

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

AGREEMENT NO. 16-251-9

THIS AGREEMENT is made, on the date of execution by the County, between Rummel, Klepper & Kahl, LLP ("Contractor") a Maryland Limited Partnership, located at 12600 Fair Lakes Circle, Suite 300, Fairfax, Virginia 22033 authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" will consist of:

This Agreement with Scope of Work

Attachment A – Non-Disclosure and Data Security Agreement (Contractor)

Attachment B – Non-Disclosure and Data Security Agreement (Individual)

Attachment C – Federal Transit Administration (FTA) Clauses

Attachment D – FTA Certification Regarding Lobbying Pursuant to 49 CFR PART 20

Attachment E – FTA Certification Regarding Debarment, Suspension and Other Responsibility Matter

Attachment F – Disadvantaged Business Enterprise Provisions – Exhibits 1 thru IV

Attachment G – Price Schedule, Testing Laboratory Fees

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

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

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work") as detailed in the "Scope of Work". The primary purpose of the Work is to provide Construction Management (CM) services for the Columbia Pike Multi-Modal Street Improvements and the Columbia Pike Transit Stations projects. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

The Contract Term shall be One (1) Base Year with Four (4) One-Year Option periods. The Period of Performance shall commence upon the Contract award date and Notice to Proceed. The County, at its sole discretion, may exercise an Option Year by written notice to the Contractor within sixty (60) days of the Base Year Contract expiration date. The preliminary notice shall not commit the County to an extension.

5. OPTION TO EXTEND SERVICES

The County may require continued performance of any services beyond the Contract Term within the limits and at the rates specified in the Price Schedule. This Option Provision may be exercised more than once, but the total extension hereunder shall not exceed six (6) months. The Procurement Officer may exercise the Option by written notice to the Contractor within thirty (30) days of Contract expiration.

6. CONTRACT AMOUNT

This is a Firm Fixed-Unit Price, Indefinite Quantity Task Order Contract.

The County will not compensate the Contractor for any services beyond those included in the Scope of Work unless those additional services are covered by a fully executed Contract amendment. Additional services will be billed at the rates set forth in the Price Schedule unless otherwise agreed by the parties in writing.

7. CONTRACT PRICE ADJUSTMENTS

The hourly/unit price(s) will remain fixed during the Base Period. To request an hourly/unit price adjustment, the Contractor or the County must submit a written request to the other party not less than sixty (60) days before the end of the Base Period. Adjustments to the unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the Base Year period.

Any adjustment to the hourly/unit price(s) that resulting from this provision will become effective on the date the of the Option Year Contract amendment.

If the Contractor and the County have not agreed on a requested adjustment thirty (30) days prior to the commencement of an Option Year, the County may, at its sole discretion, terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

8. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed Work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

9. REIMBURSABLE EXPENSES

Only reasonable project-related expenses identified in the Scope of Work and pre-approved by the County will be reimbursed. The Contractor will charge allowed reimbursable expenses on a unit-price basis and must provide verified invoices.

10. REIMBURSABLE TRAVEL-RELATED EXPENSES

The County will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget. For employees located outside this area, the County will reimburse for pre-approved travel-related expenses, documented with receipts, as follows:

Meals: The County will reimburse at the U.S. General Services Administration's ("GSA") per diem rates for the destination, current for the date of travel, with the first and last days of travel counted at 75% of the per diem rate.

Lodging: The County will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the Work is performed, up to the GSA's daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the Work, including a spouse, the County will reimburse for only the cost of a single room.

The applicable GSA per diem rates can be obtained at <http://www.gsa.gov/portal/content/104877>.

Transportation:

General

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

Ground Transportation

Use of public transportation is encouraged. The County will reimburse for the business use of personal or company vehicles, if allowed, at the GSA's mileage rates current at the time of travel. The Contractor's request for reimbursement may not include any personal use of the vehicle.

The County may approve reimbursement for rental of vehicles or use of taxicabs if the Contractor can demonstrate that to be the most economical option. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance if the Contractor's or the employee's existing insurance coverage provides such protection.

Air Travel

The County will reimburse for air travel at the lowest available fare, typically economy. Tickets must be purchased at least seven days in advance, unless otherwise approved by the County.

Time limit: The County will not honor requests for travel reimbursement that are submitted more than 60 days after completion of the travel.

Non-reimbursable Expenses: The County will never reimburse for the following expenses:

1. Alcoholic beverages
2. Personal phone calls
3. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (e.g. laundry, valet, haircuts)
5. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
6. Auto repairs, maintenance and insurance costs for personal vehicles

11. PAYMENT OF SUB-CONTRACTORS

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

- a. Pay the sub-contractor 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 sub-contractor, in writing, of the Contractor's intention to withhold all or a part of the sub-contractor's payment, with the reason for non-payment.

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

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

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

12. NO WAIVER OF RIGHTS

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

13. NON-APPROPRIATION

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

14. COUNTY PURCHASE ORDER REQUIREMENT

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

15. BACKGROUND CHECK

All employees or subcontractors whom the Contractor assigns to work on this Contract must pass the County's standard background check. The background check will include fingerprinting by the County Sheriff's Office and a credit check.

16. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project or request replacements at any time. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager and Construction Manager without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager or Construction Manager must be absent for more than thirty (30) days extended period, the Contractor must provide an interim Project Manager or Construction Manager subject to the County's written approval.

If the approved Project Manager or Construction Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager or the Construction Manager with an individual with similar qualifications and experience, subject to the County's written approval.

17. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability, genetics, sexual orientation or on any other basis prohibited by state or federal law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.

- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities, and will provide at its sole expense, such reasonable accommodations as needed to perform the work hereunder..
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

18. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

19. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

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

20. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

21. TERMINATION

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

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

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

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

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

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

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

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

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs,

as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

22. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)

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

23. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

24. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

25. OWNERSHIP AND RETURN OF RECORDS

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

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

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

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

26. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and sub-contractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

27. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information"

includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) County's Non-Disclosure and Data Security Agreement. The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Attachment A) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.
- (b) Use of Data. The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) Data Protection. The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) Security Requirements. The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- (e) Conclusion of Contract. Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its

subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.

- (f) Notification of Security Incidents. The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- (g) Subcontractors. If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

28. ETHICS IN PUBLIC CONTRACTING

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

29. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

30. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

31. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

32. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The parties agree and represent that any staff assigned to work on the Project are an integral part of the Contractor's business and solely the employees of the Contractor. As such, the Contractor must provide all manner of proper wage and benefit administration (including the provision and coordination of FMLA and other leave), supervision, accommodations, and day to day management of such staff. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or

agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation. The Contractor shall promptly notify the Project Officer of any and all personnel issues affecting the Work and of any concerns related to County staff. The Contractor shall promptly undertake investigations and remediation of such issues, as applicable.

33. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

34. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

35. AUDIT

The Contractor must provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within two months after the close of Contractor's fiscal year. If a management letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within 15 calendar days of the County's receipt of the findings. All accounts of the Contractor are subject to audit.

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years

Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

36. ASSIGNMENT

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

37. AMENDMENTS

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

38. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

39. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

40. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

41. ARBITRATION

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

42. NONEXCLUSIVITY OF REMEDIES

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

43. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

44. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

45. ATTORNEY'S FEES

45. ATTORNEY'S FEES

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

46. SURVIVAL OF TERMS

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

47. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

48. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

49. NOTICES

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

TO THE CONTRACTOR:
Rummel, Klepper & Kahl, LLP
Miriam Kronish, Senior Director
12600 Fair Lakes Circle
Suite 300
Fairfax, Virginia 22033

TO THE COUNTY:
Daniel Reinhard Project Management Coordinator
Department of Environmental Services – Transportation
2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201

AND

Shirley Diamond, Senior Procurement Officer - Transportation
Office of the Purchasing Agent
2100 Clarendon Boulevard
Suite 500
Arlington, Virginia 22201

50. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

51. ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in the design, development or maintenance of or responsibility for the content or format of any County web sites or for the County's presence on third-party web sites, the Contractor must perform such work in compliance with ADA.

52. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

This Contract is subject to certain provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1.F, which is attached as Exhibit C. All FTA-mandated terms control in the event of a conflict with any other provisions of this Agreement. The Contractor must not perform any act, fail to perform any act or refuse to comply with any County requests if doing so would cause the County to violate the FTA terms and conditions.

The Contractor must include this clause without modification in each sub-contract that is financed in whole or in part by the FTA.

53. INSURANCE REQUIREMENTS

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

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's 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 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent

g. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for 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 Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is 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 whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
COUNTY

NAME: Shirley Diamond
TITLE: Senior Procurement Officer

CONTRACTOR
NAME: Miriam Kronish
TITLE: Senior Director

AUTHORIZED
SIGNATURE: 

DATE: 11-21-10

AUTHORIZED
SIGNATURE: 

DATE: 11/17/2016

SCOPE OF WORK

SERVICE REQUIREMENTS

This Scope of Work is for Construction Management ("CM") services to Arlington County on a Task Order assignment basis for the Columbia Pike Multimodal Street Improvements and Columbia Pike Transit Stations projects. The Work will be divided into individual project tasks, with each task representing a construction package. A Statement of Work (SOW) will be issued for Task Order, proposed Period of Performance (schedule) as well as specifications/requirements if applicable.

The Contractor shall provide, in response to a Task assignment request, a Cost Proposal that shall include, at a minimum, assigned staff/personnel, quantities (hours, unit-costs) and hourly rates based on the approved Contract Price Schedule. The Contractor may be required to provide full construction management services (General, Pre-Construction Phase, Construction Phase and Construction Administration) to ensure the Work is performed in accordance with the Contract plans, Specifications, applicable codes, regulations, and standards. The Contractor shall not perform any work under an approved Task Order until the Task Order document is fully executed by the Project and Procurement Officers and a Notice to Proceed (NTP) has been issued by the Project and Procurement Officer.

Construction management services, shall include but not be limited to, monitoring construction project activities through all phases of project. The Contractor's responsibilities shall include but not be limited to:

GENERAL

- Ensure the safety of contractors, County employees, and the general traveling public. This includes access to essential areas including handicapped access and emergency vehicle access, barring entrance(s) to construction area, and cleanliness within the surrounding facilities and general neighborhood;
- Ensure compliance with the approved maintenance of traffic plans including maintaining access to adjacent properties at all times;
- Monitor project schedule and costs;
- Monitor quality of workmanship;
- Coordinate and advise the Project Officer of construction progress (schedule), unusual disruptions, potential changes, potential Change Orders; and
- In conjunction with, and following approval from, the Project Officer, initiate actions to mitigate activities that may lead to claims and/or stop work orders, to resolve potential conflicts as promptly as possible.

PRE-CONSTRUCTION PHASE

- Review design documents, site conditions and site condition reports, and other pertinent documents for potential schedule, phasing, staging and costs impacts;
- Review construction documents and bid documents for design integrity, constructability, dimensional accuracy and potential coordination impacts among project disciplines;
- Advise and provide written recommendations on constructability, cost and schedule to mitigate impacts;
- Prepare a construction management plan, which shall include a Safety and Security Management Plan and a Quality Assurance/Quality Control Plan.

- Assist in the development of Scopes of Work, including base bid, alternates, and allowances to ensure SOW's are complete, and coordinated with all adjacent projects including County and adjacent private development projects;
- Assist the Project Officer with the preparation of the Invitation for Bid (IFB) documentation for submission to Purchasing;
- Assist with the preparation of Independent Cost Estimate(s) (ICE) for each Task Order project;
- Assist with the preparation of a Construction Plan and Project Schedule for the components of the Work, including phasing of construction, times of commencement, completion required of the Contractor(s), and ordering and delivery of products requiring long lead times;
- Assist the Project Officer, if required, in reviewing of the Contractor Bid Abstract transmitted to the Project Officer from the Procurement Officer for the recommendation of award to Contractor; and
- As required and in conjunction with the Project Officer, attend construction progress meetings; coordination meetings; Value Engineering (VE) meetings; and if applicable and/or required, proposed Contractor substitutions.

CONSTRUCTION PHASE

- Act as the County's representative in monitoring construction progress, contractor(s) performance, QA/QC, and other duties as assigned by the Project Officer to ensure project on-time completion within budget compliance with Contract documents;
- In conjunction with the Project Officer, organize, attend and document all project-related meetings, including but not limited to bi-weekly progress meetings.
- Construction progress meeting agenda should include, at a minimum, the following:
 - Review of previous progress meeting minutes, safety, errors and omissions, Work performed to date, upcoming work scheduled, utility coordination (if applicable), adjacent project coordination (if applicable), QA/QC, community outreach issues (if applicable), Submittal Status Report, Requests for information (RFI), Status Report, potential Change Order(s), Change Order(s), and upcoming and next progress meetings schedule;
- Assist in the preparation of required Independent Cost Estimates for potential Change Orders.
- Maintain Change Order log;
- Assist in the preparation, evaluation and recommendation on potential Change Orders for need, appropriateness, and cost;
- Assist the Project Officer with Change Order negotiations and written responses;
- Assist with the review of Contractor-prepared construction schedules, schedule analysis, activity durations, sequence, and critical path issues to determine if forecast projected completion are realistic and consistent with scheduling specifications;
- Assist the Project Officer in analyzing Contractor claims for time extension(s); delay claims; critical path impacts; and alternative(s) to reduce schedule and critical path impacts;
- Provide on-site construction inspection and management personnel as required by the Task Order project;
- Provide daily construction reports to the Project Officer including weather, manpower, equipment, major issues, work completed;
- Provide monthly project status reports including digital photographs to the County Project Manager;

- Assist the Project Officer in the performance of materials, equipment, and systems testing, and coordinate with the construction Contractor (if applicable) in inspection and testing coordination;
- Observe and review performance tests as required by specifications;
- Assist the Project Officer with the issuance of short-term notifications and coordination for closures and direct property impacts;
- Maintain current project Record Set of documents, including posted drawings and specifications reflecting any modifications, As-Built records and drawings, hard copies of all RFIs (including responses), Submittals, and other project related correspondence for project completion and close-out process;
- Review the Construction Contractor Record Set of drawings on a regular basis throughout the course of the work to verify that all trades are properly recording field changes;
- Review and make a payment recommendation on all monthly payment applications and submit their recommendation to the County Project Manager.
- Receive from the construction Contractor all written RFI, Submittals;
- The CM shall maintain electronic and a paper file(s) of all RFIs, responses and submittals as well as coordinate with the appropriate design engineering personnel for review and responses;
- In conjunction with the Project Officer, monitor the preparation and completion of "punch list" items for Substantial and Final Completion and close-out;
- In conjunction with the Project Officer, receive completed As-Built drawings, warranties, O&M manuals, and other submittals required from the construction Contractor;
- Conduct regular unannounced field verifications for all Federal Transit Administration (FTA) contract clauses, including but not limited to the Davis-Bacon Act, Buy America, Disadvantaged Business Enterprises (DBE)/Small Business Enterprises (SBE) participation and Civil Rights requirements; and
- The County does not intend to provide a field office for the Construction Manager; however, the County reserves the right to evaluate on a case by case basis for each task order.

INSPECTIONS AND CONSTRUCTION MATERIALS TESTING SERVICES

The Contractor shall provide Inspections and Construction Materials Testing services that shall include the following:

- Written observations, tests, and inspections provided by the Project Manager, Construction Manager, Construction Contractor(s), and Civil Engineer;
- Reports shall include, but not be limited to:
 - Date issued
 - Project Title, Description, and Permit Number
 - Testing laboratory name, address and telephone number
 - Name of inspector
 - Location of observation, test inspection or sampling
 - Date and time of observation, test inspection or sampling
 - Weather conditions at the time of observation, test, inspection or sampling
 - Results and statement of compliance or non-compliance with plans and specifications, of observation, test, inspection or sampling

- All reports shall include the seal of the Engineer in Responsible Charge
- Interpretation of test results when requested

The Contractor shall be responsible for the hiring of the testing laboratory and shall ensure that the testing laboratory or its employees are not authorized to release, revoke, alter, diminish or increase requirements of the plans, specifications and/or requirements of the USBC; approve, accept, disapprove or reject any portion of the Work performed; or perform any of the Construction Contractor or sub-contractors duties. Testing laboratory and any associated subcontractors shall meet applicable industry standards including ASTM E-329-93G. The Contractor shall provide detail and verification regarding the ability to meet these standards. All testing equipment shall be calibrated at intervals not to exceed 12 months by devices traceable to National Bureau of Standards or accepted values of natural physical constants.

All Inspections and Construction Materials Testing shall be performed in accordance with the requirements set forth in the Arlington County Construction Standards and Specifications (latest edition), the Virginia Department of Transportation Road and Bridge Standards and Specifications, 2006 Virginia Uniformed Statewide Building Code (USBC), and the International Building Code (IBC) Chapter 17, as applicable.

Observations, testing and inspections shall be in accordance with the requirements set forth in Arlington County Construction Standards and Specifications (latest edition), the Virginia Department of Transportation Road and Bridge Standards and Specifications, 2006 Virginia Uniformed Statewide Building Code (USBC), and the International Building Code (IBC) Chapter 17Chapter 17 of the 2009 IBC and pertinent sections of the USBC, as applicable.

PROJECT MANAGEMENT SOFTWARE

The County is in the process of implementing e-Builder as a project management software system. If the County implements e-Builder, the Construction Manager may be required to utilize the e-Builder system. If e-Builder is not implemented, the CM shall be required to provide an alternative software that would be used to generate reports and documents. Tasks anticipated to be performed in the e-Builder or alternative software system include but are not limited to: processing submittals, pay applications, potential change orders, change orders, RFIs, meeting minutes, daily construction reports, action items, construction schedules, punch lists, and incident reports.

LIMITATIONS OF RESPONSIBILITY

Design Phase: The duties of the CM do not relieve the designer-of-record, or any other entity hired to perform design work on behalf of the County, of their obligations, duties, and responsibilities.

Construction Site: The duties of the CM shall not include the daily supervision of the Construction Contractor's employees or subcontractors.

TASK ORDER ASSIGNMENTS AND PROCEDURES

A separate Statement of Work (SOW), schedule, Price Schedule and Notice to Proceed (NTP) will be issued with each Task Order. **The Contractor shall not commence any work until the Contractor is in receipt of a fully executed Task Order and Notice to Proceed.**

For each task, the Contractor shall receive from the Project Officer a Scope of Work, specifications/requirements (if applicable), proposed schedule and deliverables for each task Order to be issued. The Contractor, in response to the above information from the Project Officer, shall submit the following:

1. **Cost Proposal** – that shall include assigned personnel, quantity (hours) for each assigned personnel, hourly rates in accordance with Contract approved Price Schedule, and schedule that includes commencement/completion of the Task Order and deliverables.

CONTRACT TYPE

The County contemplates award of a firm fixed-unit price indefinite quantity task order contract.

CONTRACT TERM

The term shall be One (1) Base Year, with Four (4) One-Year Option periods. Total contract period will not exceed Five (5) years from the date of award.

COST

The total value of each individual project shall not exceed ten million dollars (\$10,000,000) and the sum of all projects performed in one contract term shall not exceed ten million dollars (\$10,000,000).

ATTACHMENT A

NONDISCLOSURE AND DATA SECURITY AGREEMENT **(CONTRACTOR)**

The undersigned, an authorized agent of the Contractor and on behalf of Rummel, Klepper & Kahl, LLP ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 16-251-9 (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

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

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

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

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work

site or the County's physical facility, if the Contractor is working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, or running the latest version of an industry-standard virus protection program. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

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

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

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

Authorized Signature: _____



Printed Name and Title: Miriam "Mimi" Kronisch, PE, CCM

Date: _____

6/10/2016

ATTACHMENT B

NONDISCLOSURE AND DATA SECURITY AGREEMENT

(INDIVIDUAL)

I, the undersigned, agree that I will hold County-provided information, documents, data, images, records and the like confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No.16-251-9 (the "Project" or "Main Agreement") or which may be accessed through County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

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

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

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

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

I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network is free of all computer viruses or running the latest version of an industry-standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. I will not download any County Information except as authorized by the County Project Officer and then only onto a County-approved Device. I understand that downloading onto a personally-owned Device or service, such as personal e-mail, Dropbox etc., is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. I will fully cooperate with the County to help regain possession of any County Information and to prevent its further disclosure, use or dissemination.

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

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

Signed:



Printed Name: Mark M. Dumler, Esq. CPA

Date: 06/10/2016

Witnessed:

Contractor's Project Manager:



Printed Name: Miriam "Mimi" Kronisch, PE, CCM

Date: 06/10/2016

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT

ATTACHMENT C

Federal Transit Administration Clauses

Solicitation Provisions/Required Contract Clauses

Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

This project is funded in whole or in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between Arlington County (hereinafter referred to as "The County") and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1F. The Contractor/Proposer is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA).

Contractor/Proposer is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, Contractor/Proposer is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract including all applicable FTA requirements.

Upon request of the County or FTA, Contractor/Proposer shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance at all tiers.

The following solicitation provisions and required contract clauses will be incorporated by reference in any contract resulting from this Solicitation issued by the County. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this Solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid/proposal or contract, which are included herein. Failure to execute and submit required certifications with the bid/proposal or contract documents may render a bid/proposal non-responsive or a contract null and void.

Clauses may not be listed in consecutive numerical order as only those provisions and required clauses that apply to this contract/project have been referenced.

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

Applicable to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and sub-recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Fly America- The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

Applicable to all contracts and subcontracts exceeding \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and sub-recipients at every tier.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The certificate entitled *Certification Regarding Lobbying* (Attachment A) must be completed and returned with your bid/proposal.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Applicable to all contracts as listed below.

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the County is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the County which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the County, the Secretary of the US Department of Transportation and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the County, the FTA Administrator, the US Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
5. FTA does not require the inclusion of these requirements in subcontracts.

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between The County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

14. CLEAN AIR

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

(1) The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts

Applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to

the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1F

Applicability to Contracts

Applicable to all contracts exceeding \$10,000.

Termination for Cause, Including Breach and Default; Cure

The Contract shall remain in force for the Contract Term or Subsequent Contract Term(s) and until the County determines that all 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 is 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"). 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 Project or the cost of repairing or correcting any unsatisfactory or non-compliant work. Such costs shall be either subtracted 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, 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.

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.

Termination for the Convenience of the County

The performance of work under this Contract may be terminated by the 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 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 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. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Applicability to Contracts

The provisions of Part 29 apply to all contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federal required auditing services. 49 CFR 29.220(b).

The certificate entitled *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Attachment B) must be completed and returned with your bid/proposal.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

Applicable to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present

and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1F

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Dispute Resolution

The Contract is governed in part by the applicable provisions of the Arlington County Purchasing Resolution. 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 Purchasing Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent. Pending final determination of any dispute or claim hereunder, the Contractor shall proceed diligently with the performance of the Work under the Contract.

Arbitration

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts

Applicable to all DOT-assisted contracting activities.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The County's overall goal for DBE participation is 9 %. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the contractor's receipt of payment for that work from the County. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify the County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts

Applicable to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause the County to be in violation of the FTA terms and conditions.

33. ACCESS FOR INDIVIDUALS WITH DISABILITIES

Applicability to Contracts

Applicable to all contracts.

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

ATTACHMENT D- FTA CLAUSE CERTIFICATION
CERTIFICATION REGARDING LOBBYING PURSUANT TO 49 CFR PART 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, Rummel, Klepper & Kahl, LLP, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801 *et seq.*, apply to this certification and disclosure, if any.

 Signature of Contractor's Authorized Official

Miriam "Mimi" Kronisch, PE, CCM Printed Name of Contractor's Authorized Official

Sr. Director Title of Contractor's Authorized Official

6/10/2016 Date

ATTACHMENT E- FTA CERTIFICATION CLAUSE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(To be submitted with each bid or offer exceeding \$25,000)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Arlington County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Arlington County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statute or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Rummel, Klepper & Kahl, LLP

Company Name

Miriam "Mimi" Kronisch, PE, CCM

Printed Name & Title of Authorized Representative



Signature of Authorized Representative

6/8/2016

Date

☐ I am unable to certify to the above statements. My explanation is attached.

ATTACHMENT F
DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS
REVISED June 6, 2016

1. Definitions and Interpretations

The County will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The following definitions and any other definitions related to the DBE program have the same meaning as defined in 49 CFR Part 26.

(a) "Disadvantaged Business Enterprise" or "DBE" means a for profit small business concern: (1) which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) "Small Business Concern" means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in section 26.65(b).

(c) "Socially and Economically Disadvantaged Individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and includes any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (6) Non-minority American Women;
- (7) "Tribally-owned concern" means any concern at least 51 percent owned by an Indian tribe;
- (8) "Any individual groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such times as the SBA designation becomes effective; and
- (9) Any individual who the County finds to be socially and economically disadvantaged on a case-by-case basis.

(d) "USDOT" means the U.S. Department of Transportation including the Federal Transit Administration (FTA).

(e) "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirement.

2. Small Business Enterprise

The County's Division of Transportation has a Small Business Enterprise (SBE) Program as part of its DBE Program. The County provides race-neutral efforts to facilitate participation of small businesses in its procurement

process for federally-assisted projects through the FTA. Although there is no SBE goal for this procurement, SBE firms are encouraged to participate and Offerors are encouraged to seek SBE firms as subconsultants/subcontractors.

3. Banks and Financial Institutions

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions. The identity of such banks is available at http://www.fms.treas.gov/mbdp/current_list.html.

4. Certification and Directory of DBEs

(a) All prospective DBEs must be certified through a Unified Certification Program (UCP). The County recognizes certification by the Virginia Department of Minority Business Enterprise (DMBE) and the Metropolitan Washington Airports Authority (MWAA).

(b) Each DBE firm will be verified as a certified DBE through one of the UCP Directories listed above and they each maintain online DBE directories of all firms certified. These online directories and appropriate forms to apply for DBE certification are available at the following website addresses:

DMBE's website: <http://www.dmbv.virginia.gov/>

MWAA's website: <http://www.metwashairports.com/4590.htm>

(c) The eligibility of a DBE certified joint venture will be determined on a project-by-project basis by the County.

(d) Offerors are reminded that only certified DBEs may participate in County contracts in such capacities. If Offerors propose using a DBE not currently certified, it is strongly urged that a UCP be contacted well in advance of the date set for receipt of offers in order to enable review of the proposed DBE's eligibility.

5. DBE Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

(a) If a prime contractor wishes to terminate or substitute a DBE subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE subcontractor with its own forces, an affiliate, a non-DBE subcontractor or with another DBE subcontractor, it must submit written documentation prior to the termination or substitution of the DBE subcontractor to the Contracting Officer. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the Intent to Perform as a DBE Subcontractor form(s) (Exhibit - I) on file with the Contracting Officer. The Offeror/Contractor must provide any and all documentation and information as may be requested with respect to the requested change.

(b) The Offeror's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to: the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE subcontractor being substituted by another DBE subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After providing an opportunity to the County's DBE Specialist to make a recommendation, the Contracting Officer will approve or disapprove the change.

(c) If the change involves a subcontractor substitution, the Offeror/Contractor must make good faith effort to replace one DBE with another DBE. The substitute DBE firm must be certified by a UCP in order for the Offeror/Contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the Offeror/Contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Contracting Officer describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE subcontractor without the prior written consent of the Contracting Officer.

(d) The Offeror/Contractor must submit a new Intent to Perform as a DBE Subcontractor form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by a UCP. The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Contracting Officer within ten (10) business days of its receipt of the substitution approval.

(e) If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform as a DBE Subcontractor form specified for contract modifications for any DBE subcontractor affected by this change. This form may be obtained from the Contracting Officer.

(f) If the Contractor does not comply with this Provision, the County may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

6. Demonstration of Good Faith Effort

(a) If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. The Offeror shall submit to the County the Evidence of Good Faith Efforts Form (Exhibit - II) which documents the steps it has taken to solicit participation from DBE firms. This form should be submitted when the initial response to the County's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, the County will only consider those documented efforts that occurred prior to the good faith efforts determination.

(b) In the event that a firm submitted by an Offeror in accordance with the requirements of the Submission of DBE Utilization Forms and Related Documentation provision cannot be certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same ten (10) calendar day period.

(c) The County will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

(d) Offerors are reminded that the issue of whether or not the Offeror has met or exceeded the established goal and/or demonstrated good faith efforts is considered a matter of the Offeror's responsibility. The County will only award contracts to Offerors determined to be responsible. The Contracting Officer, after affording the County's DBE personnel an opportunity to make a recommendation, shall be responsible for determining the sufficiency of an Offeror's good faith effort to meet contract goals.

(e) An Offeror that the Contracting Officer determines is not responsible may request administrative review and reconsideration under the County's Procurement Regulations. As part of any reconsideration, if requested, the Offeror may elect to meet in person with the County's Purchasing Agent to discuss credit toward meeting the DBE goal or whether the Offeror made adequate good faith efforts.

7. Offeror's DBE Obligation

The Offeror's DBE Obligation is outlined in Section VIII – Federal Transit Administration Clauses provision 28 entitled Disadvantaged Business Enterprise (DBE). The County has established an overall goal of nine (9) percent race-neutral DBE participation on USDOT-assisted contracts.

8. Payment Documentation

Concurrently with the submission of each invoice or request for a progress payment under this contract, the Contractor shall provide a breakdown of the amounts paid to DBEs identified by the Contractor to participate in this contract. The breakdown shall be provided on the attached Monthly DBE Subcontractor Progress Report form (Exhibit - III). As provided elsewhere in this Contract, the County may withhold all or part of any payment otherwise due the Contractor if the Contractor fails to submit the Monthly DBE Subcontractor Progress Report form and/or make prompt payments to its subcontractors, suppliers, materialmen or laborers.

9. Sanctions for Noncompliance with the County's DBE Program Provisions

Failure of the Contractor to carry out the County's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the County may deem appropriate. The County reserves the right to apply legal and contract remedies available under Federal, state and local law, including but not

limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. The County will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take steps provided in 49 CFR Section 26.107.

10. Submission of DBE Utilization Forms and Related Documentation

(a) Each Offeror should submit to the County a Summary of Subcontractor/Subconsultant/Suppliers form (Exhibit - IV) and an executed Intent to Perform As a DBE Subcontractor (Exhibit I) form for each proposed subcontractor when the initial response to the County's solicitation is due. If an Offeror does not meet the County's DBE participation goal, the Evidence of Good Faith Efforts (Exhibit II) form should also be submitted when the initial response to the county's solicitation is due. The submission of this information is considered an issue of responsibility, and the County will not award a contract to any Offeror who has not supplied this documentation.

(b) The Intent to Perform As A DBE Subcontractor form for each proposed subcontractor shall constitute a representation by the Offeror to the County that it believes such firm is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Offeror that if it is awarded the contract, it will enter into a subcontract with such subcontractor for the work described at the approximate price set forth in the Intent to Perform As A DBE Subcontractor form.

(c) If the DBE Subcontractor participation changes after the forms have been submitted, but prior to award of the contract, the Offeror will be required to immediately notify the Contracting Officer of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modification or Substitutions provision of this Exhibit.

(d) Except as authorized by the Contracting Officer, the successful Offeror shall enter into formal agreements with the subcontracting firms shown in the submitted Intent to Perform As A DBE Subcontractor form(s) within ten (10) business days after receipt of a contract executed by the County. The successful Offeror (Contractor) shall provide the Contracting Officer a copy of each agreement within three (3) business days of execution.

(e) If an Offeror is a DBE and lists itself on the Intent to Perform As A DBE Subcontractor form, it is required to perform the work indicated with its own work force.

Signature:  Title: Senior, Director

Name: Miriam "Mimi" Kronisch, PE, CCM Date: 6/10/2016

EXHIBIT - I
INTENT TO PERFORM AS A DBE SUBCONTRACTOR FOR A CONTRACT AWARD

All DBE subcontracting firms to be used on this solicitation must fill out this form.

DBE firms participating in Arlington County's contracting opportunities must have "current" certification status with a Unified Certification Program (UCP) prior to award of this contract. If the County determines that the firm is not an eligible DBE firm for Arlington County contracts and subcontracts, the prime contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and the County will not award a contract to any Offeror who has not supplied this documentation.

1. Arlington County Solicitation #: 16-251-9
2. Name of **DBE** Subcontracting Firm DMY Engineering Consultants, Inc.
3. Has the **DBE** subcontractor been certified as a DBE by a UCP agency? Yes
4. The **DBE** subcontractor is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):
Inspections and Laboratory Testing
and at the following price \$ N/A

BY: [Signature]
(Signature of **DBE** subcontracting Owner, President or Authorized Agent)

DATE: 06 / 10 / 2016

Wamiq Hamid, PE- Vice President PHONE: (703) 665-0586
(Print or Type - Name of Signature of Owner, President or Authorized Agent of **DBE** subcontracting firm)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the Senior Director
(Title of Declarant)
and a duly authorized representative of Rummel, Klepper & Kahl, LLP
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform As A DBE subcontractor form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the subcontracting firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed DBE subcontracting firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by Arlington County. The undersigned will provide the Contracting Officer a copy of that agreement within three (3) business days of execution.

The Prime Contractor designated the following person as their DBE Liaison Officer:

Miriam "Mimi" Kronisch, PE, CCM (703) 259-3721
(Name-Please Print) (Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the U.S. Department of Transportation, and possibly the U.S. Department of Justice, for prosecution.

Name of Declarant: Miriam "Mimi" Kronisch, PE, CCM
Signature: [Signature] Date: 6/10/2016

EXHIBIT - IV **SUMMARY OF SUBCONTRACTORS/SUBCONSULTANTS/SUPPLIERS**

Offerors should provide information on all of their prospective subcontractor(s)/subconsultant(s)/suppliers who submit bids/proposals in support of this solicitation.
 Use additional sheets as necessary.

Construction Management Services for the Columbia Pike Multi-Modal

Project Name: Street Improvements and the Columbia Pike Transit Station Project

Arlington County Solicitation # 16-251-9

Name of Prime Contractor: Rummel, Klepper & Kahl, LLP

NAMES AND ADDRESSES OF SUBCONTRACTOR(S)/SUBCONSULTANT(S)	TYPE OF WORK TO BE PERFORMED	ETHNICITY & GENDER OF OWNER (PLEASE CIRCLE)	PREVIOUS YEAR'S ANNUAL GROSS RECEIPTS	\$ AMOUNT ON CONTRACT
NAME: DMY Engineering Consultants, Inc. ADDRESS: 45662 Terminal Dr. Suite 110 Dulles, VA 20166 PHONE: (703) 665-0586 FAX: (202) 688-1918 E-MAIL: darwood@dmec.com CONTACT PERSON: David Arwood	TYPE OF WORK: Inspection/Laboratory Testing AGE OF FIRM: 7 Years IS THE FIRM A CERTIFIED DBE BY A UNIFIED CERTIFICATION PROGRAM? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Ethnicity: <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input checked="" type="checkbox"/> Subcont. Asian American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input checked="" type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	<i>To be determined at the issuance of each task order solicitation</i>
NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON:	TYPE OF WORK: AGE OF FIRM: IS THE FIRM A CERTIFIED DBE BY A UNIFIED CERTIFICATION PROGRAM? YES <input type="checkbox"/> NO <input type="checkbox"/>	Ethnicity: <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Subcont. Asian American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	<i>To be determined at the issuance of each task order solicitation</i>
NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON:	TYPE OF WORK: AGE OF FIRM: IS THE FIRM A CERTIFIED DBE BY A UNIFIED CERTIFICATION PROGRAM? YES <input type="checkbox"/> NO <input type="checkbox"/>	Ethnicity: <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Subcont. Asian American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	<i>To be determined at the issuance of each task order solicitation</i>

Print Name/Title of Person Completing this Form: Miriam "Mimi" Kronisch, PE, CCM

Signature:  Date: 06/10/2016

ATTACHMENT G

PRICE SCHEDULE

TESTING LABORATORY FEE SCHEDULE

ARLINGTON COUNTY GOVERNMENT
RFP NO. 16-251-E PRICE SCHEDULE

NAME AND ADDRESS OF FIRM						
Rummel, Klepper & Kahl, LLP (RK&K) 12600 Fair Lakes Circle Suite 300 Fairfax, VA 22033						
PROJECT NUMBER(S) AND DESCRIPTION						DATE
RFP No. 16-251-9 Construction Management Services for the Columbia Pike Multi-Modal Street/Transit Improvements						7/28/2016
I. DIRECT COSTS				FOR AUTHORITY USE ONLY		
Work Classification	No. Hours	Rate / Hour	Total	No. Hours	Rate / Hour	Total
1. Project Manager		\$ 317.32	\$ -			\$ -
2. Construction Manager		\$ 139.97	\$ -			\$ -
3. Estimator/Claims Support		\$ 174.33	\$ -			\$ -
4. Office/Field Engineer		\$ 110.00	\$ -			\$ -
5. Senior Construction Inspector (RK&K)		\$ 91.19	\$ -			\$ -
6. Construction Inspector (RK&K)		\$ 71.06	\$ -			\$ -
7. Steel Inspector		\$ 105.95	\$ -			\$ -
8. Engineering Support		\$ 152.99	\$ -			\$ -
9. Administrative Assistant		\$ 66.55	\$ -			\$ -
10. QA/QC Manager		\$ 238.60	\$ -			\$ -
11. Construction Inspector (DMY)		\$ 94.27	\$ -			\$ -
12. Field Technician: Concrete/Soil/Foundation(DMY)		\$ 78.34	\$ -			\$ -
13.			\$ -			\$ -
14.			\$ -			\$ -
15.			\$ -			\$ -
TOTAL OF SECTION I			\$ -			\$ -
II. CONTRACTOR IN-HOUSE REPRODUCTION COSTS			\$			\$
III. MATERIALS AND SUPPLIES <i>(Not included in G&A Costs)</i>			\$			\$
IV. INDIRECT COSTS <i>(Furnish details)</i>						
1. Overhead on Direct Labor - Percentage		0.00%	\$ -			\$
2. General and Administrative Costs (% Direct Labor)		0.00%	\$ -			\$
A. Profit - % of All above Direct and Indirect Costs		0.00%	\$ -			\$
TOTAL OF SECTION IV			\$ -			\$ -
V. TOTAL OF SECTIONS I, II, III AND IV <i>(Subject to statutory cost limitation)</i>			\$ -			\$ -
VI. REIMBURSABLE ITEMS <i>(Give details)</i>						
1. Topographical Surveys			\$			\$
2. Soil Borings			\$			\$
3. Chemical, Mechanical, etc., Surveys			\$			\$
4. Preparation of Technical Manuals			\$			\$
5. Making Technical Studies/Investigations			\$			\$
6. Travel, Per Diem <i>(Number of Trips)</i>			\$			\$
7. Long Distance Telephone Costs			\$			\$
8. Reproduction Costs <i>(Where subcontracted)</i>			\$			\$
TOTAL OF SECTION VI			\$ -			\$ -
VII. PROPOSAL (TOTAL OF SECTIONS V AND VI)			\$ -			\$ -
REMARKS <i>(Identify by Section and Item Number, if applicable, if additional space is required, use separate blank sheet of paper.)</i>						

See attached for Direct Costs

BILLABLE RATE										OVERTIME
Position Classification	Negotiated Direct Hourly Rate	Direct Labor	Overhead Rate	Overhead Cost	Facilities Cost Cap 0.04%	Base Rate	Fee (Profit) 10.00%	Direct Expenses	Fixed Billable Rate Home	Overtime Billable Rate Home
1 Project Manager	\$ 76.00	\$ 76.00	139.15%	\$105.75	\$0.03	\$ 181.78	\$ 18.18		\$ 199.96	
2 Construction Manager	\$ 59.20	\$ 59.20	104.96%	\$62.14		\$ 121.34	\$ 12.13	\$ 9.00	\$ 142.47	
3 Estimator/Claims Support	\$ 63.18	\$ 63.18	139.15%	\$87.91	\$0.03	\$ 151.12	\$ 15.11		\$ 166.23	
4 Office/Field Engineer	\$ 46.53	\$ 46.53	104.96%	\$48.83		\$ 95.36	\$ 9.54	\$ 9.00	\$ 113.89	
5 Senior Construction Inspector (RK&K)	\$ 38.57	\$ 38.57	104.96%	\$40.48		\$ 79.05	\$ 7.90	\$ 9.00	\$ 95.95	\$ 115.24
6 Construction Inspector (RK&K)	\$ 30.05	\$ 30.05	104.96%	\$31.54		\$ 61.60	\$ 6.16	\$ 9.00	\$ 76.76	\$ 91.78
7 Steel Inspector	\$ 44.81	\$ 44.81	104.96%	\$47.03		\$ 91.84	\$ 9.18	\$ 9.00	\$ 110.03	\$ 132.43
8 Engineering Support	\$ 55.45	\$ 55.45	139.15%	\$77.15	\$0.02	\$ 132.62	\$ 13.26		\$ 145.88	
9 Administrative Assistant	\$ 24.12	\$ 24.12	139.15%	\$33.56	\$0.01	\$ 57.69	\$ 5.77		\$ 63.46	\$ 75.62
10 QA/QC Manager	\$ 86.47	\$ 86.47	139.15%	\$120.32	\$0.03	\$ 206.83	\$ 20.68		\$ 227.51	
11		-		\$0.00		-	-		-	-
12		-		\$0.00		-	-		-	-
13		-		\$0.00		-	-		-	-
14		-		\$0.00		-	-		-	-

ARLINGTON COUNTY GOVERNMENT
RFP NO. 16-251-E PRICE SCHEDULE
Direct Expenses

7/28/2016	UNIT	QTY	UNIT COST
VEHICLE LEASE			
6 Month Lease (4x2 crew cab)	Monthly	TBD	\$1,048.87
12 Month Lease (4x2 crew cab)	Monthly	TBD	\$1,034.99
24 Month Lease (4x2 crew cab)	Monthly	TBD	\$685.49
36 Month Lease (4x2 crew cab)	Monthly	TBD	\$579.13
Stobe Light	Each	TBD	\$184.27
LEASE MILEAGE:	Per Mile	TBD	\$0.30
POV MILEAGE:	Per Mile	TBD	\$0.54
LODGING: (As Authorized)		(Per Federal Prevailing Rates)	
MEALS: (As Authorized)		(Per Federal Prevailing Rates)	
OTHER DIRECT EXPENSES:(As Authorized)			
Troxler Gauge Rental Fee - 4640b (Monthly Usage)	each	TBD	\$600.00
Troxler Gauge Rental Fee - 3440 (Monthly Usage)	each	TBD	\$550.00
Troxler Gauge Rental Fee - 3430 (Monthly Usage)	each	TBD	\$500.00
Troxler Gauge Rental Fee - 3411b (Monthly Usage)	each	TBD	\$400.00
COMMUNICATION			
Phone	Monthly	TBD	\$45.00
Smart Phone with Data	Monthly	TBD	\$70.00
Tablet Data	Monthly	TBD	\$50.00
MISC. EXPENSES AS AUTHORIZED	TBD	TBD	TBD

ARLINGTON COUNTY GOVERNMENT
RFP NO. 16-251-E PRICE SCHEDULE

NAME AND ADDRESS OF FIRM						
Rummel, Klepper & Kahl, LLP (RK&K) 12600 Fair Lakes Circle Suite 300 Fairfax, VA 22033						
PROJECT NUMBER(S) AND DESCRIPTION						DATE
RFP No. 16-251-9 Construction Management Services for the Columbia Pike Multi-Modal Street/Transit Improvements						7/28/2016
I. DIRECT COSTS				FOR AUTHORITY USE ONLY		
Work Classification	No. Hours	Rate / Hour	Total	No. Hours	Rate / Hour	Total
1. Project Manager		\$ 199.96	\$ -			\$ -
2. Construction Manager		\$ 142.47	\$ -			\$ -
3. Estimator/Claims Support		\$ 166.23	\$ -			\$ -
4. Office/Field Engineer		\$ 113.89	\$ -			\$ -
5. Senior Construction Inspector (RK&K)		\$ 95.95	\$ -			\$ -
6. Construction Inspector (RK&K)		\$ 76.76	\$ -			\$ -
7. Steel Inspector		\$ 110.03	\$ -			\$ -
8. Engineering Support		\$ 145.88	\$ -			\$ -
9. Administrative Assistant		\$ 83.46	\$ -			\$ -
10. QA/QC Manager		\$ 227.51	\$ -			\$ -
11. Construction Inspector (DMY)		\$ 94.27	\$ -			\$ -
12. Field Technician Concrete/Soil/Foundation(DMY)		\$ 76.34	\$ -			\$ -
13.			\$ -			\$ -
14.			\$ -			\$ -
15.			\$ -			\$ -
TOTAL OF SECTION I			\$ -			\$ -
II. CONTRACTOR IN-HOUSE REPRODUCTION COSTS			\$			\$
III. MATERIALS AND SUPPLIES (Not included in G&A Costs)			\$			\$
IV. INDIRECT COSTS (Furnish details)						
1. Overhead on Direct Labor - Percentage		0.00%	\$ -			\$
2. General and Administrative Costs (% Direct Labor)		0.00%	\$ -			\$
A. Profit - % of All above Direct and Indirect Costs		0.00%	\$ -			\$
TOTAL OF SECTION IV			\$ -			\$ -
V. TOTAL OF SECTIONS I, II, III AND IV (Subject to statutory cost limitation)			\$ -			\$ -
VI. REIMBURSABLE ITEMS (Give details)						
1. Topographical Surveys			\$			\$
2. Soil Borings			\$			\$
3. Chemical, Mechanical, etc., Surveys			\$			\$
4. Preparation of Technical Manuals			\$			\$
5. Making Technical Studies/Investigations			\$			\$
6. Travel, Per Diem (Number of Trips)			\$			\$
7. Long Distance Telephone Costs			\$			\$
8. Reproduction Costs (Where subcontracted)			\$			\$
TOTAL OF SECTION VI			\$ -			\$ -
VII. PROPOSAL (TOTAL OF SECTIONS V AND VI)			\$ -			\$ -
REMARKS (Identify by Section and Item Number, if applicable, if additional space is required, use separate blank sheet of paper.)						

BILLABLE RATE						OVERTIME				
Position Classification	Negotiated Direct Hourly Rate	Direct Labor	Overhead Rate	Overhead Cost	Facilities Cost Cap 0.04%	Base Rate	Fee (Profit) 10.00%	Direct Expenses	Fixed Billable Rate Home	Overtime Billable Rate Home
1 Project Manager	\$ 76.00	\$ 76.00	139.15%	\$105.75	\$0.03	\$ 181.78	\$ 18.16	\$ 9.00	\$ 199.96	
2 Construction Manager	\$ 59.20	\$ 59.20	104.96%	\$62.14		\$ 121.34	\$ 12.13	\$ 9.00	\$ 142.47	
3 Estimator/Claims Support	\$ 63.18	\$ 63.18	139.15%	\$87.91	\$0.03	\$ 151.12	\$ 15.11	\$ 9.00	\$ 166.23	
4 Office/Field Engineer	\$ 48.53	\$ 48.53	104.96%	\$48.83		\$ 95.36	\$ 9.54	\$ 8.00	\$ 113.89	
5 Senior Construction Inspector (RI&K)	\$ 38.57	\$ 38.57	104.96%	\$40.48		\$ 78.05	\$ 7.90	\$ 8.00	\$ 95.95	\$ 115.24
6 Construction Inspector (RI&K)	\$ 30.05	\$ 30.05	104.96%	\$31.54		\$ 61.60	\$ 6.16	\$ 8.00	\$ 76.76	\$ 91.78
7 Steel Inspector	\$ 44.81	\$ 44.81	104.96%	\$47.03		\$ 91.84	\$ 9.18	\$ 8.00	\$ 110.03	\$ 132.43
8 Engineering Support	\$ 55.45	\$ 55.45	139.15%	\$77.15	\$0.02	\$ 132.62	\$ 13.26		\$ 145.88	
9 Administrative Assistant	\$ 24.12	\$ 24.12	139.15%	\$33.56	\$0.01	\$ 57.69	\$ 5.77		\$ 63.46	\$ 75.52
10 QA/QC Manager	\$ 86.47	\$ 86.47	139.15%	\$120.32	\$0.03	\$ 206.83	\$ 20.68		\$ 227.51	
11		\$ -		\$0.00		\$ -	\$ -		\$ -	\$ -
12		\$ -		\$0.00		\$ -	\$ -		\$ -	\$ -
13		\$ -		\$0.00		\$ -	\$ -		\$ -	\$ -
14		\$ -		\$0.00		\$ -	\$ -		\$ -	\$ -



DMY Standard Fee Schedule – Laboratory Testing Services

I. Laboratory Services

Soil	
Moisture Content Test (ASTM D2216)	\$10.0 /test
Sieve Analysis (ASTM D422)	\$70.00 /test
Atterberg Limits Test (ASTM D4318)	\$70.00 /test
Hydrometer Analysis (ASTM D422)	\$170.00 /test
USDA Hydrometer Analysis	\$90.00 /test
Specific Gravity (ASTM D854)	\$75.00 /test
Standard Proctor Test (ASTM D698/VTM-1)	\$130.00 /test
One Point Proctor Test (VTM-12)	\$80.00 /test
Modified Proctor Test (ASTM D1557)	\$150.00 /test
California Bearing Ratio Test (ASTM D1883/VTM-8)	\$475.00 /test
Unconfined Compression of Soil (ASTM D2166)	\$155.00 /test
Organic Content (AASHTO T267)	\$80.00 /test
pH and Resistivity (AASHTO T288 and T289)	\$220.00 /test
Sulfate and Chloride (AASHTO T290 and T291)	\$220.00 /test
Concrete/Mortar/Grout	
Compressive Strength of Concrete Cylinders-4"x8" (ASTM C39)	\$11.50 /test
Compressive Strength of Concrete Cylinders-6"x12" (ASTM C39)	\$13.50 /test
Compressive Strength of Mortar Cubes (ASTM C170) (set of three)	\$25.00 /test
Compressive Strength of Grout Specimen (ASTM C1019)	\$25.00 /test
Rapid Chloride Permeability Test (VTM-112/AASHTO T-277)	\$185.00 /test