

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

NOTICE OF AWARD OF CONTRACT

TO: AUMA ACTUATORS, INC.	DATE ISSUED:	October 10, 2013
100 SOUTHPOINTE BOULEVARD		
CANONSBURG, PENNSYLVANIA 15317	CURRENT CONTRACT NO:	625-13
	CONTRACT TITLE:	REPLACEMENT PARTS, HARDWARE, & EQUIPMENT FOR ACTUATORS

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.

The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on NOVEMBER 30, 2022.

The contract documents consist of the terms and conditions of the standard form agreement including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

REFER TO PARAGRAPH 3 & Exhibit C (ATTACHED)

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: JEFFREY GIBBONS-NEFF

VENDOR PAYMENT TERMS: NET 30 DAYS


COUNTY CONTACT: DENNIS DOBBS

TELEPHONE NO.: 703-228-6827

EMAIL: DDOBBS@ARLINGTONVA.US

CONTRACT AUTHORIZATION

DISTRIBUTION


Elizabeth B. Dooley, CPPO, CPPB
Assistant Purchasing Agent

10/10/13
Date

VENDOR: 1
BID FOLDER: 2

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

AGREEMENT NO.625-13

THIS AGREEMENT (hereinafter "Agreement" or "Contract") is made, on the date of execution by the County, between Auma Actuators, Inc., 100 Southpointe Boulevard, Canonsburg, Pennsylvania 15317 ("Contractor"), a State of Pennsylvania Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The contract documents consist of this Agreement, Exhibit A (Specifications and Appendix 1 -Water Pollution Control Bureau Contractor Safety Standards), Exhibit B (Cancellation & Returned Goods Policy) (collectively the "Contract Documents").

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents.

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

2. CONTRACT TERM

The Contractor's provision of goods and services for the County will commence upon execution of this Agreement by the County and shall be completed no later than November 30, 2022, subject to any written modifications as provided for in the Contract Documents.

3. SCOPE OF SERVICES

The Contractor shall provide all goods and services described in the Contract Documents. The primary purpose of the Agreement is provision of equipment and replacement parts, accessories, and hardware for Auma engineered equipment to meet the needs of Arlington County to maintain equipment installed at the County's Water Pollution Control Plant ("WPCP") and provide parts and materials required to keep the WPCP operational at all times. The Scope of Work is more fully described in Exhibit A.

4. CONTRACT PRICING

The County will provide a requisition to the Contractor identifying all the goods or services needed for a single order. The Contractor will provide a price quote for each good or service on the requisition within 48 hours of receipt from the County. The County Project Officer shall review the price quote from the Contractor and either approve the price quote for purchase or negotiate the pricing with the Contractor until an acceptable price is reached.

Unless otherwise provided in the Contract Documents, the Contractor shall provide the goods set

forth in the Contract Documents at a minimum of a fifteen (15%) percent discount from the manufacturer's listed price for goods and services shall be performed based on the pricing listed in Exhibit B.

5. REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)

During the Contract Term the Contractor will furnish all goods and 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 few, or no items or services are required or requested by the County.

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 Documents. 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. PAYMENT TERMS

Payment terms will be recorded by the County as Net thirty (30) days. The Net thirty (30) days will commence from the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing goods shipped and or completed work which is reasonable and allocable to the Contract, and meets the Contract requirements. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the goods and work.

The number of the County Purchase Order pursuant to which authority shipments have been made or work performed shall appear on all invoices and packing slips.

All time periods concerning warranties or guarantees shall be deemed to begin from the date of final acceptance. The date of final acceptance for a particular good or service is the date on which the County issues the payment for the goods received or performance of the required work.

8. 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.

9. NON-APPROPRIATION

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

10. COUNTY PURCHASE ORDER REQUIREMENT

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

11. DELIVERY

All goods are purchased F.O.B. destination – Arlington County, VA as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Contractor shall bill the County, at its cost, for transportation costs and provide a copy of the freight carrier's invoice.

12. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance, by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

13. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

14. OSHA REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration ("OSHA") requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or federal occupational safety and health requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor.

15. HAZARDOUS MATERIALS

Arlington County is subject to the Hazard Communication Standard, 29 CFR § 1910.1200 ("Standard"). The Contractor agrees that it will provide or cause to be provided Material Safety Data Sheets ("MSDS") required under the Standard for all hazardous materials supplied to the County or used in the performance of the Work. Such MSDS shall be delivered to the County no later than the time of actual delivery of any hazardous materials to the County or use of such material in the performance of work under the Contract by the Contractor or its subcontractors, whichever occurs first. Container labeling that meets the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The County reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when MSDS have not been received prior to or at the time of receipt of the shipment for use by the County or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of MSDS are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials.

16. PROHIBITION AGAINST ASBESTOS-CONTAINING MATERIALS

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to worker protection, the immediate removal and legal disposal of the goods, equipment or materials containing asbestos. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this contract. The Contractor also shall reimburse

to the County all expenses related to and the costs of such goods, equipment, supplies or materials installed. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the County, the County shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The County shall be entitled to offset such expenses against any sums owed by the County to the Contractor under this Contract.

17. 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.

18. 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.

19. 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 who 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.

20. FAILURE TO DELIVER

In case of failure by the Contractor to deliver goods or services in accordance with the Contract Documents, the County, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or under law. At its discretion, the County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

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

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

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least thirty (30) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs, except for order cancellation costs and re-stock fees (see attached Cancellation and Returned Goods Policy.).

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 Project 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.

22. 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, including order cancellation costs and re-stock fees 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.

23. 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 attorney's 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. LIMITATION OF LIABILITY

Except for claims involving personal injury or death or intellectual property, any and all losses as described in section 23 (Indemnification), shall be limited to lesser of the actual costs or contractor's annual product liability insurance limit of \$1,000,000. See attached certificate of insurance.

25. 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 goods and/or services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Price includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the work 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 attorney's 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.

26. 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 affect 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 Agreement 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.

27. CONFIDENTIAL INFORMATION

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

28. 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 bidder, 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.

29. 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 there from which is not available to the general public.

30. FORCE MAJEURE

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

31. 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.

32. 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.

33. ANTITRUST

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

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 and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

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 sixty (60) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

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. NON-EXCLUSIVITY 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. **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.

44. SURVIVAL OF TERMS

In addition to the 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; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION.

45. 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.

46. 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.

47. NOTICES

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

TO THE CONTRACTOR:

Barbara Craycroft
Auma Actuators, Inc.
100 Southpointe Boulevard
Canonsburg, Pennsylvania 15317

TO THE COUNTY:

Dennis Dobbs, Project Officer
DES, Water Pollution Control Bureau
3402 S. Glebe Road
Arlington, VA22202

AND

Richard D. Warren, Jr., Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia22201

48. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

49. INSURANCE REQUIREMENTS

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

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insured on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - All insurance policies required by this Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Purchasing Agent, Arlington County, Virginia." If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.

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

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

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

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

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

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

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA


AUTHORIZED
SIGNATURE:

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

DATE: 10/10/13

AUMA ACTUATORS, INC.

AUTHORIZED
SIGNATURE:


NAME AND
TITLE: DENNIS A. DIRAZZA, CFO

DATE: 10/4/2013

AGREEMENT NO. 625-13
EXHIBIT A

SPECIFICATIONS

This Agreement is established for the Contractor's provision of equipment and replacement parts, accessories, and hardware for actuators and Auma engineered equipment.

The County may order a wide range of equipment, hardware, parts, supplies and material for immediate delivery.

The County will require the Contractor to submit a price quote for the purchase of new OEM equipment and parts or the necessary labor service to assist the County with repair of OEM equipment and parts.

A. REPLACEMENT PARTS, ACCESSORIES, AND HARDWARE

1. The County contacts the Contractor and specifies the needs.
2. The Contractor shall prepare a written quote within forty-eight (48) hours to the County.
3. Upon approval of the quote, the County will contact the Contractor, provide the Contractor with a County Purchase Order and authorize shipment of the goods.
4. All spare parts (stocked and non-manufactured) shall be shipped within three (3) calendar days following receipt of County Purchase Order. The Contractor shall notify the County in writing within twenty four (24) hours following the receipt of County Purchase Order if there are any manufacturer delays due to the item ordered being special order item or if there are any production delays for ordered item(s) by the manufacturer.
5. All non-stocked and manufactured spare part lead times will be stated in the quotation.
6. The Contractor shall clearly state the reason for the delay and propose solutions to mitigate the situation, and the promised date by which the ordered item(s) will be received by the County.

B. DELIVERY TO THE COUNTY

All County orders shall be F.O.B. Destination - Arlington County. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Freight costs will be billed to the county, at cost on a separate line item on the invoice, and provide freight invoice for County verification. The Contractor shall deliver items ordered by the County to the individual ordering, as directed at the time of order.

All orders for in stock (non-manufactured) items shall be shipped within three (3) calendar days following receipt of County order. The Contractor shall notify the County in writing within two (2) County Business days following the receipt of County order if there are any manufacturer delays due to the item ordered being special order item or if there are any production delays for ordered item(s) by the manufacturer.

The Contractor shall clearly state the reason for the delay and propose solutions to mitigate the situation, and the promised date by which the ordered item(s) will be received by the County.

Orders for custom-made items will be shipped to the County in accordance with the standard

lead time state on the quotation or order acknowledgement for that particular manufacturer.

C. PACKING SLIPS:

All County order shall include a packing slip. The packing slip shall include the following detail:

- 1) County Purchase Order number;
- 2) Date order was placed;
- 3) Serial\UPN or catalogue number for each item delivered or picked up; and
- 4) A description of product(s) shipped, including quantity.

D. PICKUPS AND DELIVERIES

All pickups and deliveries shall be onsite in Arlington County Water Pollution Control Bureau (WPCB) located at 2900 South Eads Street, Arlington, Virginia 22202. Regular business hours at the WPCB are from 6:00 am to 2:30 pm, Monday through Friday. All pickups and deliveries shall be scheduled at regular business hours.

E. REPAIR AND TECHNICAL ASSISTANCE SERVICES

The Contractor shall furnish all necessary labor, tools-of-trade, consumables, supplies and materials as may be required to provide repairs or technical assistance services for Auma engineered equipment. The repairs or technical assistance services shall be performed on-site or over the phone, as requested by the County based on the pricing in Exhibit C.

The Contractor shall coordinate with the County Project officer to schedule these services.

Within five (5) days following completion of the on-site or phone repair or technical assistance services, the Contractor shall submit to the County Project Officer, a written report identifying the equipment serviced and the following information:

1. A general statement as to the condition of the equipment, including identification of model and serial number;
2. Specific recommendations for any major repairs or technical services, modification, upgrade and/or replacement; and
3. An estimate for the cost to accomplish the work recommended in item 2, above, if applicable.

F. REFURBISHING/REBUILDING PARTS:

As part of repair services, if equipment needs to be overhauled or rebuilt, the Contractor shall coordinate delivery of such equipment with the Project Officer by issuing a written (electronic email acceptable) Auma Return Material Authorization (RMA). Afterwards, the County will ship the unit(s) to Auma for evaluation and quote. Auma will inspect and create a written (electronic email acceptable) findings and quote for refurbishment/overhaul of the unit(s) received and forward to the Project Officer within 5 business days. There is no charge to the County for return of units other than the County's freight costs. The County will then provide a written authorization to repair or replace unit(s). The refurbishing\rebuilding services shall be billed using the labor rates contained in Exhibit C of this Agreement.

Repair services that are required under this Contract shall be performed as requested by the

County Project Officer.

Repair services which are not due to the Contractor's provision of inferior quality parts shall be completed on a time and materials basis using the labor rates contained in Exhibit C of this Agreement. Repair services required due to the Contractor's provision of inferior quality parts shall be performed at no cost to the County pursuant to the Warranty provisions contained in the Agreement.

Repair work is not authorized unless specifically approved in advance by the County Project Officer and supported by issuance of a Purchase Order.

EXHIBIT B
CANCELLATION & RETURNED GOODS POLICY

CANCELLATION POLICY

This schedule indicates the fees AUMA will charge in the event an order is canceled by the customer. The charges are based on the status of the order at the time of cancellation.

- 1) Order is on HOLD and AUMA has prepared an original submittal and revised the submittal not more than one time: NO CHARGE.
- 2) Order is on HOLD and AUMA as prepared an original submittal and revised the submittal more than one time: FIVE PERCENT (5%) of net order amount.
- 3) Order is released to production, but not yet shipped:
FIFTEEN PERCENT (15%) of the net order amount plus AUMA's cost of procuring material.

NOTE: This policy applies to orders not yet shipped. If an order has shipped, then AUMA's "Return Goods Policy" will be followed.

RETURN GOODS POLICY

Complete Actuators and Products:

AUMA Actuators, Inc. is a manufacturer of custom design and engineered products. As such, electric actuators, electrical and electronic controls and actuator appurtenances are manufactured specifically in accordance to each customer's specification and requirements. All actuators and appurtenances are manufactured from components and sold as new, complete assemblies. AUMA Actuators, Inc. does not inventory finished goods or sell refurbished products.

Therefore, AUMA Actuators, Inc. is not able to accept returns on complete actuators and controls once they have been shipped from the AUMA factory.

Spare Parts:

Spare parts may be returned to AUMA for **exchange only** within 30 days of the initial date of shipment from AUMA Actuators, Inc. in accordance with the following terms:

- 1) Returned part is inspected and found to be in its original state.
- 2) Electronic boards must be shipped in their original packaging.
- 3) Upon receipt of the material by AUMA, an inspection will be performed and costs to bring the returned goods up to "as new" condition will be added to the base charges.

Credit will be issued only to the original purchaser after disassembly and inspection of components to determine their condition. If suitable and of current design, those components may be designated "new" and returned to inventory. All components which cannot be returned to inventory, including machined drive nuts and couplings including the

EXHIBIT B
CANCELLATION & RETURNED GOODS POLICY

charges to machine those drive nuts and couplings are not eligible for credit. A minimum restocking fee of 40% of the original AUMA net sell price will be charged on all components that can be returned to stock. Freight and insurance costs for product returns are the responsibility of the customer requesting credit in addition to damage to the returned equipment incurred during transportation to AUMA Actuators, Inc.

EXHIBIT C

CONTRACT RATE SCHEDULE

New OEM parts shall be provided by Auma at 15% discount from Manufacturer's List Price. All other services shall be performed at the rates provided in this Agreement – Exhibit C.

EXHIBIT C

AUMA Actuator Service Policies

In House Service Policy

In order to return material to AUMA and remain consistent with our "Terms and Conditions", please follow these steps:

1. Call the AUMA Service Department and request a "Return Authorization Number".

NOTE: AUMA will not accept returned equipment without a return number

2. When requesting a Return Authorization Number, please have the AUMA Sales Order (S.O.#) number and serial number of each unit available. Also be prepared to explain the reason why the unit is being returned to AUMA.
3. The material must be returned to the AUMA location specified, freight prepaid.
4. Make certain the package is marked with the Return Authorization Number.
5. When the unit is received an inspection will be performed, and a quotation prepared based on that inspection. The quotation will be faxed or E-mailed to the customer for their approval. There will be a minimum one hour charge for each unit returned for inspection. No repairs will be done to the equipment until the customer issues a purchase order in hard copy to AUMA Actuators Inc.

Field Service Policy

In order to remain consistent with the AUMA Terms and Conditions of sale, it must be pointed out that field service is not a part of the AUMA warranty. All warranty items should be returned to the factory in accordance with the In House Service Policy. Customers requesting service to their location should adhere to the following procedure:

1. Customer should have the Sales Order (S.O.) number available and the serial number of each unit that requires work. Also be prepared to give a detailed description of the problems encountered or the work that is required.
2. The customer should be prepared to issue a hard copy of a purchase order for the service work. No servicemen will be sent to the field before this is received by the Service Department. If the customer has not done business with AUMA Actuators Inc. previously, they should also send their credit references with the purchase order.
3. If the serviceman is on site, and discovers that a problem has occurred with a component that is covered under the AUMA warranty, the component and the labor to repair it will be warranted. The customer will be responsible for the service expenses.

AUMA Actuator service rates

In-House Rates:

\$120.00 per hour Monday - Friday (one hour minimum for all repairs)
\$180.00 per hour for Saturday
\$240.00 per hour for Sundays and Holidays

Field Service Rates - Within the continental United States:

Monday - Friday (7:00a.m. to 5:00 p.m.)

\$1,000.00 per day plus expenses for service calls outside the 150 mile radius of the AUMA service location.

\$120.00 per hour for an eight hour day plus expenses for service calls within a 150 mile radius of the AUMA factory. Mileage will be charged at 1.25 per mile.

Saturday (7:00 a.m. to 5:00 p.m.)

\$1500.00 per day for service calls outside the 150 mile radius of the AUMA factory plus expenses.

\$180.00 per hour for service calls within 150-mile radius of the AUMA factory plus 1.25 per mile.

Sunday (7:00 a.m. to 5:00 p.m.)

\$2000.00 per day for calls outside the 150 mile radius of the AUMA factory.

\$240.00 per hour for service within the 150-mile radius of the AUMA factory plus 1.25 per mile.

Note: All expenses will be paid by the customer in all categories. All hours worked in excess of the listed times in all categories will be billed at a rate of 1½ times the hourly rate in that category. Excess hours will be approved by the site supervisor with knowledge of the hourly rate charged.

International Travel-Outside the continental United States and offshore oil platforms

Monday - Friday (7:00a.m. to 5:00 p.m.)

\$1200.00 per day plus expenses

\$200.00 per hour in excess of an eight hour day

Saturday (7:00 a.m. to 5:00 p.m.)

\$1500.00 per day plus expenses

\$200.00 per hour in excess of an eight hour day

Sunday (7:00 a.m. to 5:00 p.m.)

\$2400.00 per day plus expenses

\$200.00 per hour in excess of an eight hour day

Note: All expenses will be paid by the customer in all categories. Travel time will be billed at a rate of \$120.00 per hour portal to portal.