**

1. REFER TO SIGNED BID FORM BY THE CONTRACTOR(ATTACHED)
2. REFER TO PARAGRAPH NO. 5 (CONTRACT PRICING ADJUSTMENT) IN SECTION III (CONTRACT TERMS AND CONDITIONS) INVITATION TO BID NO. 602-13 (ATTACHED).
3. INVITATION TO BID NO. 602-13

**EMPLOYEES NOT TO BENEFIT:**

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

VENDOR CONTACT: HUNK LAVERY VENDOR PHONE: 703-939-5062  
VENDOR EMAIL: hlavery@millenniumpools.com

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: KURT LOUIS COUNTY EMAIL: klouis@arlingtonva.us  
COUNTY TEL. NO.: 703-228-7754

CONTRACT AUTHORIZATION

  
Maryam Zahory, CPPB  
Procurement Officer

3/28/13  
DATE

DISTRIBUTION

VENDOR: 1  
BID FOLDER: 2

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
INVITATION TO BID NO. 605-13

B I D F O R M  
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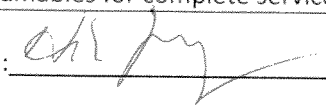
SUBMIT TWO (2) FULLY-COMPLETED AND SIGNED BID FORMS TO THE OFFICE OF THE BID CLERK, SUITE 511, 2100 CLARENDON BLVD., ARLINGTON, VIRGINIA, 22201 (ONE FORM SHALL CONTAIN AN ORIGINAL LONGHAND SIGNATURE; THE OTHER SHALL BE A PHOTOCOPY OF THE SIGNED ORIGINAL)

**BIDS WILL BE OPENED AT 2:00 P.M., ON MARCH 5, 2013**

**PROVISION OF OPERATIONAL MAINTENANCE SERVICES FOR EXISTING AND FUTURE INTERACTIVE WATER FEATURES PER THE TERMS, CONDITIONS AND SPECIFICATIONS OF THIS SOLICITATION:**

The undersigned understands and acknowledges the following:  
The official, true, and complete copy of the solicitation documents, WHICH SHALL INCLUDE ALL AMENDMENTS THERETO, is the hard copy of the documents available from the Office of the Purchasing Agent.  
An electronic copy of the solicitation documents provided at the County Purchasing Agent's website (<http://www.arlingtonva.us/purchasing>) is subject to an important disclaimer which must be acknowledged online before the documents can be downloaded.  
Each bidder is responsible for determining the accuracy and completeness of ALL solicitation documents they receive, including documents obtained from the County by either of the methods described above, and documents obtained from all other sources.

#	CATEGORY	RATE
1	Daily Visit: (includes all labor, equipment, tools, tools of trade, consumables for complete service) per site)	\$ 125 <sup>00</sup> Per VISIT
2	Emergency Response: (includes all labor, equipment, tools, tools of trade, consumables for complete service)	\$ 95 HIR MECHANIC
3	Fully-burdened Labor Rate for Repairs and Modification Services	\$ 95 HIR MECHANIC
4	Seasonal Work (one time charge for opening of each Interactive Water Features at the beginning of each operational period)	\$ 350 <sup>00</sup>
5	Seasonal Work (one time charge for closure of each Interactive Water Features at the end of each operational period)	450 <sup>00</sup>
6	Emergency Closure (one time charge for each event includes all labor, equipment, tools, tools of trade, consumables for complete service)	\$ 150 <sup>00</sup>

Bidder's Name: 

EMERGENCY CONTACT INFORMATION:

Contact Name:	Contact Phone Number	Alternate Phone Number
Frank Lavery	703 774 6871	703 929 5062

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by an bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, Section 4-111 of the Arlington County Purchasing Resolution states that the bidder must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

Please mark one:



No, the bid I have submitted does not contain any trade secrets and/or proprietary information.

Yes, the bid I have submitted does contain trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the bid containing such data or materials:

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State the specific reason(s) why protection is necessary:

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BIDDERS NAME:

Frank Lavery

If you fail to identify the data or other materials to be protected and state the reasons why protection is necessary in the space provided above, you will not have invoked the protection of Section 4-111 of the Purchasing Resolution. Accordingly, effective upon the award of contract, the bid will be open for public inspection consistent with applicable law.

**CERTIFICATION OF NON-COLLUSION:** The undersigned certifies that this bid is not the result of, or affected by, any act of collusion with another person (as defined in the Code of Virginia § 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.).

**CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES**

Provide the name and address of the person designated by the Bidder to receive notices and other communications (Refer to section headed Notices in the Contract Terms and Conditions of this solicitation for further details):

Hank Lavery  
8777 Lake Braddock Dr.  
Booke VA 22015

**THE PROPER LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS BID FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE INVITATION TO BID TO BE SUBMITTED WITH THIS BID FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED AMENDMENTS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BELOW BY A PERSON AUTHORIZED TO LEGALLY BIND THE BIDDER, OR THE BID MAY BE REJECTED:**

AUTHORIZED SIGNATURE



PRINT NAME AND TITLE

HANK LAVARY

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID (I.E. PROJECT MANAGER):

NAME (PRINTED): Hank Lavery TITLE: President

E-MAIL ADDRESS: HLAVARY@MILLENNIUM TEL. NO.: 703 774 6971  
BOOKE.COM

SUBMITTED BY: (LEGAL NAME OF ENTITY) <i>Millennium Pools and Spas LLC</i>				
ADDRESS: <i>8927 Lake Bradlock Dr</i>				
CITY/STATE/ZIP: <i>Burke VA 22015</i>				
TELEPHONE NO: <i>703 939 5062</i>		FACSIMILE NO.: <i>703 940 5558</i>		
TAX ID NUMBER (EIN/SSN): <i>760822692</i>		VA. CONTRACTOR LICENSE #: <i>2705108861</i>		
THIS FIRM IS A: • INSERT NAME OF STATE <u>VA</u> ___ CORPORATION, ___ GENERAL PARTNERSHIP, <input checked="" type="checkbox"/> LIMITED PARTNERSHIP, ___ UNINCORPORATED ASSOCIATION, ___ LIMITED LIABILITY COMPANY, ___ SOLE PROPRIETORSHIP				
IS FIRM AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VA?				<i>Y</i>
IDENTIFICATION NO. ISSUED TO THE FIRM BY THE SCC:			<i>5184261-8</i>	
ANY BIDDER EXEMPT FROM SCC AUTHORIZATION REQUIREMENT SHALL INCLUDE A STATEMENT WITH ITS BID WHY THEY ARE NOT REQUIRED TO BE SO AUTHORIZED				
IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY DEBARRED FROM SUBMITTING BIDS TO ARLINGTON COUNTY, VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION?				<i>N</i>
BIDDER STATUS:	MINORITY OWNED:	<i>N</i>	WOMAN OWNED:	<i>N</i>
			NEITHER:	<input checked="" type="checkbox"/>

Solicitation # 605-13

Metropolitan Washington Council of Governments Rider Clause

**USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.**

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your bid/proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

YES	NO	JURISDICTION	YES	NO	JURISDICTION
		ALEXANDRIA, VIRGINIA			MANASSAS, VIRGINIA
		ALEXANDRIA PUBLIC SCHOOLS			CITY OF MANASSAS PUBLIC SCHOOLS
		ALEXANDRIA SANITATION AUTHORITY			MANASSAS PARK, VIRGINIA
		ARLINGTON COUNTY, VIRGINIA			MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMM.
		ARLINGTON COUNTY PUBLIC SCHOOLS			METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
		BOWIE, MARYLAND			METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
		BLADENSBURG, MARYLAND			MONTGOMERY COLLEGE
		CHARLES COUNTY PUBLIC SCHOOLS			MONTGOMERY COUNTY, MARYLAND
		COLLEGE PARK, MARYLAND			MONTGOMERY COUNTY PUBLIC SCHOOLS
		CULPEPER COUNTY, VIRGINIA			OMNIRIDE
		DISTRICT OF COLUMBIA			PRINCE GEORGE'S COUNTY, MARYLAND
		DISTRICT OF COLUMBIA COURTS			PRINCE GEORGE'S PUBLIC SCHOOLS
		DISTRICT OF COLUMBIA PUBLIC SCHOOLS			PRINCE WILLIAM COUNTY, VIRGINIA
		FAIRFAX, VIRGINIA			PRINCE WILLIAM COUNTY, VIRGINIA
		FAIRFAX COUNTY, VIRGINIA			PRINCE WILLIAM COUNTY PUBLIC SCHOOLS
		FAIRFAX COUNTY WATER AUTHORITY			PRINCE WILLIAM COUNTY SERVICE AUTHORITY
		FALLS CHURCH, VIRGINIA			ROCKVILLE, MARYLAND
		FAUQUIER COUNTY, VIRGINIA SCHOOLS & GOVERNMENT			SPOTSYLVANIA COUNTY SCHOOLS
		FREDERICK, MARYLAND			STAFFORD COUNTY, VIRGINIA
		FREDERICK COUNTY, MARYLAND			TAKOMA PARK, MARYLAND
		GAITHERSBURG, MARYLAND			UPPER OCCOQUAN SEWAGE AUTHORITY
		GREENBELT, MARYLAND			VIENNA, VIRGINIA
		HERNDON, VIRGINIA			VIRGINIA RAILWAY EXPRESS
		LEESBURG, VIRGINIA			WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
		LOUDOUN COUNTY, VIRGINIA			WASHINGTON SUBURBAN SANITARY COMMISSION
✓		LOUDOUN COUNTY PUBLIC SCHOOLS			WINCHESTER, VIRGINIA
		LOUDOUN COUNTY SANITATION AUTHORITY			WINCHESTER PUBLIC SCHOOLS

BIDDER'S NAME: Heath Gray

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201  
(703) 228-3410

INVITATION TO BID NO. 602-13

SEALED BIDS WILL BE RECEIVED IN HAND IN THE OFFICE OF THE BID CLERK, SUITE 511, 2100 CLARENDON BOULEVARD, ARLINGTON, VIRGINIA 22201, UNTIL 2:00 P.M. ON THE 5<sup>TH</sup> DAY OF MARCH, 2013 FOR:

**PROVISION OF ALL LABOR, EQUIPMENT, MATERIAL, CONSUMABLES, AND INCIDENTALS NECESSARY FOR THE OPERATIONAL MAINTENANCE SERVICES OF EXISTING AND FUTURE INTERACTIVE WATER FEATURES LOCATED THROUGHOUT ARLINGTON COUNTY, VIRGINIA A ON AN AS-NEEDED BASIS, FOR UP TO A TEN-YEAR PERIOD.**

At the time, date and place stated above, bids will be publicly opened.

**NOTE: ARLINGTON COUNTY MOVED TO A NEW SUPPLIER REGISTRATION SYSTEM (BIDDER LIST) ON JUNE 15, 2012. ALL SUPPLIERS, INCLUDING THOSE WHO WERE REGISTERED IN OUR CURRENT SYSTEM, MUST REGISTER IN THE NEW SYSTEM, AND PROVIDE A VALID E-MAIL ADDRESS, TO RECEIVE NOTICES OF BID OPPORTUNITIES. FOR ADDITIONAL INFORMATION AND REGISTRATION LINK PLEASE VISIT [WWW.ARLINGTONVA.US/PURCHASING](http://WWW.ARLINGTONVA.US/PURCHASING).**

Arlington County reserves the right to reject any and all bids, cancel this solicitation, and to waive any informalities or irregularities in procedure. A bidder's submission of a bid indicates acceptance of these terms.

Arlington County, Virginia  
Office of the Purchasing Agent

Maryam N. Zahory, CPPB  
Procurement Officer  
[mzahory@arlingtonva.us](mailto:mzahory@arlingtonva.us)

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## I. INSTRUCTIONS TO BIDDERS

### 1. ADDITIONAL INFORMATION

All questions relating to this solicitation shall be submitted via e-mail to Maryam Zahory in the Office of the Purchasing Agent, at mzahory@arlingtonva.us. For a question to be considered, the subject line of the e-mail must state the following: ITB No. 602-13 Questions. Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a contract resulting from this solicitation, bidders are prohibited from contacting County staff other than the Office of the Purchasing Agent.

**NO QUESTIONS WILL BE CONSIDERED IF THEY ARE SUBMITTED WITHIN THE SEVEN (7) CALENDAR DAYS IMMEDIATELY PRECEDING THE DEADLINE FOR RECEIPT OF BIDS.**

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal amendment only. Bidders are cautioned that any written, electronic, or oral representations made by any County representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the Office of the Purchasing Agent.

### 2. COMPETITION INTENDED

It is the County's intent that this solicitation promotes competition. It shall be the bidder's responsibility to advise Arlington County if any language, requirements or specifications restrict or limit the purchase to a single source. Such notification must be received by the Arlington County Purchasing Agent not later than fifteen (15) calendar days prior to the date and time set for bid opening. A review of such notifications will be made and the bidder notified of the results of the review.

### 3. BID FORM SUBMISSION

The required Bid Form is provided in the solicitation. One (1) fully-completed Bid Form with an original longhand signature, and a photocopy of the signed original (two (2) copies total), shall be submitted by hand, in a sealed envelope or package, to the Office of the Bid Clerk, Suite 511, 2100 Clarendon Boulevard, Arlington, Virginia, 22201, no later than the date and time deadline specified in the Invitation to Bid above. Timely submission is solely the responsibility of the bidder. Bid Forms received after the specified date and time will be rejected. The exterior of the envelope or package shall indicate the name of the bidder, the scheduled bid opening date and time, and the number of the Invitation To Bid. Bids submitted by facsimile or electronically will not be accepted.

A bidder's failure to submit a bid with a fully-completed Bid Form, using the Bid Form provided in this solicitation, shall be cause for rejection of that bidder's bid. A bid will be rejected if its corresponding Bid Form is not signed in the designated space by a person authorized to legally bind the bidder.

Modification of or additions to the Bid Form may be cause for rejection of the bid; however, Arlington County reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a bid as nonresponsive. As a precondition to bid acceptance, Arlington County may, in its sole discretion, request that the bidder withdraw or modify any such modifications or additions which do not affect quality, quantity, price, or delivery. Bids and all documents related to this solicitation submitted to Arlington County by a bidder or a prospective bidder shall, upon receipt by Arlington County, become the property of the County.

### 4. BIDDER CERTIFICATION

Submission of a signed Bid Form is certification by the respective bidder that it is registered with the Virginia State Corporation Commission, if applicable, it is the legal entity authorized to enter into an agreement with the County, and that it will accept any award made to it as a result of the submission.

**5. EXCEPTIONS**

Bidders taking exception to any part or section or term of this solicitation, including, by way of illustration and not limitation, the Scope of Services, the Special Conditions, and any attachments or references hereto or thereto, shall indicate such exceptions on the Bid Form. Failure to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the solicitation as written. However, conditional or qualified bids with such exceptions, unless specifically allowed in this solicitation, are subject to rejection in whole or in part as nonresponsive.

**6. NONCONFORMING TERMS AND CONDITIONS**

If a bidder submits with its bid alternate terms and conditions that do not conform to the terms and conditions in this solicitation, the bid will be subject to rejection for unresponsiveness. Arlington County reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to a determination by the County of unresponsiveness as a result of the submission of nonconforming terms and conditions.

**7. ERRORS IN EXTENSION**

Where the unit price and the extension price are at variance, the unit price will prevail.

**8. DISCOUNTS**

Discounts contingent on payment of invoices by Arlington County within a stipulated period of time will be accepted as a component of a bid, but will not be considered by Arlington County when evaluating bid prices or when making an award.

**9. EXPENSES INCURRED IN PREPARING BID**

Arlington County accepts no responsibility for any expense incurred by any bidder in the preparation and presentation of a bid. All expenses related to a bid are the sole responsibility of the bidder.

**10. BIDDER INVESTIGATIONS**

Before submitting a bid, each bidder must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by Arlington County that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful bidder.

**11. INCOMPLETE DOCUMENTS**

Each bidder is responsible for having determined the accuracy and/or completeness of the solicitation documents upon which it relied in making its bid, and has an affirmative obligation to notify the Arlington County Purchasing Agent immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential bidder downloaded an electronic version of the solicitation documents, that potential bidder is responsible for determining the accuracy and/or completeness of the electronic documents. If the successful bidder proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified the Arlington County Purchasing Agent, the bidder hereby agrees to perform any activity described in the missing or incomplete documents at bidder's sole expense and at no additional cost to Arlington County.

**12. QUALIFICATION OF BIDDERS**

Each bidder may be required, before the award of contract, to show to the complete satisfaction of the Purchasing Agent that it has the necessary facilities, ability, and financial resources to comply

with the contract and furnish the service, material or goods specified herein in a satisfactory manner. Each bidder may also be required to provide past history and references which will enable the Purchasing Agent to be satisfied as to the bidder's qualifications. Failure to qualify according to the foregoing requirements will result in bid rejection by Arlington County.

**13. DEBARMENT STATUS**

The bidder shall indicate in the space provided on the Bid Form, whether or not it, or any of its principals, is/are currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the bid.

**14. ALTERNATE BID**

Bidders who have other items they wish to offer in lieu of, or in addition to, what is required by this solicitation shall submit a separate bid clearly marked "ALTERNATE BID". Alternate bids will be automatically deemed nonresponsive and will not be considered for award. Such bids will, however, be examined prior to awarding the contract contemplated herein and may result in either cancellation of all bids in order to permit rewriting of the solicitation to include the alternate item in a rebid or the alternate item may be considered for future requirements.

**15. INFORMALITIES**

Arlington County reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a bid insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the services being procured. If insufficient information is submitted for Arlington County to properly evaluate the bid by a bidder; Arlington County reserves the right to require such additional information as it may deem necessary after the bid opening time and date, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the services being procured.

**16. ARLINGTON COUNTY BUSINESS LICENSES**

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

**17. AUTHORITY TO TRANSACT BUSINESS**

Any bidder organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper full and legal name of the firm or entity and the identification number issued to the bidder by the State Corporation Commission must be written in the space provided on the Bid Form. Any bidder that is not required to be authorized to transact business in Virginia shall include in its bid a statement describing why the bidder is not required to be so authorized. The County may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a prospective and/or successful bidder to provide such documentation shall be grounds for rejection of the bid or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

**18. BID WITHDRAWAL PRIOR TO BID OPENING**

No bid can be withdrawn after it is filed with the Bid Clerk unless the bidder makes a request in writing to the Purchasing Agent prior to the time set for the opening of bids.

**19. WITHDRAWAL OF BID FROM CONSIDERATION AFTER BID OPENING**

After the opening of a bid, a bidder may withdraw its bid from consideration if the price of the bid is substantially lower than other bids due solely to a mistake therein, provided the bid is submitted in good faith, the mistake is a clerical mistake as opposed to a judgment mistake, and is actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. No partial withdrawals of bids will be permitted after the time and date set for the bid opening. The bidder must give notice in writing to the Arlington County Purchasing Agent of a claim of right to withdraw a bid and provide all original work papers, documents and other materials used in the preparation of the bid sought to be withdrawn, within two (2) business days after the date of bid opening. A bid may also be withdrawn if the Arlington County fails to award or issue a notice of intent to award the bid within ninety (90) days after the date fixed for opening bids.

**20. PARKING**

At most Arlington County government facilities, parking for contractors' vehicles is not provided by Arlington County. A contractor is responsible for the payment of any parking charges or fines resulting from illegal parking at any worksite(s).

**21. REQUIREMENTS CONTRACT AND ACKNOWLEDGEMENT**

Bidders acknowledge that the contract that will be entered into as a result of this solicitation will be a requirements contract. Arlington County will have no obligation to the successful bidder if no items or services are required. Any quantities which are included in this solicitation are the present expectations of those who are planning for Arlington County for the period of the contract. The amount is only an estimate and each bidder understands and agrees that Arlington County is under no obligation to the successful bidder to buy any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. Each bidder further understands that Arlington County may require 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 in the contract.

**22. TRADE SECRETS OR PROPRIETARY INFORMATION**

Trade secrets or proprietary information that is submitted by a bidder or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) of the Arlington County Purchasing Resolution may be exempted from public disclosure under the Virginia Freedom of Information Act ("VFOIA"). However, the bidder or contractor must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing, on the Bid Form, the data or other materials to be protected and state the reasons why protection is necessary or falls within the exception to the VFOIA. It is the bidder's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

**23. INTEREST IN MORE THAN ONE BID AND COLLUSION**

Multiple bids received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one (1) bid for a solicitation both as a bidder and as a subcontractor for another bidder will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable

grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

**24. METHOD OF AWARD**

The County will make the award for this solicitation to the lowest responsive and responsible bidder. The determination of the lowest bid will be done through the use of a bid formula that will be kept sealed during the bidding period and will become part of the bid record at the bid opening.

**25. INSURANCE REQUIREMENTS**

Each bidder must review the insurance requirements section carefully with its insurance agent or broker prior to submitting a bid to ensure they can provide the specific coverage requirements and limits applicable to this solicitation. If the bidder is not able to meet the insurance requirements of the solicitation, alternate insurance coverage satisfactory to Arlington County may be proposed by the bidder and considered by the County. Written requests for consideration of alternate coverage must be received by the County Purchasing Agent at least ten (10) working days prior to the date set for receipt of bids. If the County denies the request for alternate coverage, the coverage required by the Insurance Requirements section must be provided. If the County permits alternate coverage, an amendment to the Insurance Checklist will be issued prior to the time and date set for receipt of bids. The insurance requirements herein shall neither operate as a limitation of the Contractor's liability to the County nor as a limitation of the Contractor's duty of indemnification, as set forth in this solicitation and any resulting Contract.

**26. CONDITIONS OF THE RIDER CLAUSE**

The successful bidder have the option to extend any contract resulting from this solicitation to all or some of the member jurisdictions of the Metropolitan Washington Council of Governments ("COG") and the Northern Virginia Cooperative Purchasing Council, as set forth in the extension checklist contained in the Bid Form. The following conditions shall apply to the extension of an award to a designated jurisdiction:

- a. A negative reply to inclusion of any jurisdiction shall not adversely affect consideration of a bid for award.
- b. There shall be no obligation on the part of any designated jurisdiction to utilize an award extended to that jurisdiction.
- c. The awardee is solely responsible for notification of the identified jurisdictions of the availability of the award.
- d. Arlington County shall not be held responsible for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.
- e. Participating jurisdictions will be permitted to purchase at Contract prices in accordance with contract terms. Participating jurisdictions will place their orders directly with the awardee and will be responsible for placing orders directly with the awardee, arranging deliveries, reconciling discrepancies and invoices, and issuing payments.
- f. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required insurance policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are

unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

- g. Any extension to another jurisdiction shall be at the unit prices identified in the bid. Bidders shall not, under the conditions of this extension, offer any adjustment, addition, modification or other change to the technical requirements of this solicitation or the unit prices awarded by Arlington County under this solicitation to any public body to which the award is extended.

**27. NOTICE OF DECISION TO AWARD**

When the County has made a decision to award a contract(s), an e-mail with a Notice of Decision to Award will be sent to all bidders, using the email address provided in the Bid Form.

## II. SCOPE OF SERVICES

The objective of this solicitation is to establish a contract with a qualified source to provide seasonal operational maintenance, daily water quality testing, and necessary repairs for water feature equipment as may now be operational or later become operational throughout Arlington County ("County").

- a. Penrose Square Park:  
2503 Columbia Pike Will become operation April 1, 2013
- b. Virginia Highlands Park:  
1600 S. Hayes St. (currently under construction, will become operational during contract term)
- c. Mosaic Park:  
544 N. Pollard St. (currently under construction, will become operational during contract term)
- d. James Hunter Park:  
N. 13th & Herndon St. (currently under construction, will become operational during contract term)

### 1. **Service Requirements:**

- A. For the amounts bid for the daily visit, the Contractor shall furnish all necessary labor, transportation, parking fees, tools, tools-of-the-trade, consumable supplies, and materials as may be required to provide a comprehensive operational maintenance, daily water quality testing, and repair services on as needed basis for ALL Water Features that are listed herein. The Contractor shall only assign Certified Pool Operator (CPO) for the performance services under this contract.
- B. The Contractor shall have a certified electrician conduct an annual inspection of electrical system prior to the opening of the operational season. Written documentation of this inspection shall be provided to the County no less than fourteen (14) days prior to the opening.
- C. The County will provide to the Contractor, a copy of the operation's and maintenance manual for each Interactive Water Feature under this contract. A copy of these manuals shall be kept on-site at all the times, while the Contractor is performing maintenance work.
- D. The Contractor shall be responsible for provision of all necessary chemicals for water adjustment, sanitizing, and oxidizing (chlorine) or PH level adjustment, the cost of these materials shall be included in the daily visit rates.
- E. It shall be the responsibility of the Contractor to provide the County with a detailed specific account of the condition and, long term as well as short-term, needs of the operational system. Upon completion, the Contractor shall provide a written report sent to County within twenty-four (24) hours. The Contractor shall also report all concerns regarding the fitness of the pump and filter operations and or safety concerns to the County Project Officer immediately.
- F. At the County's written request, the Contractor shall join the County for a complete inspection of the County's facility.

### G. **WORK HOURS:**

It is the Contractor's responsibility to determine the hourly schedule and access to each facility covered under this contract. No overtime or "portal to portal" charges shall be permitted under the contract.

**2. Contract Changes**

The County reserves the right to add or remove Water Features Systems to or from contract. The additions or removals shall be at the sole discretion of the County. The County will provide the Contractor a written notice ten (10) days in advance of the date on which contract changes will go in effect. The Contractor shall adjust its billing according to the notices received.

**3. Operational Period And Frequency Of Services Requirements:**

- a. The operational period shall be from April 1 thru October 31<sup>st</sup> of each calendar year.
- b. The Contractor shall, if requested by the County, operate the interactive water features beyond the operational period.
- c. The County may in its sole discretion reduce the number of days of the operational period, if doing so is in the best interest of the County. The reduction will be based on the number of days that the features will not be operational.
- d. The Contractor shall visit each facility on daily basis during the operational period.
- e. The County will notify the contractor of the extended or reduced operation period in writing seven (7) days in advance of such change.

**4. Daily Visits:**

- a. Daily visits shall be performed at least once a day, seven (7) days a week, at each site as they become operational.
- b. During each daily visit, the Contractor shall perform all required water quality tests and inspections according to Chapter 24:1, Water Recreation Facilities Ordinance of the Arlington County Health Department Code.
- c. The Contractor shall post the record of each tests on site for each Interactive Water Feature as they become operational (in defined location by the County at each site)
- d. The Contractor shall also update the daily record with the necessary information.
- e. Time of the daily visits will be scheduled by the County prior to each season

At the minimum, during the daily visits the Contractor shall:

- 1) Post the disinfectant residuals and water balance parameters
- 2) the disinfectant residuals and water balance parameters shall be continuously maintained within the following ranges:

Parameter	Minimum	Ideal	Maximum
IWF Free Chlorine(ppm)	3.0	4.0	9.0
Combined Chlorine(ppm)	-	-	2.0
pH	7.2	7.4-7.6	7.8
Total Alkalinity(ppm)	80	100	160
Calcium Hardness	200	200-400	800

- 3) Readings of the disinfectant residuals shall be recorded and immediately corrected if they fall outside of the range.



- 4) A copy of these records shall be supplied to the Public Health Division upon request.
- 5) Provide all necessary chemicals to balance the water and chemical levels of PH, Disinfectants, Total Alkalinity and calcium hardness.

**5. Special Events:**

The County will notify the Contractor, of any special events that will be held in and around the Interactive Water Features.

- a. The Contractor shall be responsible to maintain the Water Feature's water balance up to the start of a special event; however, they may not be required to perform testing during the special event.
- b. The Contractor shall be responsible for shutting off the pumps and motors to the water feature prior to the event. The County will notify the contractor in writing at least a week prior to the event.

**6. Public Hours of Operation:**

Penrose Square Park:

2503 Columbia Pike, Monday - Sunday 10:00 AM to 10:00 PM. (2013 season consist of two-hundred fourteen days).

Virginia Highlands Park:

1600 S. Hayes St. (will be determined when becomes operational)

Mosaic Park:

544 N. Pollard St. (will be determined when becomes operational)

James Hunter Park:

N. 13th & Herndon St. (will be determined when becomes operational)

**7. Seasonal Work:**

**A. Opening**

The Contractor shall ensure that the Facility is ready to open for the season by completing the following at least fourteen (14) days prior to opening day:

- A. Coordinate access to the facility and check out of keys for this preparation work with the County designee. Note: the Contractor shall bear full responsibility for all keys and/or security access codes/equipment assigned to the Contractor and shall be responsible for any alterations to the lock/security system needed, should the system be compromised by the actions of the Contractor.
- B. Reconnect all plumbing fixtures to facility; **contact the County to have water turned on.** Note: any cost relative to failure to contact Owner to authorize water to be turned on shall be the Contractor's responsibility. After water is turned on; monitor all plumbing and report leaks to Owner immediately.
  - 1) Inspect, clean, set up and prepare for use skimmer system including covers and baskets.
  - 2) Inspect backflow preventer by certified backflow inspector
  - 3) Inspect, clean and prepare all drains for use. Ensure covers are secure and all hardware is in place.
  - 4) Inspect and prepare all motors and pumps for most effective operation.

- 5) Inspect and prepare filter tank for daily operation.
- 6) Inspect, prepare and install disinfectant system (chlorinator), ORP and PH sensors.
- 7) Inspect, install and prepare for use recirculation feeder housed with Owner.
- 8) Verify that all valves are completely OPEN except for the DISPLAY ADJUSTMENT VALVES. If not properly adjusted, these valves should be initially set at 50% open.
- 9) Start filter pump to verify that it is pumping water by checking the Filter Pressure Gauge. Filter pressure should increase by at least 5 PSI when pump is started.
- 10) Start main pressure pump and verify that it is pumping water by checking the Discharge Pressure Gauge. Pressure should increase by at least 5 PSI when pump is started.
- 11) Set the time clock programming for appropriate operating times.
- 12) Observe fountain operation for at least ten minutes to verify proper operation.
- 13) Before leaving, verify that any sump pumps or vent fans, if so equipped, are operations and that all selector switches are in their AUTO positions.
- 14) Inspect, set up and prepare all chemicals, feeders, controllers and chemical tubing.
- 15) Report to Owner all operating deficiencies and problems at least ten (10) days before opening.
- 16) Contractor shall notify the County in writing immediately upon completion of spring startup.
- 17) The County will also be responsible for the purchase, installation and inspection of water feature's signage to ensure safe operations.

#### **B. Closing**

Unless the County elects "Extension of Operation", the water feature operation shall be considered closed for the season on November 1st and Contractor shall close the facility as soon after that date as Contractor deems possible. No closing procedures shall be performed before November 1st. At the end of the each season, as herein specified or as extended by mutual agreement between the parties, Contractor shall winterize and close the facility and perform and furnish the following services:

- 1) Turn all pump and lighting circuit breakers OFF.
- 2) Do NOT turn off any circuit breaker that powers a protective device such as a sump pump or vent fan.
- 3) Before leaving fountain, verify that the sump pump, if so equipped is operational.
- 4) If the fountain is to be out of service for an extended period of time, we recommend that the fountain be drained, the nozzles removed, and that all open pipes be plugged or otherwise sealed to prevent debris from getting into the piping system.
- 5) In addition, verify that no chemicals have been left in the skimmers or chemical feeders.
- 6) Drain all fountain basins completely and store drain plugs and standpipes in a safe location.
- 7) Drain all equipment and piping within the equipment space.

- 8) Turn OFF the ventilation system for equipment room unless system is thermostat protected
- 9) Do NOT turn OFF power to sump pumps (if so equipped)
- 10) Install plumbers' plug to seal ALL open piping connections in fountain pool floors.

**WARNING! DO NOT ADD AUTOMOTIVE ANTI-FREEZE TO FOUNTAIN, IT IS POISONOUS.**

- 11) Winterize according to manufacturer's instructions.
- 12) Disconnect all plumbing fixtures to facility and store all plugs from plumbing; contact the County to shut off the water.
- 13) After water is turned off; report any problems to County immediately.
- 14) Provide a list of parts required for next season's operation to the County. This should include plumbing and electrical items.
- 15) The Contractor shall conduct an end of season inspection immediately upon conclusion of the season, and shall provide a written report to the County within two weeks after the closing of the pool.
- 16) The Contractor shall perform reasonable inspections of all equipment and advise the owner of needed repairs and/or replacement of defective, worn, or damaged equipment in the year-end written report.
- 17) At the County's request, the Contractor shall provide specifications for the repairs and/or replacement to the County.
- 18) The Contractor shall prepare an accurate, written inventory of equipment and supplies, and shall secure/store equipment and supplies. The inventory report must be verified by County before it will be accepted.

**C. Emergency Closing:**

The Contractor shall shut off the interactive water feature system, upon the request from the County Project Officer in response to an emergency situation (severe weather, equipment malfunction, etc.)

**8. Maintenance During Operation Period:**

The Contractor shall exercise reasonable care and diligence to provide services for the daily operation of all Interactive Water Feature(s), which shall include the following duties:

- a. Maintain, and operate the filter equipment in accordance with the Arlington County Health Department requirements.
- b. Backwash filtering system; to be conducted and completed when the water feature(s) is not in use.
- c. Work with the County in handling complaints users may have, report via phone call or email, depending on the severity, all complaints within twenty-four (24) hours to the County designee
- d. Clean all strainers on all pumps and associated filtering devices regularly, daily if necessary.
- e. Provide the necessary tools for all equipment Contractor will be operating.
- f. Contractor shall retain a record of all problems brought to their attention. The County will review this log at weekly intervals. A daily log of communication shall be kept on site.

**9. Emergency Response**

The Contractor shall respond within two (2) hours of receiving a call from the County, identifying an emergency event. If the Contractor is unable or fails to respond within the required time frame, the County reserves the right to solicit the service on an open market. If the Contractor is unable or fails to respond within the required time frame on two (2) or more occasions during Contract Term, the County may terminate the contract for convenience.

**10. Repairs and Modification of Equipment:**

Repairs and modifications (replacements, relocations and installation of existing and new equipment) outside the scope of this contract and which are not due to the Contractor's improper performance or failure to perform preventive maintenance, shall be completed on a time and materials basis using the contract labor rates. Materials and equipment for such non-contract work shall be at the Contractor's cost. The Contractor shall attach the original receipts to the invoices, in which reimbursement for material cost for repairs are sought. The County will reimburse the Contractor for any subcontractor work including labor rates and parts charged by the subcontractor at the Contractor's cost. Repair and modification work is not authorized unless specifically approved in advance by the County Project Officer and supported by issuance of a Purchase Order.

**11. Procedures for Approval of Repair and Modification Work**

The Contractor shall submit a proposal for all repair and modification work with detailed breakdown of costs, including, labor rates, materials, parts and equipment. The Contractor shall not begin such work unless they receive a written authorization in the form of a County Purchase Order.

The Contractor's proposal shall be based on the Contract Labor Rates, and for the actual cost for parts used to complete the work. If the Contractor's actual charges exceed the estimate submitted to the County Project Officer by more than 20% on two (2) or more occasions during any two (2) month period, the County may terminate the contract for default.

The County may issue a separate formal bid for equipment, whose cost exceeds \$25,000, However, the County reserves the right to solicit additional cost proposals or issue a separate bid(s) for any such equipment, work and material, regardless of cost.

**12. MATERIAL AND WORKMANSHIP:**

All parts used or furnished under this contract shall be new and genuine manufacturer's recommended or authorized replacement parts. Use of used parts is prohibited. Use of manufacturer rebuilt parts and components may be authorized by the County Project Officer, provided such parts and components carry the same warranty as the new parts or components. Prior approval of the County Project Officer is required on a case by case basis when rebuilt parts are proposed for use.

The Contractor shall maintain a sufficient quantity of common repair parts on its service vehicles and/or have such common repair parts immediately available from Contractor's warehouse in order to prevent unnecessary downtime of equipment.

The Contractor shall guarantee all parts and workmanship for a period of one year or the manufacturer's warranty period, whichever is longer. Any repeated calls for repairs for the same reason or problem within this time period shall be made at no cost to the County.

**13. CORRECTIVE WORK**

The Contractor shall repair any all damages to Interactive Water Feature equipment caused by Contractor's negligence or malfeasance, requiring repairs outside the scope of work of this Contract, at no additional cost to the County.

**14. PAYMENTS**

Payments for all labor performed on a time and materials basis shall be for work performed and services rendered on the job site only. No "portal to portal" or overtime charges shall be permitted under the contract.

III. **CONTRACT TERMS AND CONDITIONS**

**1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of the bid of the successful bidder (hereinafter "Contractor") and Arlington County (hereinafter "County") Invitation to Bid No. **602-13**.

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 as the "Contract" or "Agreement".

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"), more particularly described in the Scope of Services included with the Invitation to Bid. The primary purpose of the Work is to provide operational maintenance services for County Interactive Water Features. 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 term of this Agreement will commence on upon finalization of award of this contract by the County, and the Contractor shall continue operations until March 31, 2023.

**4. CONTRACT PRICING**

Unless otherwise provided in the Contract Documents, the Contractor shall provide the goods covered in the County's Invitation to Bid No. **602-13** at the prices provided in the bid of the Contractor.

**5. CONTRACT PRICING ADJUSTMENT**

The Contract unit price(s) set forth in the bid of the Contractor 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 April 30<sup>th</sup> of any given year of the contract (April 30 may be referred to herein below as "Anniversary Date").
- B. Requests for adjustment(s) to unit price(s) shall not exceed the percentage increase or decrease of the U.S. Department of Labor, Employment Compensation (Not Seasonally Adjusted): Employment Cost Index, for Total Compensation for all workers (Table 4) during the twelve (12) month that ended in the prior September of each year of the contract.
- C. Any adjustment(s) to unit price(s) approved by the County as a result of the procedure set forth in subsections A and B of this section shall become effective the day after the next Anniversary Date and shall be binding on both parties for the remainder of the Contract Term unless an adjustment is requested by the Contractor and approved by the County in a subsequent year according to the procedure set forth in this section.

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

**6. 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 the 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.

**7. PROJECT STAFF**

The Project Officer will, throughout the Initial Contract Term and Subsequent Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the Project officer 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.

**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 project or of the Contractor's services has 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 notify the Project Officer immediately 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. PAYMENT TERMS**

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Office, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority services have been performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire Work by the County.

**10. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven (7) days after

receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

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

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar 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 as those contained herein with respect to each lower-tier subcontractor.

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

#### **11. 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 services provided under this Contract or substitutes for such 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.

#### **12. REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)**

During the Initial Contract Term or any Subsequent Contract Term, the Contractor will furnish all of the goods 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 and/or rates set forth in this Contract.

**13. 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 Contractors provide services without a signed County Purchase Order, it does so at its own risk and expense.

**14. 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 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 the contract.

**15. SUPERVISION BY CONTRACTOR**

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

**16. 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 federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related 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 the 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 \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

**17. 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, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

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

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of 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 of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "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, the employees of whom 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.

**19. UNSATISFACTORY WORK**

If any of the work done, or material, goods, 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, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. In the event

the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work, material, goods, or equipment and replace it with suitable and satisfactory work, material, goods, or equipment, the County shall have the right, but not the obligation, to remove or replace the rejected work, material, goods, 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. At its discretion, 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.

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

The Contract shall remain in force for the Initial Contract Term or 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) 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 and 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.

#### **21. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The performance of Work under this Contract may be terminated by the County 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.

#### **22. 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.

**23. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask work 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, 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 hereunder. 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.

**24. 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.

**25. OWNERSHIP AND RETURN OF RECORDS**

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or to 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.

**26. CONFIDENTIAL INFORMATION**

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

**27. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia 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.

**28. COUNTY EMPLOYEES**

No employee of the County 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.

**29. 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, acts of terrorism, or an act of God beyond the control of the Contractor and outside 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, acts of terrorism, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

**30. 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 cost or expense, at the sole option of the County.

**31. RELATION TO THE 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 from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. 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.

**32. 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 services purchased or acquired by the County under this Contract.

**33. REPORT STANDARDS**

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

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

All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;

All copies shall be double-sided;

Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);

The use of plastic covers or dividers should be avoided; and

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

**34. 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 or 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.

**35. 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.

**36. AMENDMENTS**

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**37. 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.

**38. DISPUTE RESOLUTION**

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing 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. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending any decision of the Project Officer, County Manager, County Board, or a court of law.

**39. 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 hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In



performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

**40. ARBITRATION**

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

**41. 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.

**42. 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.,

**43. 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.

**44. 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.

**45. SURVIVAL OF TERMS**

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

**46. 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.

**47. 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.

**48. 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 by 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:** REFER TO BID FORM OF CONTRACTOR

**TO THE COUNTY:**

The County Project Officer (refer to section headed Project Officer) under the Contract Terms and Conditions section (Contractor shall request address from Project Officer);

AND

Richard D. Warren, Jr., Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**49. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**50. INSURANCE REQUIREMENTS**

Prior to the execution of this Contract and upon any Contract extension thereafter, the Contractor shall provide to the County Purchasing Agent evidence indicating that the Contractor has in force the coverage and endorsements (collectively referred to hereinafter "coverage", "coverages" or "insurance") required below. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated below or in the Contract Documents.

All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with an A.M. Best rating of "A-VII", and as acceptable to the County. The insurance requirements herein shall not operate as a limitation of the Contractor's liability or as a limitation of the Contractor's duty of indemnification, as set forth in this solicitation and any resulting contract. The Contractor is responsible for determining whether the minimum coverage below are adequate to protect its interest.

The Contractor shall secure and maintain (and ensure that its subcontractors, if any, secure and maintain) all insurance required by law or this Contract, including without limitation:

- 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.
- 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 additional insureds on all policies, except Workers Compensation, Auto, and Professional Liability. A copy of the Additional Insured endorsement, or an "Acord" certificate with the additional insured endorsement box checked for all policies that include an additional insured endorsement, must be provided by the Contractor to the County Purchasing Agent prior to the execution of this Contract and any Contract extension. Failure to provide such documentation shall result in cancellation of the award or of the Contract.
- f. Cancellation - If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract Term is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium). A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.
- 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 – All documentation and copies of endorsements required hereunder shall state this Contract's number and title.
- i. Certificate Holder - The Certificate Holder must be identified as:

The County Board of Arlington County, VA  
c/o The Purchasing Agent  
2100 Clarendon Boulevard, Suite 500  
Arlington, VA 22201

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 additional 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' documentation of coverage and endorsements specified herein to the County Purchasing Agent immediately upon request by the County and/or prior to a

subcontractor performing work related to this Contract.

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, the alternative coverage(s) are submitted to and acceptable to the County and the terms additional endorsements required hereunder are met to the satisfaction of the County Purchasing Agent or Risk Manager. The Contractor must provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy and security of the insurance funding.

IV. ATTACHMENTS AND FORMS

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