

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

CONTRACT NO. 18-244

This Agreement is made on the date of execution by the County, between Traffic Systems & Technology, LLC dba Traffic Systems & Technology, a Virginia Limited Liability Company ("Contractor"), authorized to do business in the Commonwealth of Virginia and the County Board of Arlington County ("County"). The County and the Contractor, for the consideration hereinunder specified, agree to the following:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of this Contract document and the following:

- Attachment A – Scope of Work
- Attachment B – Specifications
- Attachment C – Current Arlington County Traffic Signal Pole Standard Drawings
- Attachment D – Price Schedule
- Attachment E– Traffic Systems & Technology, LLC Bid Documents to Invitation to Bid No. 18-244

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

2. SCOPE OF WORK

The Contractor/Manufacturer agrees to provide goods described in the Contract Documents (hereinafter "the Work"), more particularly described in the Statement of Work, Specifications and Drawings included with the Invitation to Bid. The primary purpose of the Work is to supply Arlington County with traffic signal poles, mast arms and appurtenances. Additionally, the County's existing traffic signal pole design requires updating to incorporate the most current AASHTO and VDOT specifications.

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/Manufacturer's responsibility, at the Contractor/Manufacturer's sole cost, to provide the specific goods set forth in the Contract Documents and sufficient goods 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 Contract Term shall be One Base Year with Four (4) One-Year Option periods.

4. OPTION TO EXTEND SERVICES

The County may require continued performance of any of the goods or services within the limits and at the rates specified in the Price Schedule. This option provision may be exercised more than once, but

5. CONTRACT PRICING

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

6. PROJECT OFFICER

The performance of the Contractor/Manufacturer 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. It shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

7. PAYMENT TERMS

Payment terms will be recorded by the County as net Thirty (30) days. The County will pay the Contractor/Manufacturer within Thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed Work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the Work which meets the Contract requirements, whichever is later.

Payments will be made by the County for goods furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of delivery of service, subject to applicable payment terms. The number of the County Purchase Orders pursuant to which authority services have been performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

8. PAYMENT OF SUB-CONTRACTORS

The Contractor/Manufacturer is obligated to take one of the two following actions within Seven (7) calendar days after receipt of amounts paid to the Contractor/Manufacturer 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 sub-contractor 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 nonpayment.

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 (7) calendar 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 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 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 sub-contractor.

The Contractor's obligation to pay an interest charge to a sub-contractor pursuant to this Section may not be construed to be an obligation of the County. A Contract Modification may not be made for the

purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. NON-APPROPRIATION

All funds for payments by the County to the Contractor/Manufacturer 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

10. REQUIREMENTS CONTRACT

During the Contract Term, the Contractor shall furnish all of the items or services described in the Contract Documents required by the County. The Contractor/Manufacturer 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/Manufacturer further understands that the County may require items and/or services in excess of the estimated annual Contract Amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract. In addition, for any items or services required, the County will treat the Contractor/Manufacturer as the exclusive provider of such items or services, and it will use its best efforts to ensure that all orders for the items or services specifically described in the Contract will be placed with the Contractor.

11. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency.

The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

12. DELIVERY

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor/Manufacturer. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

13. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or Workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor/Manufacturer shall provide all manufacturers' warranties available to the Project Officer at the time of delivery.

All goods and materials are guaranteed by the Contractor/Manufacturer against defects resulting from the use of inferior or faulty materials or Workmanship for One (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of Final Acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

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

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

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

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

15. DISPOSAL OF PACKING MATERIALS, TRASH, AND DEBRIS

The Contractor/Manufacturer shall be responsible for all costs associated with the immediate removal of all packing materials, trash, and debris ("Waste"), and legal disposal of said Waste off-site. No County building or waste containers shall be used for such Waste. If the Contractor fails to adhere to this requirement the County will contract a third party for removal and disposal of the Waste left by the Contractor.

By accepting this award, the Contractor/Manufacturer agrees that all costs incurred by the County for removal and disposal of Waste left by the Contractor will be deducted from the final payment due to the Contractor/Manufacturer. Similarly, any damage to walls, floors, carpeting or any other County-owned or County-controlled property caused by the Contractor or the Contractor's agents during service provision, delivery, setup or equipment installation shall be repaired or caused to be repaired by the County at the Contractor's sole expense with all costs of the repair deducted from the Contractor's final payment unless the County agrees that such repairs will be made by the Contractor. Any such Contractor repairs shall be made within Ten (10) days of the date of damage to the satisfaction of the County.

16. OSHA REQUIREMENTS

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

17. HAZARDOUS MATERIALS

Arlington County is subject to the Hazard Communication Standard, 29 CFR § 1910.1200 (“Standard”).

The Contractor agrees that it will provide or cause to be provided Material Safety Data Sheets (“MSDS”) required under the Standard for all hazardous materials supplied to the County or used in the performance of the Work. Such MSDS shall be delivered to the County no later than the time of actual delivery of any hazardous materials to the County or use of such material in the performance of Work under the Contract by the Contractor or its subcontractors, whichever occurs first.

Container labeling that meets the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The County reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when MSDS have not been received prior to or at the time of receipt of the shipment for use by the County or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of MSDS are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials.

18. PROHIBITION AGAINST ASBESTOS-CONTAINING MATERIAL

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor/Manufacturer or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to Worker protection, the immediate removal and legal disposal of the goods, equipment or materials containing asbestos.

The Contractor/Manufacturer shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or sub-contractors relating to the Work under this contract. The Contractor/Manufacturer shall also reimburse to the County all expenses related to and the costs of such goods, equipment, supplies or materials installed.

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

19. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its Work pursuant to this Contract, the Contractor agrees as follows:

- a. The Contractor/Manufacturer 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/Manufacturer, 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/Manufacturer 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/Manufacturer will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

20. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

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

21. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor/Manufacturer agrees to the following:

- (i) Provide a drug-free Workplace for 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 \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

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

22. FAILURE TO DELIVER

In case of failure by the Contractor/Manufacturer to deliver goods or services in accordance with the Contract Documents, the County, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs.

This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or under law. At its discretion, the County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

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

- The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that the following requirements and conditions have been satisfactorily met:
 - The County has accepted the Work, and thereafter until the Contractor/Manufacturer 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/Manufacturer 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/Manufacturer may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs").

In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within Fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

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

Upon any termination pursuant to this Section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant Work performed or provided by the Contractor/Manufacturer or its sub-contractors. 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/Manufacturer 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/Manufacturer 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 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/Manufacturer of a written notice of termination at least Fifteen (15) consecutive calendar 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/Manufacturer 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 paper work for terminated Work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

25. INDEMNIFICATION

The Contractor/Manufacturer covenants for itself, its employees, and sub-contractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or sub-contractors, 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.

26. INTELLECTUAL PROPERTY INDEMNIFICATION

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

The Contractor/Manufacturer further covenants for itself, its employees, and sub-contractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County.

If the Contractor, or any of its employees or sub-contractors, uses any design, device, Work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, Work, or materials in any way involved with the Work.

This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements or payments made.

The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

27. COPYRIGHT

The Contractor/Manufacturer 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/Manufacturer further agrees to execute such documents as the County may request to affect such transfer or assignment.

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

The use of sub-contractors 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 sub-contractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for Work related to Work pursuant to this Contract.

28. 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 Bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

29. COUNTY EMPLOYEES

No employee of 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.

30. FORCE MAJEURE

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

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

31. AUTHORITY TO TRANSACT BUSINESS

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

32. RELATION TO THE COUNTY

The Contractor/Manufacturer is an independent Contractor, and neither the Contractor/Manufacturer nor its employees or sub-contractors 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/Manufacturer, 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.

33. ANTITRUST

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

34. AUDIT

The Contractor/Manufacturer 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/Manufacturer must provide any requested documents to the County for examination within Fifteen (15) consecutive calendar days of the request, at the Contractor/Manufacturer's expense.

Should the County's examination reveal any overcharging by the Contractor, the Contractor/Manufacturer must, within Thirty (30) consecutive calendar 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 after the final payment, the Contractor/Manufacturer must give the County, a minimum of, Thirty (30) calendar days' notice and must not dispose of the documents if the County objects.

35. ASSIGNMENT

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

36. AMENDMENTS

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

37. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

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

38. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra Work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the Work upon which the claim is based, whichever occurs first.

Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than Sixty (60) days after Final Payment.

The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is Fifteen (15) calendar days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference.

A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

39. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

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

40. ARBITRATION

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

41. NONEXCLUSIVITY OF REMEDIES

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

42. NO WAIVER

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

43. SEVERABILITY

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

44. NO WAIVER OF SOVEREIGN IMMUNITY

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

45. SURVIVAL OF TERMS

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

46. HEADINGS

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

47. AMBIGUITIES

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

48. ATTORNEYS' FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

49. NOTICES

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

**TO THE CONTRACTOR:
Randall W. Dominick, President
Traffic Systems & Technology, LLC
10110 Battleview Parkway
Suite 100
Manassas, Virginia 20109**

**TO THE COUNTY:
Joshua Nicholas, Project Management Coordinator
Arlington County Government
Department of Environmental Services, Traffic, Engineering & Operations
2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201**

AND

**Shirley Diamond, Procurement Officer
Office of the Purchasing Agent
2100 Clarendon Blvd.
Suite 500
Arlington, Virginia 22201**

50. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

51. CONTRACTOR PERFORMANCE EVALUATION

Arlington County will perform a written evaluation of the Contractor's performance at various intervals throughout the life of this Contract. At a minimum, evaluations will be completed at Fifty Percent (50%) completion of the Work and within Sixty (60) calendar days of Final Completion of the project and prior to Final Payment being made to the Contractor. The evaluations will address the Contractor's Work, quality, cost controls, schedule, timeliness and sub-contractor performance. The Project Officer will be responsible for completing the evaluations and provide a copy to the Contractor and the Procurement Officer.

52. INSURANCE REQUIREMENTS

The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the County and the Contractor.

1. General

- 1.1 The Contractor shall provide insurance as specified in the Insurance Checklist found on the last page of the bid or proposal form.
- 1.2 The Contract with the Contractor will not be executed by the County until the Contractor has obtained, at its own expense, all of the insurance called for hereunder and such insurance has been approved by the County; additionally, the Contractor shall not allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. The Contractor shall submit to the County Purchasing Agent copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the County's request, certified copies of the required insurance policies in compliance with the insurance requirements. All endorsements and documentation shall state this Contract's number and title.
- 1.3 The Contractor shall require all subcontractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation, Employers' Liability insurance, or any other insurance required by the Contract in the same manner and form as specified for the Contractor. The Contractor

shall furnish subcontractors' evidence of insurance and copies of endorsements to the County Purchasing Agent immediately upon request by the County and/or prior to the subcontractor's performance of work related to this Contract.

- 1.4 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. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be 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 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 (10) days for non-payment 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.

- 1.5 No acceptance and/or approval of any insurance by the County shall be construed as relieving or excusing the Contractor, any surety, or any bond, from any liability or obligation imposed under this Agreement.
- 1.6 Arlington County, and its officers, elected and appointed officials, employees, and agents are to be named as additional insureds under all coverages except Workers' Compensation, Professional Liability, and Automobile Liability, and the endorsement must clearly identify the County as an additional insured permitted to enjoy all the benefits under the applicable policy of insurance. The certified policy, if requested, must so state coverage afforded under this paragraph shall be primary as respects the County, its officers, elected and appointed officials, agents and employees. The following definition of the term "County" applies to all policies issued under the Contract and to all applicable endorsements:

"The County Board of Arlington County and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which

controlling interest is vested in Arlington County; and
Arlington County Constitutional Officers."

- 1.7 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted Work.
- 1.8 The insurance coverage required shall remain in force throughout the Contract or as otherwise stated in the Contract Documents or these Insurance Requirements. If the Contractor fails to provide acceptable evidence of current insurance within Seven (7) days of written notice at any time during the Contract, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor.
- 1.9 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising or inspecting the work as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.
- 1.10 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work, such policy shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.
- 1.11 All policies shall include the following language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy."
- 1.12 All policy forms must "Pay on behalf of" rather than "Indemnify" the insured.
- 1.13 Nothing contained in these Insurance Requirements or the Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of its sub-

contractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

- 1.14 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its sub-contractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its work under the Contract.
- 1.15 For any claims related to this work, The Contractor's insurance shall be deemed primary and non- contributory to all other applicable coverage and in particular with respect to Arlington County, its representatives, officials, employees, and agents. Any insurance or self-insurance maintained by Arlington County shall be excess and noncontributory of the Contractor's insurance. The Contractor shall waive its right of subrogation for all insurance claims.
- 1.16 If the Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the Purchasing Agent, may be considered. Written requests for consideration of alternate coverages including the Contractor's most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the County Purchasing Agent, a minimum of, Ten (10) working days prior to the date set for receipt of bids or proposals. If the County denies the request for alternate coverages, the specified coverages will be required to be submitted. If the County permits alternate coverage, an Addendum to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.
- 1.17 All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The insurers must also have a policy holder's with a rating of "A-VII" in the latest edition of the A.M. Best Co.'s Insurance Reports, unless the County grants specific approval for an exception, in the same manner as described in 1.16 above.
- 1.18 The Contractor shall be responsible for payment of any deductibles applicable to the coverages.
- 1.19 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, 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.

2. Contractor's Insurance:

2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Insurance Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for Five (5) years after completion of the Work;
- v. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract;
- vi. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Business Automobile Liability, including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by Virginia law or the U.S. Longshoremen's and Harbor Workers'

Compensation Act, or other laws as required by labor union agreements, including standard Other States coverage; Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or employees of the general contractor to which the insured is subcontracted; or employees of the insured's subcontractor.

2.1.4 General Environmental Remediation Projects

In addition to the Insurance Requirements specified in the general provision or elsewhere in the Contract Documents, the Contractor shall not commence work under this Contract until all insurance as required hereafter has been obtained, and certified copies, naming the County as an additional insured, of such insurance have been submitted and accepted by the Purchasing Agent.

- i. An environmental remediation contractor or subcontractor shall be responsible for purchasing and maintaining Business Automobile Liability insurance and Workers' Compensation insurance as described in 2.1.2 and 2.1.3.
- ii. Acceptance by Arlington County of insurance submitted by the Contractor does not relieve or decrease in any manner the liability of the Contractor for performance of environmental remediation Work under the Contract.
- iii. The Contractor is responsible for any losses, claims, and costs of any kind, which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies. The limits and coverage requirements may be revised at the option of the Arlington County Risk Manager. The requirements outlined shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of work under the Contract.

2.1.5 Contractors Pollution Liability (CPL) Policy

- i. Minimum liability limits required shall be \$1,000,000 Per Loss and \$2,000,000 Total All Losses, including, but not limited to, property damage, bodily injury, loss of use, and cleanup costs.

- ii. Limits must be dedicated to work performed under this Contract only, unless prior approval by the Arlington County Risk Manager has been obtained. The policy of insurance shall contain or be endorsed to include the following:
 - a. Pollution coverage as respects asbestos, lead, VOC and PCB's.
 - b. "Covered Operations" designated by the CPL policy must specifically include all work performed under this contract. (This would include and not be limited to excavation, off-site incineration of soils, demolition, asbestos abatement, drum removal and disposal, in-situ vapor extraction, etc.) and exclusions or limitations affecting work performed under this contract must be deleted. (i.e., lead, asbestos, pollution, testing, underground storage tanks, radioactive matter, etc.)
 - c. Contractor must comply with all applicable DOT and EPA requirements.
 - d. Premises/Operations.
 - e. Broad form property damage.
 - f. Products/Completed Operations coverage for a minimum of five (5) years after Final Payment.
 - g. Contractual liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
 - h. Cross liability/severability of interest.
 - i. The scope of work and all related activities under this Contract shall be scheduled as "Covered Operations" under this policy.

- j. Coverage is included on behalf of the insured for covered claims arising out of the actions of independent contractors. If insured is utilizing subcontractors, the CPL policy must use "By or On behalf of" language with regards to coverage.
- k. Loading and unloading exclusions must be amended so as to include coverage for mobile equipment and automobiles.

2.1.6 Asbestos and Lead Based Paint Abatement Projects

- i. Minimum Liability Limits shall be \$1,000,000 Per Occurrence and \$2,000,000 Aggregate. Limits must be dedicated to work performed under this Contract only, unless otherwise approved by the Arlington County Risk Manager. The policy shall be written with a minimum annual aggregate combined single limit for Bodily Injury and Property Damage as shown on the Insurance Checklist. This limit can be inclusive of defense costs.
- ii. The policy of insurance shall contain or be endorsed to include the following:
 - a. Coverage for Asbestos/Lead-Based Paint Abatement operations as described in the contract. Specific lead endorsement evidencing this project must be provided, if applicable.
 - b. Pollution coverage as respects Asbestos/Lead-Based Paint for all phases of the abatement process.
 - c. Transportation coverage for the hauling of ACM/Lead-Based Paint from the project site to the final disposal location, as evidenced by the contractor or applicable waste hauler. Contractor must comply with all applicable D.O.T. regulations.
 - d. Premises/Operations.
 - e. Broad Form Property Damage.

- f. Products/Completed Operations coverage for a minimum of Five (5) years after project completion.
- g. Contractual Liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
- h. Cross Liability. Any "Insured vs. Insured" – type language must be deleted or amended to "Named Insured vs. Named Insured."
- i. The policy shall not exclude Asbestos/Lead Based Paint bodily injury to employees of Arlington County so long as their designated job duties do not require them to be in the regulated asbestos/lead based paint abatement area.
- j. If the policy or any endorsement contains a provision which limits or eliminates bodily injury or property damage coverage based on final air fiber clearance levels, the policy shall be modified so that it is consistent with the clearing level (FCC) and the appropriate analytical testing protocol contained in the project specifications.
- k. Personal Injury.
- l. Independent Contractors.
- m. Hostile fire coverage is to be provided.

3. Commercial General or other Liability Insurance - Claims-made Basis:

- 3.1 If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Insurance Checklist remain the same. The Contractor must either:
 - i. Agree to provide insurance, copies of the endorsement and certified

documentation evidencing the above coverages and naming the County as an additional insured for a period of Five (5) years after final payment under the Contract. Such documentation shall evidence a retroactive date, no later than the beginning of the Contractors or subcontractors' work under this Contract, or

- ii. Purchase an extended (minimum Five (5) years) reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a copy of the endorsement itself. The extended reporting period will begin upon final payment under the Contract.

4. Builder's Risk Insurance

- 4.1 The Contractor shall purchase and maintain builders risk insurance with a limit equal to the initial Contract Amount and any amendments to the Contract which affect the project cost on a replacement cost basis. Builder's risk insurance shall be maintained until Final Payment under the Contract has been made or until no person or entity other than the County has an insurable interest in the covered property, whichever is earlier. The builders risk insurance shall include the County as defined in Section 1.6, Contractor, subcontractors and sub-subcontractors as named insureds.
- 4.2 Insurance shall be on an all-risks policy form including the perils of fire, theft, vandalism, malicious mischief, lightning, wind, force majeure, collapse, and earthquake. Coverage is to apply for demolition occasioned by enforcement of any applicable legal requirements, and Architect's fees. Coverage for the peril of flood shall not be required unless otherwise required in the Contract Documents.
- 4.3 Unless otherwise provided in the Contract Documents, the builders risk insurance shall also cover materials to be incorporated into the project which are stored off the site.
- 4.4 The Contractor shall purchase and maintain Boiler and Machinery insurance, if required by the contract documents or by law, with a limit satisfactory to the County. The Boiler and Machinery insurance shall cover objects during installation and until Final Acceptance by the County. The County shall be included as a named insured.
- 4.5 Any loss under Builders Risk insurance shall be payable to the County as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by

appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner. The County, as fiduciary, shall have the right to adjust and settle a loss with insurers.

4.6 The insurance company providing the builders risk coverage shall grant permission for the County to partially occupy or use the premises under construction prior to final acceptance without removing or affecting the coverage.

WITNESS these signature:

THE COUNTY BOARD OF ARLINGTON COUNT
VIRGINIA

AUTHORIZED:
SIGNATURE:



NAME: MARIA MEREDITH
TITLE: ACTING PURCHASING AGENT

DATE: 8-14-18

CONTRACTOR:
TRAFFIC SYSTEMS & TECHNOLOGY, LLC

AUTHORIZED
SIGNATURE:



NAME: RANDY W. DOMINIC
TITLE: PRESIDENT

DATE: 8-14-18