

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

NOTICE OF AWARD OF CONTRACT

TO: FLEETCOR TECHNOLOGIES, INC. 5445 TRIANGLE PARKWAY SUITE 400 NORCROSS, GA 30092	DATE ISSUED: CURRENT REFERENCE NO: CONTRACT TITLE:	MARCH 26, 2013 580-13 DES - FUEL MANAGEMENT SYSTEMS
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE
VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract in accordance with the response submitted by you on SEPTEMBER 20, 2012. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on DECEMBER 21, 2022.

This is the FIRST year award notice of a possible TEN year contract.

The contract documents consist of the terms, conditions, and specifications of Invitation to Bid No. 580-13 and the bid of the Contractor, incorporated herein by reference.

The contract documents consist of the terms and conditions of Agreement No. 580-13, including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

- REFER TO AGREEMENT NO. 580-13.

ATTACHMENTS:

- REFER TO AGREEMENT NO. 580-13.

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: MARK ROBERTS	VENDOR TEL. NO.: 704-853-2662
VENDOR EMAIL: markr@fleetcor.com	VENDOR FAX. NO.: 704-853-1945
VENDOR PAYMENT TERMS: NET 30 DAYS	
COUNTY CONTACT: ALLEN MITCHELL	COUNTY TEL. NO.: 703-228-6462
COUNTY EMAIL: amitchell@arlingtonva.us	

CONTRACT AUTHORIZATION

DISTRIBUTION


IVETTE GONZALEZ
PROCUREMENT OFFICER

3/26/13
DATE

BID FOLDER: 1

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

AGREEMENT NO. 580-13

THIS AGREEMENT (hereinafter "Agreement") is made, on the date of execution by the County, between FleetCor Technologies Operating Company, LLC, 5445 Triangle Parkway, Suite 400, Norcross, Georgia, 30092 ("Contractor" or "FleetCor"), a Georgia corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The contract documents consist of this Agreement, Exhibit A (Scope of Services), Exhibit B (Pricing) and Exhibit C (Non-Disclosure and Data Security Agreement) (collectively, "Contract Documents").

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

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

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to provide fuel for the County's fleet vehicles, using a consigned fuel management system. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

3. CONTRACT TERM

The Work shall commence upon the execution of this Agreement by the County and shall be completed no later than December 31, 2022 ("Contract Term"), subject to any modifications as provided for in the Contract Documents regarding the Contract Term. No Work shall be deemed complete until it is accepted by the Project Officer.

4. CONTRACT AMOUNT

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

5. CONTRACT EXTENSION WITH PRICE ADJUSTMENTS NEGOTIATED

The pricing methodology for commercial sites and Contractor margins for on-site fuel as specified in Exhibit B shall remain firm for the first twelve months of the Contract Term. Freight rates applicable to on-site fuel shall remain firm for the first twelve (12) months of the Contract Term. Thereafter, any

proposed modifications to the freight rates shown in Exhibit B shall be submitted by the Contractor to the Project Officer at least ninety (90) days prior to the proposed implementation date of the changed freight rate(s), as the freight rate is stated in the award notice. Any price modifications other than freight shall be subject to the terms of Exhibit B.

If the Contractor and the County do not agree on the revised freight rates using the procedure set forth in Exhibit B by the thirtieth (30th) calendar day prior to the implementation date stated in the rate notice, then the County may terminate the Contract. In the event that the County does not elect to so terminate, proposed increases in freight rates that are properly supported (in the opinion of the Project Officer) in accordance with Exhibit B shall be implemented as of such originally proposed implementation date (as reflected in the Contractor's rate notice). For purposes of this Agreement, any such termination by the County shall constitute a termination for the convenience of the County pursuant to section 24 of this Agreement.

6. PAYMENT

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

7. PROJECT OFFICER

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

8. ADJUSTMENTS FOR CHANGE IN SCOPE

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

9. ADDITIONAL SERVICES

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

10. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

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

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

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

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

11. NON-APPROPRIATION

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

12. REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)

During the Contract Term, the Contractor will furnish all of the items or services described in the Contract Documents if so requested by the County. The Contractor understands and agrees that this is a requirements contract and the County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount, as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that the County may require goods and/or services in excess of the

estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices set forth in this Contract.

13. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. The County acknowledges that the transactions contemplated by this Agreement consist of a large volume of relatively small individual purchases; accordingly, the County Purchase Order issued pursuant to this section shall be in the nature of a standing global purchase order, to encompass all such individual purchase transactions. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

14. PROJECT STAFF

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

15. SUPERVISION BY CONTRACTOR

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

16. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

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

17. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

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

18. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

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

For the purposes of this section, "drug-free workplace" means a site used by the Contractor or its employees or agents for the performance of work done in connection with this Contract.

19. SAFETY

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

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

The Contractor shall identify to the County Project Officer at least one (1) on-site person who is the Contractor's competent, qualified, and authorized person on the worksite and who is, by training or experience, familiar with and trained in policies, regulations and standards applicable to the work being performed. The competent, qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the work site.

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

20. FUEL TANKS

The County acknowledges that it is the operator of the above and below ground storage tank(s), connected underground/above ground piping, ancillary equipment and containment systems identified in Exhibit A (hereinafter referred to as the "AGST/UGST System"). Contractor has no control of, or responsibility for, the operation of the AGST/UGST System. As operator of the AGST/UGST System, the County will comply with current and future federal, state and local laws and regulations applicable to the AGST/UGST System, as well as all other pertinent environmental laws and regulations. Without limiting the generality of the foregoing, the Contractor shall not be responsible for compliance with the following requirements with respect to the AGST/UGST System: registration; payment of all registration, maintenance, and other fees imposed upon the County by third parties; reporting and record keeping other than those identified in Exhibit A; replacements of AGST/UGST System determined to be not in compliance with federal, state and local laws; investigation and containment of leak from AGST/UGST System, including corrective action(s); closure of AGST/UGST System; and compensation of claims for bodily injury, death, exemplary damages, property damage and natural resource damages caused by or arising from, in whole or in part, a release from the AGST/UGST System.

The County avers that (a) if required by applicable law, the AGST/UGST System is or will be registered with the appropriate regulatory agencies and (b) the AGST/UGST System is in compliance with applicable federal, state and local design, construction, installation, repair, corrosion protection, release prevention and detection and containment requirements. Upon request from Contractor, proof of registration of the AGST/UGST System and compliance by County with applicable federal, state, and local laws and regulations pertaining to the AGST/UGST System will be provided by the County to the Contractor. Except as required in Exhibit A, the Contractor shall have no responsibility, obligation or liability with respect to the operation of the AGST/UGST System or compliance with federal, state, or local laws and regulations applicable to an operator of the AGST/UGST System. The County agrees and acknowledges that the Contractor shall not be responsible for any and all liabilities, losses, costs, damages, fines, penalties and expenses (including attorneys' fees and environmental response costs) in any way arising out of, pertaining to, or in any way connected with, the operation of the AGST/UGST System, with the exception to any and all liabilities, losses, costs, damages, fines, penalties and expenses (including attorneys' fees and environmental response costs) in any way arising out of, pertaining to, or in any way connected with the Contractor's delivery of fuel into the AGST/UGST System.

Any risk of loss or destruction of fuel after delivery to County, from any cause whatsoever, except negligence or willful destruction by Contractor or its employees or agents, shall be borne by County from the time the fuel is delivered into the AGST/UGST System.

The Contractor shall deliver all fuel provided under this contract to the County sites free of contaminants. The County shall maintain the security of such fuel and shall ensure that contaminants are not introduced into such fuel. County shall bear any costs associated with replacement of contaminated fuel contaminated at the AGST/UGST System, the Contractor shall not be responsible for damages caused by such contaminated fuel and/or fuel losses through theft. The Contractor shall have the right (but not obligation) to inspect fuel quality at any time during normal business hours of the County.

21. WARRANTY

The Contractor warrants to furnish the services described in this Contract at the times and places and in the manner and subject to the conditions set forth. The Contractor shall enter upon and complete the

performance of services with all due diligence and dispatch and shall exercise skill and competence conforming to specifications and industry best practices in the performance of the Work.

Fuel delivered by FleetCor's fuel supplier shall be delivered free of contaminants. The County shall maintain the security of such fuel and shall ensure that contaminants are not introduced into such fuel after delivery. The County shall bear any costs associated with replacement of fuel that is contaminated after delivery to the County by FleetCor's fuel supplier. Claims by the County against FleetCor pertaining to defective fuel shall be made within ninety-six (96) hours after discovery of the defect in the fuel. Once the fuel has been delivered to the County's property, the sole responsibility for it shall rest with the County, subject to the terms of this section. All other warranty claims made by the County to FleetCor pursuant to this section must be made by written notice to FleetCor within thirty (30) days of FleetCor providing the portion of the Work to which the County's claim relates or of FleetCor notifying the County of the completion of Work.

22. UNSATISFACTORY WORK

If any of the work done, or material or equipment provided, by the Contractor is unsatisfactory to the County in the County's reasonable discretion, the Contractor shall, upon being notified by the County (within the periods specified in Section 21), immediately remove at the Contractor's expense such unsatisfactory work or material or equipment and replace the same with work or material or equipment reasonably satisfactory to the County and, in the event the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work or material or equipment and replace it with suitable and satisfactory work or material or equipment, the County shall have the right, but not the obligation, to remove the rejected work or material or equipment and replace it with proper work or material or equipment at the reasonable expense of the Contractor, as determined by the County in its reasonable discretion. This paragraph applies during the Contract Term and during any warranty or guarantee period. The County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract.

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

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

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

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

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

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

24. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

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

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

25. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, to the extent (for that portion) resulting from

or arising out of the Contractor's wrongful, intentional, reckless, or negligent acts or omissions, including the wrongful, intentional, reckless, or negligent acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract. Contractor shall be entitled to defend and settle claims for which it is providing indemnity to the County, subject to the County's prior consent to any litigation- or settlement-related decisions. The County Attorney or other counsel retained by him may participate in the defense of any claim arising out of this Contract at the County's election. The Contractor shall be responsible for all fees and costs incurred, any settlement made, or any judgment entered as a result of a claim made or suit filed against the County arising out of this Contract.

26. COPYRIGHT

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

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

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this section as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

27. OWNERSHIP AND RETURN OF RECORDS

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

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

Contract shall be referred to the Project Officer or his or her designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.

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

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

28. DATA SECURITY AND PROTECTION

The Contractor shall hold County Information in the strictest confidence and comply with all applicable County security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted County Information received from, created or maintained on behalf of the County and strictly control access to County Information. For purposes of this provision, and as more fully described in this Contract and the County's Non-Disclosure and Data Security Agreement (NDA) (attached hereto as **Exhibit C**), "County Information" (also referred to as "County Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, County networked resources, and County databases, software and security measures which is created, maintained, transmitted or accessed to perform the work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement (NDA)**. The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at County facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an Exhibit hereto) prior to performing any work or permitting access to County networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to the County Project Officer upon request.
- (b) **Use of Data**. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to County Information and County networked resources shall not occur in an unauthorized manner. Use of County Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of County Information and any non-compliance with this DATA SECURITY AND PROTECTION provision or any NDA.
- (c) **Data Protection**. The Contractor agrees that it will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to the County a copy of its data

security policy and procedures for securing County Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by the County, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.

- (d) **Data Sharing.** Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclosure, sell or grant access to County Information to any third party without the express written authorization of the County's Chief Information Security Officer or designee.
- (e) **Security Requirements.** The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the County's Chief Information Security Officer or designee. The downloading of County information onto laptops or other portable storage medium is prohibited without the express written authorization of the County's Chief Information Security Officer or designee.
- (f) **Data Protection Upon Conclusion of Contract.** Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all County Information to the County unless the County requests that such data be destroyed. This provision shall also apply to all County Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement and shall certify completion of this task, in writing, to the County Project Officer.
- (g) **Notification of Security Incidents.** The Contractor agrees to notify the County Chief Information Officer and County Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of County Information.
- (h) **Subcontractors.** To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing County Information and a copy of their disaster recovery plan/s.

29. ETHICS IN PUBLIC CONTRACTING

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

30. COUNTY EMPLOYEES

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

31. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism, or an act of God beyond the control of the Contractor, and outside and beyond the scope of the Contractor’s then current, by industry standards, disaster plan, that makes performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism, or an act of God beyond control of the County that makes performance impossible or illegal, unless otherwise specified in the Contract.

32. AUTHORITY TO TRANSACT BUSINESS

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

33. RELATION TO COUNTY

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

34. ANTITRUST

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

35. REPORT STANDARDS

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

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

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

- tree-free paper;
- All copies shall be double-sided;
- Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

36. AUDIT

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

37. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County. Notwithstanding the limitations set forth in this section, the County acknowledges that the Contractor will utilize Mansfield Oil Company of Gainesville, Inc., 1025 Airport Parkway SW, Gainesville, GA, 30501, as a subcontractor to fulfill some of Contractor's obligations under this Contract. The County and the Contractor covenant and agree that the Contractor may, at its election, direct the County in writing to remit payment to Mansfield Oil Company of Gainesville, Inc., instead of the Contractor, and the County will make payment to Mansfield Oil Company of Gainesville, Inc., if so directed by the Contractor.

38. AMENDMENTS

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

39. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

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

40. DISPUTE RESOLUTION

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

41. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

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

42. 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.

43. NONEXCLUSIVITY OF REMEDIES

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

44. NO WAIVER

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

45. SEVERABILITY

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

46. NO WAIVER OF SOVEREIGN IMMUNITY

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

47. SURVIVAL OF TERMS

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

48. HEADINGS

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

49. AMBIGUITIES

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

50. NOTICES

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

TO THE CONTRACTOR:

Mr. Mark Roberts
FleetCor Technologies Operating Company, LLC
5445 Triangle Parkway, Ste. 400
Norcross, GA 30092

TO THE COUNTY:

Mr. Allen Mitchell, Project Officer
Arlington County, Virginia
Equipment Bureau
2701 South Taylor St.
Arlington, VA 22206

AND

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

51. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

52. INSURANCE REQUIREMENTS

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

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

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

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury,

Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract.

- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the Contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as additional insured on all policies, except Workers Compensation and Auto and Professional Liability. A copy of the Additional Insured endorsement must be provided by the Contractor to the County Purchasing Agent prior to the execution of this Contract and any Contract extension. Failure to provide such documentation shall result in cancellation of the award or of the Contract.
- f. Cancellation - If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract Term is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium. A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification – All documentation and copies of endorsements required hereunder shall state this Contract's number and title.

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

The Contractor shall require all subcontractors to maintain during the term of this contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' documentation of coverage and endorsements specified herein to the County Purchasing Agent immediately upon request by the County and/or prior to a subcontractor performing work related to this Contract.

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

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. In accordance with Section 25 of this Agreement, the Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

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

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity, the alternative coverage(s) are submitted to and acceptable to the County and the terms additional endorsements required hereunder are met to the satisfaction of the County Purchasing Agent or Risk Manager. The Contractor must provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy and security of the insurance funding.

WITNESS these signatures:

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

AUTHORIZED
SIGNATURE: _____

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

DATE: 3/26/13

**FLETCOR TECHNOLOGIES OPERATING
COMPANY, LLC**

AUTHORIZED
SIGNATURE: _____

NAME AND
TITLE: ERIC DEY CFO

DATE: 3-16-2013

ARLINGTON COUNTY, VIRGINIA
AGREEMENT 580-13
EXHIBIT A – SCOPE OF SERVICES

The Contractor shall ensure that it and Mansfield Oil Company of Gainesville, Inc. (“Mansfield”), as the Contractor’s fuel supplier, perform Contractor’s obligations pursuant to this Agreement through Contractor’s direct and indirect subsidiaries and licensees.

The Contractor shall provide a consigned fuel-management system (“System”) for use at the existing County fuel sites (“on-site”), and allow purchases of fuel at retail locations (“off-site”) by authorized County personnel. The Fuel Management System shall operate with one magnetic-stripe fuel card for each County vehicle having a 4 to 7 digit equipment number and a random PIN number assigned to each driver/operator, and shall provide to the County the reports and controls specified herein. The Contractor shall provide the fuel through its fuel subcontractor, Mansfield. The Contractor agrees to ensure that Mansfield sells the fuel directly to Arlington and Arlington agrees to accept the fuel directly from Mansfield. The County and the Contractor acknowledge that Mansfield may bill the County, and the County will pay Mansfield (if directed in writing by FleetCor to do so), for fuel supplied on-site and off-site into authorized vehicles at contract prices specified below. The Contractor shall ensure that Mansfield provides to the County fuel which is exempt from Federal motor fuel excise tax and Virginia State Excise Tax at on-site locations. Off-site purchases of fuel will not be sold to the County free from Virginia State Excise Taxes.

The County will pay for fuel supplied to County fuel sites at contract prices based on OPIS (Oil Price Information Service) plus freight, applicable taxes and a fixed management fee (“Margin”) as further explained on Exhibit B. The price at commercial sites shall be as set forth on Exhibit B.

The Contractor shall provide and install Pump Island Card Readers (PICR) that will enable automated tracking and billing of fuel usage through fuel-dispensing equipment.

The Contractor shall be responsible for maintaining its PICR equipment with limited service disruptions, so it will be expected to provide 24/7 support for software and card readers and it will be required to provide contact names and numbers for obtaining these support services. The County will be responsible for maintaining existing fueling infrastructure (tanks, pumps, hoses and nozzles, piping, wiring, leak detection and standard analog dedicated telephone lines). The card readers provided by the Contractor will be required to enable the County to restrict fuel transactions per transaction, per day, and per week. The card readers shall also be capable of restricting products by type of fuel (e.g. ULSD diesel, biodiesel blends, unleaded gasoline, ethanol blends) and by specific operator at both County sites and commercial sites.

The Contractor shall provide effective communications and accountability with Mansfield in order to address supply outages. The County will notify the Contractor’s Account Manager when fuel orders are not received within the prescribed timeframe (48 hours).

The Contractor shall provide effective communications and accountability with Mansfield to address card reader functional issues. County will notify Contractor’s Account Manager in addition to its subcontractor when card readers fail. Contractor will respond within the same business day to inform the County of the status and timing of the expected restoration.

The Contractor agrees to replace the Autogas Card Reader with a FuelMaster card reader at Fire Station #8 within eight (8) to ten (10) weeks after this Agreement is executed by the County.

The Contractor shall perform an annual card reader inspection. Any issues identified during that inspection will be addressed including replacement of components of the FuelMaster device determined to be in need of replacement. Inspections shall include, at a minimum:

- a. System display and LED lights appear functional?
- b. System display shows no errors?
- c. Cabinet panels are locked and secure?
- d. The card reader swipes are cleaned with a cleaning card.
- e. Confirm that a test transaction(s) was performed to assure it is functioning properly.

The Contractor shall replace the Fuel Master device if the County has continuous service problems from a specific site's card reader that becomes apparent and noticeable to the parties, upon receipt of written notice that County desires a specific FuelMaster unit replaced.

The Contractor shall replace every FuelMaster card reader devices after it reaches 10 years of service life.

The Contractor shall waive expedited shipment (2nd Day) charges of fuel cards for the first 12 months of the Contract, and in extended contract awards this expedited shipment charge shall be built into the fixed margin fee.

The Contractor shall provide, at no cost to the County, customized query and Data Mart Summary Level reporting as needed by County.

The Contractor shall provide in person system training of County staff as needed.

THE COUNTY WILL NOT PERMIT ADDITIONAL CHARGES FOR THE FOLLOWING SERVICES:

1. New magnetic stripe cards
2. Replacement magnetic stripe cards
3. Reports by fuel type including alternative fuel blend content (e.g. B20, E85,ULSD, unleaded)
4. Transactions by fuel type
5. Maintenance, repair or replacement of card readers.

TAXES

The Contractor shall guarantee that all on-site fuel purchases made by authorized County personnel will be exempt from applicable Federal taxes and Virginia state excise taxes at the point of sale with the exceptions of the Federal Leaking Underground Storage Tank (LUST) Tax (\$.001 per gallon), the federal Oil Spill Liability tax (\$.0019 per gallon), and the Virginia Underground Storage Tax (\$.006 per gallon).

Billing by the Contractor shall reflect these tax exemptions and taxes will not be permitted to be billed by the Contractor to the County on the fuel sold on-site by the Contractor to the County.

Off-site fuel purchases made utilizing the Contractor's fuel card will be sold at a price including State taxes but excluding allowed exempt Federal excise taxes.

The Contractor shall provide installation and implement a complete system including all services described below at no cost to the County.

INVOICING

The Contractor agrees to review Mansfield’s (subcontractor’s) invoices prior to submittal to County for payment. The date of Contractor’s invoice to County shall be the date on which the Contractor has reviewed Mansfield’s invoice. The Contractor shall provide weekly billing invoices to the County via email to the Project Officer, by no later than 1:00 P.M. Eastern Time on Thursday of each week. The invoice must have in the description field the reference billing week.

The accuracy of billing information is a critical factor for County operations. The Contractor must provide to the County accurate billing information for the prices on invoices, the data entry import files, and the Fleet Management Report must contain correct information.

The Contractor agrees that failure to provide to the County the correct billing information specified above will result in payments delay until the billing information is corrected by the Contractor. The County will not pay any penalty fees for delay payments due to incorrect billing information on invoices submitted by the Contractor or its agents to the County.

REPORTING

The Contractor shall report via email to the Project Officer, on the day following each fuel delivery, how much and what type of fuel was delivered to each County site.

The Contractor’s System shall provide, on request of the County, the following information:

1. Annual detail reports by department, by equipment no. to include all details of transactions.
2. Up to date maps and locations of all retail locations for out of town trips.
3. Monthly report of all fuel deliveries, amount delivered, date of delivery and daily tank readings.
4. Monthly summary by type of fuel dispensed.
5. Monthly summary reports by vehicle.
6. Monthly summary reports by department.
7. Monthly summary reports by account.
8. Monthly report listing Master card use.

The Contractor’s System shall provide, on request from the County, a card file listing report that includes the following information:

1. Employee name and PIN
2. Department and sub-department number
3. Card/key number
4. Vehicle number
5. Operators added and terminated
6. Vehicles added and terminated
7. Active and inactive cards
8. System restrictions on cards
9. Master cards issued

The Contractor shall submit weekly transactions data produced by their system and it shall be in a (.txt) format that allows a direct download into the County's current Fleet Management System (AssetWorks Fleet Focus) without additional processing. This download shall be performed by the Contractor. The Contractor shall ensure that reports are generated by the System, downloaded by the Contractor, and forwarded to the County.

The Contractor shall provide the following data to the County every Tuesday by no later than 5:00 P.M. Eastern Time:

1. Date and time of purchase
2. Name of operator who fueled
3. Description of vehicle
4. Location of purchase (on- and off-site)
5. Vehicle odometer reading
6. Miles per gallon rating for each transaction
7. Type of fuel purchased
8. Quantity of fuel purchased
9. Base price of fuel (excluding taxes) (on- and off-site)
10. Taxes paid each transaction
11. Track of all transactions separately by vehicle
12. Weekly total miles driven by each vehicle
13. Average weekly miles per gallon per vehicle
14. Total weekly quantity of fuel purchased
15. Total weekly dollars billed per vehicle
16. Total weekly billing by account distribution code, by vehicle to include quantity, type of fuel, total cost by department and total cost overall.

Odometer reading integrity must remain consistent whether fueling on-site.

FUEL SITE LOCATIONS AND EQUIPMENT

The Contractor shall provide card reader devices at the three (3) automated sites identified below (items #1, 3 and 4) and the County will supply communication lines necessary for the proposed System to capture all on-site transactions. The locations are as follows:

1. TRADE CENTER FUEL SITE – 2701 S. TAYLOR ST., ARLINGTON, VA, 22206
 - a. 8 hoses (4 Diesel/Bio-Diesel, 4 Unleaded)
 - b. 4 12,000 gallon tanks (2 Diesel/Bio-Diesel, 1 Unleaded, 1 unleaded capable of E85)
 - c. 2 1,000 gallon above ground propane tanks (Possible future addition)
2. 2,800 Gallon Fuel Truck (ULSD only) located at 2701 South Taylor St., Arlington, VA, 22206
3. FIRE STATION #8 – 4845 LEE HIGHWAY, ARLINGTON, VA, 22207
 - a. 2 hoses (1 Diesel/Bio-diesel, 1 Unleaded)
 - b. 1 30,000 gallon Diesel/Bio-diesel tank, 1 20,000 gallon Unleaded tank
4. FIRE STATION #2 – 4805 WILSON BOULEVARD, ARLINGTON, VA, 22203
 - a. 1 hose Unleaded
 - b. 1 20,000 gallon Unleaded tank

FUEL SPECIFICATION SHALL CONSIST OF THE FOLLOWING:

1. **Unleaded gasoline** – 87 Octane minimum.
2. **Diesel Fuel** – Grade No. 2-D S15, ultra low sulfur diesel meeting ASTM (American Society of Testing and Materials) D 975-11b or latest version thereof.
3. **Biodiesel** – biodiesel is a fuel comprised of mono-alky esters of long chain fatty acids derived from vegetable oils or animal fats. All biodiesel purchased by Arlington County must be produced from either 100% virgin stock soy oil or 100% recycled cooking oil, certified by the supplier to conform to the most recent version of ASTM D 6751. The Contractor will be required to provide on demand written certification from the manufacturer that the biodiesel blends it delivers meet this ASTM certification.
4. **E85** – (possible future use) shall meet the most recent version of ASTM D 5798, “Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.”

Termination of Contract for Default

If the Contract is terminated due to a default by the Contractor (see “Termination For Default” section in the Agreement) the Contractor agrees that it will do the following:

- Leave in place at the three (3) automated sites all System equipment (card reader devices and communication lines) necessary to capture all on-line transactions until instructed by the County to remove such equipment.
- Allow the County to upgrade software in the card reader devices to enable them to be used with the equipment manufacturer’s proprietary smart card or access key solution (herein “equipment manufacturer’s proprietary system”). Other than the Card Reader equipment to be left in place by Contractor until notice given to remove, implementation of another equipment manufacturer’s proprietary system shall be at County’s expense.
- Sell to the County, at then-current prices, all in-ground fuel at the date of the Contract’s termination.

The County shall in such event:

- Upon receipt of the hardware and software necessary to issue operator PIN number and Master cards/keys to obtain fuel, pay the Contractor for all in-ground fuel.
- Submit to the Contractor at least 2 weeks in advance notice for removal of Contractor Fuel System equipment.

EXHIBIT B

PRICING FOR ARLINGTON COUNTY AGREEMENT 580-13

PRICE:

Transactions at off-site retail locations (commercial sites) shall be based upon the respective station's advertised Retail Pump Price, which might be the Credit Retail Price as posted or transmitted to FleetCor by the Card accepting merchant (herein "pump price"). Additionally FleetCor will provide the County a discount of **\$0.04** cents per gallon off the pump price. Discounts will be applied at the transaction level allowing automatic exact dollar accountability of the discount to the County's cost center and vehicle/asset level, in the current week's invoice and fleet-management report. FleetCor reserves the right to never bill the County for any purchase at an off-site retail location/commercial site at a price below FleetCor's cost to settle with the card-accepting Merchant. In the event that the County's price (including retail discount and all merchant taxes) calculates to be below FleetCor's cost to settle with the Merchant, FleetCor's cost shall apply.

Transactions at on-site locations (County sites) shall be priced based on the following components: OPIS price plus freight, taxes and margin as listed below:

1. Biodiesel B99 per gallon:
 - a. Freight = \$0.07660
 - b. Taxes @ .0089 = \$0.00890
 - c. Fixed Margin = \$0.0890
 - d. Total = \$0.1745
 - e. Winter Additive \$0.020
 - f. Total (winter months) \$0.1945

2. Diesel (ULSD):
 - a. Freight = \$0.07660
 - b. Taxes @ .0089 = \$0.00890
 - c. Fixed Margin = \$0.0890
 - d. Total = \$0.1745
 - e. Winter Additive \$0.020
 - f. Total (winter months) \$0.1945

3. Ethanol E85:
 - a. Freight = \$0.06020
 - b. Taxes @ .0089 = \$0.00890
 - c. Fixed Margin = \$0.0890
 - d. Total = \$0.1581

4. Unleaded (E10):
 - a. Freight = \$0.05420
 - b. Taxes @ .0089 = \$0.00890
 - c. Fixed Margin = \$0.0890
 - d. Total = \$0.1521

For purposes of determining the OPIS price, except for biodiesel blends, which might require FleetCor to use the Baltimore Rack for pricing if biodiesel is not readily available to Mansfield Oil in Fairfax, FleetCor will use the Weekly Newsletter price (as of Thursday close), not the Daily Newsletter Price, for Fairfax, Virginia. Furthermore, for base price of biodiesel blends such as B5, B10 or B20, FleetCor shall calculate a virtual rack price based on the product price components using the OPIS Weekly Newsletter (Unbranded Average) Rack Price for the Ultra Low Sulfur Diesel (ULSD) portion of the blend multiplied times the applicable percentage, plus the biodiesel portion of the blend based on our fuel supplier's cost of the B99 (or B100) multiplied times the biodiesel percentage of the blend.

Likewise, for base price of E85, FleetCor shall calculate a virtual rack price based on the product price components using the OPIS Weekly Newsletter (Unbranded Average) Rack Price for the Unleaded portion of the blend multiplied times the applicable percentage, plus the ethanol portion of the blend based on FleetCor's fuel supplier's cost of the ethanol multiplied times the ethanol percentage of the blend. During winter seasons, the percentage blend for E85 might be lower than 85% ethanol as allowed by governing regulations to prevent cold start problems or other performance issues.

THE ABOVE AMOUNTS, OTHER THAN THOSE PERTAINING TO FREIGHT, ADDITIVES, AND TAX CHANGES, SHALL BE FIRM FOR THE ENTIRE CONTRACT TERM.

The Freight Rates specified in this Exhibit B shall remain firm for the first twelve (12) months of the Contract Term. Any price modifications shall be subject to negotiation and approval in writing by the County prior to new prices going into effect, except as otherwise set forth in Section 5 of the Agreement.

Adjustments in the freight pricing after the first twelve (12) months of the Contract Term shall not exceed the increase or decrease necessary to meet then applicable market freight costs as substantiated to the County by FleetCor providing quotes from competitive qualified common carriers.

FleetCor shall provide to the County multiple quotes from common carriers with at least five (5) years of fuel delivery experience in order to establish the freight rate for the ensuing contract period.

FleetCor shall provide the County notice 90 days prior to any requested rate increase. FleetCor agrees that any future increased freight rate shall remain firm for an additional twelve (12) month period.

Further, FleetCor agrees to provide the winter additives at an additional adder of **\$0.02** per gallon, which shall apply at times when the additives are being added to the fuel delivered. Should this rate ever need to increase due to cost escalations, FleetCor shall advise the County before any increase is required so that the County can determine whether it wants to discontinue winter additives.

Any increase or decrease in taxes applicable to the County shall be passed through to the County.

AGREEMENT NO. 580-13

EXHIBIT C

NON-DISCLOSURE AND DATA SECURITY AGREEMENT

The undersigned, an authorized agent of the Contractor and on behalf of the Contractor hereby agree that the Contractor will hold County-provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 580-13 (the "Project" or "County Agreement" as applicable) or which may be accessed through other County-owned or -controlled databases (all of the above collectively referred to herein as "information" or "County information").

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

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

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

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

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

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 Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the County Agreement.

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

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

Authorized Signature: Eric Dey
Printed Name and Title: ERIC DEY CFO
Date: 3-16-2013