NOTICE OF AWARD OF CONTRACT

TO:
ARTHUR CONSTRUCTION CORPORATION
23691 OVERLAND DRIVE
DULLES, VA 20166

DATE ISSUED: APRIL 8, 2014
CURRENT CONTRACT NO: 705-14

CONTRACT TITLE: ON-CALL ASPHALT PATCHING SERVICES

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

The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on JUNE 15, 2014.

The contract documents consist of the terms, conditions, and specifications of Contract 705-14 which rides the Virginia Department of Transportation’s Contract No. C00103341N01 and the bid of the Contractor, incorporated herein by reference.

CONTRACT PRICING:
REFER TO CONTRACTOR’S PRICING SCHEDULE

ATTACHMENTS:
AGREEMENT NO. 705-14

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

VENDOR CONTACT: JOSE ARAUJO
VENDOR EMAIL: arthurconst@arthurconst.com
COUNTY CONTACT: HUNG TRAN
COUNTY EMAIL: htran@arlingtonva.us

TELEPHONE NO.: 703-995-1155
FAX NUMBER: 410-995-1151
TELEPHONE NO.: 703-228-7730

CONTRACT AUTHORIZATION DISTRIBUTION

Krystyna Hepler 4/8/2014 BID FOLDER: 1
Krystyna Hepler, CPPB Date
AGREEMENT NO. 705-14

THIS AGREEMENT is made, on the date of execution by the County, between Arthur Construction Corporation, 23691 Overland Drive, Dulles, VA 20166 ("Contractor") a Virginia 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 - Arlington County Department of Environmental Services Project General Conditions, Exhibit B - the Contractor's Pricing Schedule, and Exhibit C - Contract No. C00103341N01 between the Contractor and Virginia Department of Transportation (incorporated herein by reference) ("Contract Documents").

This Agreement rides a competitive procurement process conducted by the Virginia Department of Transportation. The Contractor desires to extend to the County the same pricing as the Contractor’s agreement with the Virginia Department of Transportation.

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.

2. PROJECT OFFICER
The performance of the Contractor is subject to the general control, review and approval of the County Project Officer, who shall be appointed by the Director of the Arlington County Department of Environmental Services or designee. The Contractor shall not comply with requests and/or orders issued by other than the Project Officer of designee. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under this Agreement. Where the term "Engineer" is used in the Contract Documents, it shall be interpreted to mean "Project Officer".

3. SCOPE OF WORK
The Contractor will furnish all labor, materials, and equipment for the provision of on-call asphalt patching services in accordance with the Scope of Work of Virginia Department of Transportation’s Contract No. C00103341N01 (the "Project") and all other work shown, described and required in the Contract Documents (hereinafter "the Work"). The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. It shall be the obligation of the Contractor to obtain clarification from the Project Officer concerning any questions about or conflicts in the specifications, drawings and construction notes in a timely way so as not to delay the progress of the Work. 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 solely the Contractor's cost, to provide 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 its Work.

4. **CONTRACT TERM**
The Work shall commence on the date of execution of this Agreement by the County, and shall be completed no later than June 15, 2014 (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.

5. **CONTRACT AMOUNT**
The County will pay the Contractor according to the unit prices shown in Exhibit B, but not more than $250,000.00 in accordance with the Progress Payments paragraph for the Contractor's completion of the Work described and required in the Contract Documents, subject to the terms and conditions of the Agreement and provided the Work is performed to the satisfaction of and is accepted by the Project Officer. The Contractor agrees that it shall complete the Work for the total Contract Amount specified in this section unless such amount is modified as provided in this Agreement. The Contract Amount includes all of the Contractor's costs and fees (profit) and is inclusive of all anticipated or known site conditions, anticipated or known materials, labor, and equipment costs, or any other costs which should reasonably have been expected by the Contract Documents.

6. **PROGRESS PAYMENTS**
The County will make monthly progress payments to the Contractor upon written application by the Contractor, on the basis of a written estimate of the work performed during the preceding calendar month as approved by the Project Officer.

7. **PAYMENT TERMS**
Payment terms will be recorded by the County as net thirty (30) days. The County will pay the Contractor within thirty (30) 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 or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified by the Contract Documents, payment shall not be made prior to delivery and acceptance of the entire order by the County.

8. **PAYMENT OF SUBCONTRACTORS**
The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:
a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

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

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

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

9. RELEASE AND REQUEST FOR FINAL PAYMENT
Upon completion of the Project and before Final Acceptance, the Contractor will submit to the Project Officer a signed copy of the Arlington County Release and Request for Final Payment form per the General Conditions.

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

11. LIEN
It is expressly agreed that after any payment has been made by the County either to the Contractor or to any subcontractor, laborer, or any other person for work done, or labor or material supplied under the Contract, the County will have a lien upon all material delivered to the site either by the Contractor or any subcontractor, or for the Contractor, which is to be used in the performance of the Contract.

12. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal or Virginia law related to discrimination in
employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.

e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000.00, so that these provisions will apply to each subcontractor or vendor.

13. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term defined in the federal Immigration Reform and Control Act of 1986.

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

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

15. PROJECT STAFF
The County will, throughout the Contract Term and any renewal 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, 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 shall be solely the responsibility of the Contractor.

16. **FAILURE TO DELIVER**

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the County, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by the County. This remedy shall be in addition to any other remedies, which the County may have. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

17. **UNSATISFACTORY WORK**

If any of the work done, or material, goods, or equipment provided, by the Contractor is unsatisfactory to the County, the Contractor shall, on being notified by the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. In the event the Contractor fails within fifteen (15) calendar days after receipt of written notice to remove improper or unsuitable work, material, goods, or equipment and replace it with suitable and satisfactory work, material, goods, or equipment, the County shall have the right, but not the obligation, to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor. This paragraph applies during the Contract term and during any warranty or guarantee period. At its discretion, the County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract. If the Project Officer and the County deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate adjustment to the Contract Amount may be made therefor.

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

The County shall have the right to terminate this Contract prior to the end of the Contract Term if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

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

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

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

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

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

19. **TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The performance of Work under this Contract may be terminated by the County Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) 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 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.

20. **INDEMNIFICATION**

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the county and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

21. **INTELLECTUAL PROPERTY INDEMNIFICATION**

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

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the work hereunder. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the county and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.
22. COPYRIGHT

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

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

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

23. OWNERSHIP AND RETURN OF RECORDS

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

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

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

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

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

25. **ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Fraud 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.

26. **COUNTY EMPLOYEES**

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

27. **FORCE MAJEURE**

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

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

28. **AUTHORITY TO TRANSACT BUSINESS**

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

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

30. **ANTITRUST**

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

31. **REPORT STANDARDS**

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

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

- All submittals and copies shall be printed on **at least thirty percent** (30%) **recycled-content** and/or tree-free paper;
- All copies shall be double-sided;
- Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

32. **AUDIT**

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

33. **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.

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

35. **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.

36. **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 thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is 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 any decision of the Project Officer, County Manager, County Board, or a court of law.

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

38. **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.

39. **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.
40. **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.

41. **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.

42. **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.

43. **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 THE COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; AND CONFIDENTIAL INFORMATION.

44. **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.

45. **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.

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

**TO THE CONTRACTOR:**

Joe Araujo, Vice President  
Arthur Construction Corporation  
23691 Overland Drive  
Dulles, VA 20166
TO THE COUNTY:

Hung Tran, the County Project Officer
Arlington County - WSS
4200 28th Street, South
Arlington, Virginia 22206;

AND

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

47. NON-DISCRIMINATION NOTICE
Arlington County does not discriminate against faith-based organizations.

48. INSURANCE, PAYMENT AND PERFORMANCE BONDS
The Contractor shall maintain the required insurance coverage and payment and performance bonds through completion of the Contract, including all warranty and guarantee periods.

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

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of $100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b. Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

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.

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e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insured on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. 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 replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

h. Contract Identification - The insurance certificate shall state this Contract's number and title.

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

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

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

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

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

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

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE: Krystyna Hepler
NAME AND TITLE: RICHARD D. WARREN, JR. PURCHASING AGENT
DATE: 4/8/2014

ARTHUR CONSTRUCTION CORPORATION

AUTHORIZED SIGNATURE: 
NAME AND TITLE: Joe Araujo CP
DATE: April 2, 2014
EXHIBIT A
ARLINGTON COUNTY DES PROJECT GENERAL CONDITIONS

A. INTRODUCTION TO TERMS

1. DEFINITIONS

   a. The term “Award Date” means the date of execution of the Agreement by the Purchasing Agent.

   b. The term “Business Day” shall refer to any day that the County is open for general business.

   c. The term “Calendar Day” means any day of twenty-four hours measured from midnight to the next midnight. Included are weekends and holidays. When the term “Day” is used it shall be assumed to refer to a Calendar Day unless otherwise specified.

   d. The term “Change Order” means a written order to Contractor, signed by the County and the Contractor, which authorizes a change in the Work, or an adjustment in the Contract Amount, and/or the Contract Term issued after execution of the Agreement.

   e. The term "Commencement Date" means the date on which the Contract Term will commence for the Contractor to begin to perform his obligations under the Contract Documents as provided in the Notice to Proceed.

   f. The term "Contract Documents" means the Agreement and all the documents and Exhibits identified therein which shall include the Drawings and the Specifications and all modifications thereto properly incorporated in the Contract

(1) The term "Agreement" means the completed and signed form of Contract agreement.

(2) The term "Contract Drawings" means all drawings and construction notes which show the locations, character, dimensions, and details of the Work pertaining to the Contract.

(3) The term "Specifications" means and shall include the Supplementary Specifications, the Special Conditions, the Technical Specifications, and all written agreements and instructions pertaining to the performance of the Work.

   (a) The term "Technical Specifications" means the applicable technical specifications contained in the current edition of the Arlington County Department of Environmental Services, Standards and Specifications.
(b) The term "Supplementary Specifications" means any specifications included in the Contract Documents which modify, nullify, or add to the Technical Specifications for requirements or conditions peculiar to this contract.

(c) The term "Special Conditions" means the written statements modifying or supplementing the General Conditions for requirements or conditions peculiar to the Contract.

g. The terms "County" and "Contractor" shall mean the respective parties to the Contract. They shall be treated throughout the Contract Documents as though each were of the singular number and masculine gender. Only one Contractor is recognized as a party to this Contract.

h. The term "Engineer" means the Director, Department of Environmental Services, Arlington County, or designee. The designee may be identified as either the County's appointed Project Officer or a contractor employed by the County to perform construction services or project oversight.

i. The term "Final Acceptance" shall mean the date on which the County issues the final payment for the Work.

j. The term "Final Completion" shall mean the condition when the County agrees that all the Work has been fully completed in accordance with the Contract Documents and is acceptable. The County determines whether Final Completion has been accomplished after its representatives conduct a final walkthrough inspection of the project to verify the condition after notification by the Contractor. The date of the Final Completion of the Work under the Contract is the date on which Final Completion is accomplished.

k. "Notice to Proceed" shall mean a written notice given by the County to the Contractor specifying the Commencement Date.

l. The term "Project" means the entire proposed construction to be executed as stipulated in the Contract Documents.

m. The term "Project Officer" means the County Project Officer assigned by the Director of the County Department responsible for the project, or the Director's designee. When a designee to act on behalf of the Project Officer is used by the County, the name of the designee and the duties and authority of such designee will be identified in the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project. The designee may be a professional architect or engineer or other person employed by the County to perform construction services administration, design services, or project oversight.
n. The term "Stipulated Price Item" means and includes an item of Work, unanticipated or of unknown quantity at the time of issuance of the solicitation for a Bid and determined to be executed, based on the actual field conditions during the progress of Work under the Contract. The Unit Price for the "Stipulated Price Item", as identified in the "Stipulated Price Items" section of the Bid Form, is predetermined by the County as the current reasonably workable rate for the item inclusive of all necessary labor, equipment, materials, overheads (provision and installation), and the contractor's profit.

o. The term "Subcontractor", as employed herein, shall include only those having a direct contract with the Contractor, and it shall include those who furnish material worked to a special design according to the plans and specifications for this Work but shall not include those who merely furnish material not so worked.

p. The term "Work" shall mean the services and tasks performed under this Contract including, but not limited to, furnishing labor, and furnishing and installing materials and equipment required to complete the Project as specified in the Contract Documents.

q. "Written notice" shall be deemed to have been duly served if a) delivered in person to the individual or to the member of the firm or to an officer of the corporation for whom it is intended, or b) delivered to an agent, such as overnight or similar delivery service, or c) deposited in the United States mail, postage prepaid, certified or registered addressed to the last known address of such other party.

B. DRAWINGS, SPECIFICATIONS AND RELATED DATA

1. INTENT OF THE DRAWINGS AND SPECIFICATIONS

a. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract with all parts in working order, and all connections properly made.

b. The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications. Any additional drawings and other instructions deemed necessary by the Project Officer will be furnished to the Contractor when required for the Work and shall become incorporated into the Contract Documents.
c. Unless otherwise specifically noted, the word "similar" where it occurs in the Drawings, shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their locations and their connection with other parts of the Work.

d. Where "as shown", "as indicated" "as detailed", or words of similar import are used, it shall be understood that the direction, requirements, permission, approval or acceptance of the Project Officer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install".

e. Materials or work described in words which, so applied, have a well-known technical or trade meaning, shall be held to refer to the recognized technical or trade meaning.

f. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Figured dimensions on the plans shall be used in preference to scaling the Drawings. In case of conflict between small and large scale drawings, the large scale drawings shall govern.

2. DISCREPANCIES AND ERRORS

If the Contractor discovers any discrepancies between the Drawings and Specifications and the site conditions or any errors or omissions in the Drawings or Specifications, the Contractor shall at once report them in writing to the Project officer. If the Contractor proceeds with any work that may be affected by such discrepancies, errors, or omissions, after their discovery, but before their clarification, such work shall be at the Contractor's sole risk and expense and such work may not be the basis of any Claim for Extra Cost.

3. DIFFERING SITE CONDITIONS

The Contractor shall, within twenty-four hours after becoming aware of differing site conditions, and before the conditions are disturbed, give a written notice to the Project Officer of subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site.

The Project Officer will investigate the site conditions within two (2) business days after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the work, or the time required for performing any part of the work under the contract, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.
No request by the Contractor for an adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any work that may be affected by such differing site conditions before giving notice to the Project Officer as set forth herein, such work shall be at the Contractor's sole risk and expense.

5. DOCUMENTS ON THE JOB SITE

The Contractor shall keep on the site of the project a copy of the Drawings, Specifications, Permits, and all other applicable documents including all authorized revisions, and shall at all times give the County and its authorized representatives access thereto.

6. OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All Drawings and Specifications and copies thereof furnished by the County are the property of the County and shall not be used on other projects. Upon completion of the project, all copies of the Drawings and Specifications except the signed Contract sets shall be returned to the Project Officer.

7. SUBMITTALS

Submittals shall be processed per the Specifications unless otherwise specified.

8. TESTS

Any specified laboratory tests of materials and finished articles shall be made by bureaus, laboratories or agencies approved by the Project Officer and the certified reports of such tests shall be submitted to the Project Officer. All costs in connection with the testing shall be borne by the Contractor. Failure of any material to pass the specified tests or any test performed by the Project Officer, will be sufficient cause for refusal to consider, under this Contract, any further materials of the same brand or make of that material. Samples of various materials delivered on the site or in place may be taken by the Project Officer for testing. Samples failing to meet the Contract requirements will automatically void previous approvals of the items tested.

9. SURVEYS AND CONTROLS

Unless otherwise stated, the County will provide horizontal and vertical reference points necessary for the Contractor to proceed with the Work. The Contractor shall carefully preserve all reference points, and in the case of destruction thereof by the Contractor or due to the negligence of the Contractor or of any subcontractor, the Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes or construction errors that may be caused by the loss or disturbance of such reference points. The Contractor shall be responsible for laying out the Work and shall retain a
professional land surveyor licensed in the Commonwealth of
Virginia to survey and provide all necessary construction layouts
and to establish all control lines, grades, and elevations during
construction.

10. **AS-BUILT DRAWINGS**

As-built drawings shall be the responsibility of the Contractor.
The Contractor shall maintain and mark up one (1) set of prints
of the applicable Contract drawings to portray as-built
construction. The prints shall be neatly and clearly marked to
show all variations between the Work actually provided and that
indicated on the Contract Drawings, and all utilities encountered
in the Work. All drafting shall conform to good drafting
practice and shall include such supplementary notes, legends and
details as may be necessary for legibility and clear portrayal of
the as-built construction. These drawings shall be submitted
with every payment request. At the completion of the Project and
prior to request for Final Payment, the Contractor shall turn
over to the Project Officer a complete set of As-Built drawings.

**C. COUNTY, PROJECT OFFICER, AND CONTRACTOR RELATIONS**

1. **STATUS OF PROJECT OFFICER**

The Project Officer shall be the County's representative during
the construction period. The Project Officer shall have
authority to suspend the Work whenever such suspension may be
necessary in the responsible opinion of the Project Officer. The
Project Officer shall also have authority to reject all work and
materials that do not conform to the Contract and to decide
questions that arise in the execution of the Work.

2. **PROJECT OFFICER'S DECISIONS**

The Project Officer will, within a reasonable time, make
decisions on all matters relating to the execution and progress
of the Work.

3. **LIMITATION ON COUNTY'S RESPONSIBILITIES**

Except as modified by the Contract Documents, the County shall
not supervise, direct, or have control or authority over, nor be
responsible for: the Contractor’s means, methods, techniques,
sequences or procedures of construction; the safety precautions
and programs related to safety; or the Contractor’s failure to
perform or furnish the Work in accordance with the Contract
Documents.

4. **DISPUTES**

a. All disputes arising under this Contract or its
interpretation, whether involving law or fact or both, for
extra work, and all claims for alleged breach of Contract
shall be submitted in writing to the Project Officer for
decision prior to beginning the work on which the claim is
based. Such claims must set forth in detail the amount of the claim, and shall state the facts surrounding it in sufficient detail to identify it together with its character and scope.

b. In any case where the Contractor deems extra compensation is due him for work or materials clearly not covered in the Contract, or not ordered by the Project Officer as additional work not specifically included in the Contract Documents, the Contractor shall notify the Project Officer in writing of the Contractor's intention to make claim for such extra compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given, or the Project Officer is not afforded proper facilities by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for such extra compensation.

c. Contractual disputes shall be processed in accordance with the procedures outlined in Sections 7-107, Contractual Disputes and 7-108, Legal Actions of the Arlington County Purchasing Resolution and the Dispute Resolution paragraph in the Agreement.

d. The Contractor shall not cause a delay in the work pending a decision of the Project Officer, County Manager, County Board, or court, except by prior written approval of the Project Officer.

5. INSPECTION OF WORK

The Engineer and representatives of any public authority having jurisdiction shall, at all times, have access to the Work while in progress. The Contractor shall provide suitable facilities for such access and for proper observation of the Work and shall conduct all special tests required by the specifications, the Engineer's instructions, and any laws, ordinances or the regulations of any public authority applicable to the Work. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the Work.

6. INSPECTION OF MATERIALS

All articles, materials, and supplies purchased by the Contractor for the Work are subject to inspection by the Project Officer upon delivery to the site and during manufacturing or fabrication. The County reserves the right to return for full credit, at the risk and expense of the Contractor, all or part of the articles, materials, or supplies furnished contrary to specifications and instructions. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the materials.

7. EXAMINATION OF COMPLETED WORK

If the Engineer requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of
the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, then the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as extra work, but should the work so exposed or examined prove unacceptable, then the uncovering, removing, restoration, and/or replacing shall be at the Contractor's expense.

8. RIGHT TO SUSPEND WORK

The County shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the County may deem necessary or desirable. Any such suspension shall be in writing to the Contractor and the Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the County. The Contractor may be entitled to an extension of the Contract Term or an increase in the Contract Amount subject to the terms of the Contract Documents. If the suspension of Work is caused by the County's belief that non-conforming work is being installed, and subsequent investigation proves that the Work was non-conforming, the Contractor shall not be awarded additional time or costs.

9. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall keep a competent superintendent and any necessary assistants on the Work at all times during its progress and such persons shall be satisfactory to the Engineer. The superintendent shall not be changed except on the Engineer’s determination the superintendent is no longer satisfactory or except with the consent of the Engineer where the superintendent proves to be unsatisfactory to the Contractor and ceases to be in the Contractor's employment. The superintendent shall represent the Contractor in the Contractor's absence and all directions given to him shall be as binding as if given to the Contractor. In general, instructions by the Engineer shall be confirmed in writing, and always upon written request from the 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.

10. LANDS BY COUNTY

The County shall provide the lands shown on the Drawings upon which the Work under the Contract is to be performed and to be used for rights of way and for access. In case all of the lands, rights-of-way or easements have not been obtained as herein contemplated before construction begins, the Contractor shall begin its work on such lands and rights-of-way as the County may have previously acquired.

11. LANDS BY CONTRACTOR

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If the Contractor requires additional land for temporary construction facilities and for storage of materials and equipment other than the areas available on the site or right-of-way, or as otherwise furnished by the County, the Contractor shall provide such other lands and access thereto entirely at the Contractor's own expense and without liability to the County. The Contractor shall not enter upon private property for any purpose without written permission.

12. **SEPARATE CONTRACTS**

   a. The County reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable access to the Project, including the opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the work of other such contractors.

   b. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Officer any defects in such work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in other contractor's work after its execution.

   c. If the Contractor or any of the Contractor's subcontractors or employees cause loss or damage to any separate contractor on the Work, the Contractor agrees to settle or make every effort to settle or compromise with such separate contractor. If such separate contractor sues the County on account of any loss so sustained, the County shall notify the Contractor, who shall indemnify and save the County harmless against any expense, claim or judgment arising therefrom, including reasonable attorney's fees.

   d. In case of a dispute arising between two or more contractors engaged in adjacent work as to the rights of each under the Contract Documents, the Project Officer shall determine the rights of each party.

13. **SUBCONTRACTS**

   a. The Contractor shall be as fully responsible to the County for the acts and omissions of the Contractor's subcontractors as the Contractor is for the acts and omissions of persons directly employed by him.

   b. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions of the Contract, Special provisions and

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other documents comprising the Contract insofar as such documents are applicable to the work of subcontractors.

c. Nothing contained in the Contract shall be construed to create any contractual relation between any subcontractor and the County, nor shall it establish any obligation on the part of the County to pay, or see to the payment of any sums to any subcontractor.

14. **ELIMINATED ITEMS**

The Project Officer may, upon written notice to the Contractor, eliminate item(s) from the Contract. Payment will not be made for such item(s) so eliminated; except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item(s) and the net cost of materials purchased before the item(s) was eliminated from the Contract, including freight and tax costs, as evidenced by invoice. If the County notifies the Contractor of such elimination at least fifteen (15) calendar days prior to scheduled installation of such item(s), then no additional compensation will be made for overhead or anticipated profit.

D. **MATERIALS AND WORKMANSHIP**

1. **MATERIALS FURNISHED BY THE CONTRACTOR**

Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. All workmanship shall be accomplished by persons qualified in the respective trades.

2. **IBC REQUIREMENTS**

The Contractor certifies that all material supplied or used under this Contract meets all current International Building Code (IBC) requirements and the requirements of the Virginia Uniform Statewide Building Code (USBC); 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 national code requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor under this Contract.

3. **ADA COMPLIANCE**

The Contractor shall ensure that all Work performed under this Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA), and any other applicable regulations and standards.

The Contractor is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines, or other
applicable regulations and standards. However, should the Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform the County and its design consultant, if applicable, to allow for corrective action.

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor’s non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

Neither the Arlington County Inspection Services Division, nor any County staff and/or their third party inspection services, are responsible for inspecting the Work to ensure it is completed in accordance with Contract Documents, the ADA, or other applicable requirements.

4. MANUFACTURER’S DIRECTIONS

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's directions as approved by the Engineer, unless herein specified to the contrary.

5. WARRANTY

All material provided to the County shall be fully guaranteed by the Contractor against manufacturing defects within the period of the manufacturer's standard warranty. The Contractor shall provide all manufacturer’s warranties to the Project Officer by the date of Final Completion. Such defects shall be corrected by the Contractor at no expense to the County.

All work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials, or inferior or faulty workmanship, or work not in accordance with the requirements of the Contract Documents for one (1) year from the date of Final Acceptance of the work 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. The Contractor shall promptly correct any defective work or materials after receipt of a written notice from the County to do so. If the Contractor fails to proceed promptly or use its best efforts and due diligence to complete such compliance as quickly as possible, the County may have the materials or work corrected and the Contractor and its Sureties shall be liable for all expenses and costs incurred by the County.

Nothing in this section shall be construed to establish a period of limitations with respect to other obligations the Contractor may have under this Contract.

6. INSPECTION, ACCEPTANCE AND TITLE OF MATERIALS
Inspection and acceptance by the County will be at the work site in Arlington County, Virginia and within five (5) business days of delivery unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any materials stored off-site by the Contractor. Title and risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem advisable to assure that goods or services conform to the specification. The Contractor shall be responsible for maintaining all materials and supplies in the condition in which they were accepted until they are used in the work.

7. CONTRACTOR'S TITLE TO MATERIALS

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

8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS

All material and work covered by partial payments made by the County will become the property solely of the County at the time the partial payment is made. However, risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. This provision will not be construed as relieving the Contractor from having sole responsibility for all materials and work upon which payments have been made and for the restoration of any damaged work or replacement or repair at the County's option of any damaged materials. This provision will not be construed as a waiver of the County's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the Warranty provisions of the Agreement, nor shall payment indicate acceptance of the materials or work.

9. CUTTING, PATCHING, AND DIGGING

The Contractor shall do all cutting, fitting, or patching of the Contractor's work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed project and shall make good after them as the Project Officer may direct. The Contractor shall not endanger any work by cutting, digging, or otherwise, and shall not cut or alter the work of any other contract except with the consent of the Project Officer.
10. REJECTED WORK AND MATERIALS

a. All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Project Officer, or are in any way unsatisfactory or unsuit to the purpose for which they are intended, shall be rejected. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed and the work shall be re-executed by the Contractor at no cost to the County. The fact that the Project Officer may have previously overlooked such defective work shall not constitute acceptance of any part of it.

b. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, when notified to do so by the Project Officer, the County may, by contract or otherwise, replace such material or correct such workmanship and charge the cost to the Contractor. This clause applies during the Contract Term and during any warranty or guarantee period.

c. If the Project Officer and County deem it expedient not to require correction of work which has been damaged or not done in accordance with the Contract, an appropriate adjustment to the Contract Price may be made therefor.

11. OSHA REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration (O.S.H.A.) 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.

12. 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 meeting 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.

13. HAZARDOUS WASTE

Hazardous Waste Generator/Hazardous Waste Disposal: The County Board of Arlington County, Virginia and the Contractor shall be listed as Co-generators. The Contractor shall assume all the duties pertaining to the waste Generator, including signing the Waste Shipment Record ("WSR") and manifest. The Contractor shall supply the County Project Officer with the executed original Owner's Copy of the WSR, as required by applicable regulatory agencies within 35 days from the time the waste was accepted by the initial waste transporter, and prior to request for final payment. A separate WSR shall be submitted for each shipment to the disposal site.

Delayed Waste Shipment Records: The Contractor shall report in writing to the EPA Region III office within 45 days if an executed copy of the WSR is not received from the operator of the disposal site. The report to the EPA regional office shall include a copy of the original WSR and a cover letter signed by the Contractor stating the efforts taken to locate the hazardous waste shipment and the results of those efforts.

Temporary Hazardous Waste Storage Prohibited: The Contractor shall not temporarily store hazardous waste unless pre-approved by the County. If so approved, hazardous waste stored off-site in a temporary facility shall be monitored and records shall be kept on the number of containers, size, and weight. The Contractor shall inform the County when the hazardous waste is to be transported to the final disposal site. The County has the right to inspect the temporary site at any time. The Contractor shall submit copies of all relevant manifests, Waste Shipment Record(s), and landfill receipts to the County Project Officer prior to the request for final payment. All paperwork shall be signed by the Contractor and disposal site operator as required.

14. ASBESTOS

Whenever and wherever during the course of performing any work under this Contract the Contractor discovers the presence of asbestos or suspects that asbestos is present, the Contractor shall stop work immediately, secure the area, notify the County Project Officer immediately and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. Work will not proceed without an Asbestos-Related Work Authorization executed by the County Asbestos Program Manager.

15. PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS
No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this contract. The Contractor also shall reimburse to the County all costs of such goods, equipment, supplies or materials installed. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the County, the County shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The County shall be entitled to offset such expenses against any sums owed by the Contractor to the County under this Contract.

E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY

1. MAINTENANCE OF TRAFFIC

The Contractor shall conduct its operations in a manner that will ensure that all modes of traffic will be uninterrupted except as approved by the County. At the close of each work day, the area of work shall be confined to the smallest area possible, but in no event larger than the area designated in the Construction Documents, so that the maximum use of the street and sidewalk will be restored and the hazard to traffic reduced to the minimum. No excavation shall remain open within the roadway or sidewalk without the approval of the County except when the excavation can be safely bridged with the use of steel plates or other materials acceptable to the County. When areas of excavation do remain open, the area shall be barricaded and warning signs shall be posted. Approved safety barriers may be required.

At all times the Contractor shall use the personnel and traffic control signs and devices necessary to comply with Part VI of the "National Manual on Uniform Traffic Control Devices." During the progress of the work when the street may be obstructed to any extent by construction equipment or construction operations, in addition to the signs and barricades, special workers, equipped with VDOT required "STOP\SLOW" double sided traffic control paddles, shall be designated by the Contractor to direct traffic. These workers so designated shall not be assigned to any other duties while engaged in directing traffic. The Contractor has sole responsibility for ensuring that its operations are conducted in a safe manner and notwithstanding any other provision to the contrary, shall fully indemnify Arlington County, its officers, agents and employees for any damage or injury related to traffic operations which is caused by negligent or otherwise improper or deficient performance under the Contract or nonperformance of the
terms of the Contract. All personnel, signs, barricades and any other items necessary for the maintenance of traffic and safety shall be provided by the Contractor. No separate payment shall be made by the County for Maintenance of Traffic, unless otherwise specified.

2. **SAFETY AND ACCIDENT PREVENTION**

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

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

The Contractor shall identify to the County Project Officer at least one on-site person who is the Contractor's competent, qualified, and authorized person on the worksite and who is, by training or experience, familiar with 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) calendar days of the County's request may result in cancellation of the Contract.

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all injury to persons and damage to property either on or off the site, which occur as a result of the Contractor's prosecution of the Work.

The Contractor shall take or cause to be taken such additional safety and health measures as the County may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws. The Contractor is directed to the "Rules and Regulations Governing
Construction, Demolition and All Excavation" and adopted by the Safety Codes Commission of Virginia, 1966, or latest edition, covering requirements for shoring, bracing, and sheet piling of trench excavations.

3. **OVERHEAD HIGH VOLTAGE LINES SAFETY ACT**

If any work required herein will be performed within ten (10) feet of an overhead high voltage line, the provisions of Virginia Statute 59.1-406, et. seq., "Overhead High Voltage Line Safety Act" (Act) shall apply. The "person or contractor responsible for the work to be done", as that term is used in the Act, will be interpreted to mean the Contractor. The Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time prior to the time work is to be commenced to avoid any delays in the work. The County will not pay for lost time, profits, or permit any extension of the work for any delays caused by the failure of the Contractor to make such arrangements in a timely manner. All costs for the work shall be paid by the Contractor. The County shall reimburse the Contractor for the actual reasonable cost paid to the owner or operator of the high voltage line by the Contractor on presentation to the County by the Contractor of original invoices from the owner or operator of the high voltage line in the same manner as for other Contractor invoices submitted for work performed. Retention, if applicable to the Contract shall not be withheld from the payment to the Contractor by the County. No processing, administrative, or other charges above the actual amount charged by the owner or operator of the high voltage line shall be paid to the Contractor by the County.

4. **SANITARY PROVISIONS**

The Contractor shall provide and maintain such sanitary accommodations for the use of the Contractor's employees and those of its subcontractors as may be necessary to comply with the requirements and regulations of the local and State departments of health and where additional accommodations are necessary to maintain a reasonably sanitary environment, then such additional accommodations shall be made as determined by the Project Officer.

5. **DAMAGES CAUSED BY WORK**

Any damage resulting from work performed under this Contract shall be repaired to the County’s satisfaction at the Contractor’s expense.

**F. PROGRESS AND COMPLETION OF THE WORK**

1. **NOTICE TO PROCEED**

Within thirty (30) calendar days of the Award Date, the Contractor shall be given written Notice to Proceed with the Work. Such Notice to Proceed shall state the date on which the
Work is to be commenced, and every calendar day thereafter shall be counted in computing the actual time for completion.

2. **TIME FOR COMPLETION**

   It is hereby understood and mutually agreed by and between the Contractor and the County that the Commencement Date, the rate of progress, and the Time for Completion of the Work to be done hereunder are essential conditions of the Contract. The Contractor agrees that the Work shall be started promptly upon the Commencement Date and shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with good workmanship.

3. **SCHEDULE OF COMPLETION**

   Unless otherwise specified, the Contractor shall within 10 business days after the Award Date, or prior to the pre-construction meeting, whichever occurs first, submit schedules which show the order in which the Contractor proposes to carry on the Work, with dates for starting and completing the various activities of the Work. The Project Officer will review the schedule to verify compliance with the Contract requirements, and when accepted, such schedules shall govern the Work. The Contractor shall submit an updated schedule monthly with the request for partial payment. Review and acceptance by the County of the Contractor's schedule of completion shall in no way relieve the Contractor of its responsibility to complete the Work within the contract time.

4. **USE OF COMPLETED PORTIONS**

   The County shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired; but taking such possession and use shall not be deemed an acceptance of any work not done in accordance with the Contract Documents. If the Contractor claims that such prior use increases the cost or delays, the completion of remaining work, or causes refinishing of completed work, the Contractor may submit a claim for compensation or extension of time or both.

G. **MEASUREMENT AND PAYMENT**

1. **PAYMENTS TO CONTRACTOR**

   The County will make partial payments to the Contractor monthly on the basis of the Contractor's written estimate of the work performed during the preceding calendar month as approved by the Project Officer.

   The Contractor's application for payment will not be reviewed or processed unless an updated schedule is attached. The pay application shall also contain a certification by the Contractor.
that due and payable amounts have been paid by the Contractor, including payments to subcontractors, for work which previous payment was received by the Contractor from the County.

The Contractor's application for payment shall indicate the amount of work completed to date in a format consistent with the accepted bid and as indicated below:

a. **Lump Sum**: If required by this Contract, the Contractor shall provide to the Project Officer a Schedule of Values for each Lump Sum item in the Contract, and the application for payment will reflect the schedule of values and the amount of work completed in those units.

Otherwise, the application for payment shall reflect the percentage of work completed for each lump sum item.

b. **Unit Price**: The schedule of unit prices in the accepted bid shall be used as the basis for preparing the estimates, and each partial payment shall represent the total value of all units of work completed, computed at the unit prices stated in the Contract, less the aggregate of previous payments.

In addition to the amount of work completed to date, the application for payment shall indicate the aggregate of all previous payments for each line item, the retainage previously withheld, and the total payment requested this period.

2. **PAYMENT FOR MATERIALS ON SITE**

When requested in writing by the Contractor, payment allowances may be made for material secured for use on the Project and secured at the project site. Such payments will only be made for materials scheduled for incorporation into the work within sixty (60) days.

3. **STIPULATED PRICE ITEMS**

Work on Stipulated Price Items shall be carried out only upon written order by the Project Officer. The payment for a Stipulated Price Item shall be made by the County to the Contractor at the related Unit Price specified in the 'Stipulated Price Items' section of the Bid Form on the same basis as the payment for any other regular Bid Item.

4. **PAYMENTS WITHHELD**

The Project Officer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to the extent necessary to protect the County from loss on account of defective work not remedied. Any such withholding shall not result in any liability to the Contractor for damages.

5. **CHANGES IN WORK**
The County, without invalidating the Contract, may order extra work or make changes by addition, deletion or revision in the Work, with the Contract Sum being adjusted accordingly if applicable. All such work shall be executed under the conditions of the original Contract, except that any claim for modification of the Contract Term caused thereby may be adjusted at the time of ordering such change.

The Project Officer shall have authority to make minor changes in the Work by verbal order when such changes do not involve extra cost and are not inconsistent with the purpose of the Project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the County signed by the Project Officer and no claim for an addition to the Contract Sum shall be valid unless so ordered.

a. **Unit Price Items:** The County expressly reserves the right, except as may be otherwise specifically limited, to increase or decrease quantities of work for which the Contractor provided a unit price in the bid form as the County deems necessary or desirable to complete the Work covered in this Contract. Increases in such quantities shall be performed by the Contractor at the cost provided in the bid form.

b. **Other Work:** Any change in work which is not covered by Unit Prices in the bid form shall be determined in one or more of the following ways: (a) by estimate and acceptance by the County in a lump sum; (b) by cost and fixed fee; or (c) by any other method permitted under the Arlington County Purchasing Resolution.

c. If none of the aforementioned methods is agreed upon the Contractor shall proceed with the work provided the Contractor receives an order as above per the conditions outlined under Force Account Work below.

6. **FORCE ACCOUNT WORK**

A Force Account may be used at the County’s discretion and only when the County cannot firmly establish an applicable and acceptable estimate for the cost of the work because the level of effort necessary to perform and complete the work cannot be reasonably estimated or anticipated but can only be determined by performing the work. Because of the significant burden on the County to monitor and control the work, Force Account work is not a preferred method, and it shall be the responsibility of the Contractor to provide all necessary documentation and justification of costs. The rates for labor, equipment and materials to be used in cases of work performed on a force account basis will be compensated as documented below. No costs other than those explicitly listed below shall be allowed:

a. **Labor:** Before any Force Account work begins, the Contractor shall submit for approval to the Project Officer the proposed hourly rates and associated labor costs (benefits
and payroll burden) for all laborers and forepersons to be engaged in the work. The number of laborers and forepersons engaged in the work will be subject to regulation by the Project Officer and shall not exceed the number that the Project officer deems most practical and economical for the work. For all labor and forepersons in direct charge of the force account work, excluding general superintendence, compensation will be as follows:

1) Certified Pay Rate: The Contractor will receive the actual rate of wage or scale as set forth in his most recent payroll for each classification of laborers, and forepersons who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized by the County, payment will be at the normal overtime rate set forth in the Contractor’s most recent payroll.

2) Benefits: The Contractor will be entitled to receive the actual cost for any fringe benefits that are regularly provided to the classes of laborers and forepersons engaged in the work and that are not included in the certified pay rate.

3) Payroll Burden: The Contractor will be entitled to receive the actual cost for all costs associated with required payroll taxes and payroll benefits not covered in (ii) above, including:
   - Social Security Tax
   - Medicare Tax
   - Unemployment Tax
   - Worker’s Compensation Insurance
   - Contractor’s Public Liability Insurance
   - Contractor’s Property Damage Liability Insurance

4) If the Contractor is unable to provide the necessary documentation for Benefits and Payroll Burden as identified above, the Contractor will be entitled to an additive of 20% of the Certified Hourly Pay Rate as full and final compensation for Benefits and Payroll Burdens.

5) Overhead and Profit: The Contractor will be entitled to an additive of 10% on all properly documented and approved costs established in paragraphs i, ii, iii, and iv for all administrative, overhead, and profit associated with labor costs.

6) Subsistence and lodging allowances may be allowed by the Project Officer at the actual and documented costs for lodging and meals if the following conditions are met and the applicable rates and authorization for such costs are established prior to beginning the work. No additives for overhead, administrative, profit, or any other costs will be permitted for subsistence and

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lodging.

i. The specific Force Account work is outside the scope of the original contract, requires mobilization of a separate crew not intended to be used on the original contract, and the Contractor’s base location is more than 50 miles from the work site, or

ii. Forces which have been working on the Contract will be used for the Force Account work and have been routinely staying overnight during the life of the project, and the Force Account Work will warrant an extension of the contract time, and the distance from the Contractor’s base location to the work site is more than 50 miles.

b. Materials: The Contractor will receive the actual cost of materials accepted by the Engineer that are delivered and used for the work including taxes, transportation, and handling charges paid by the Contractor, not including labor and equipment rentals as herein set forth, to which 15 percent (15%) of the cost will be added for administration and profit. The Contractor shall make every reasonable effort to take advantage of trade discounts offered by material suppliers. Any discount received shall pass through to the County. Salvageable temporary construction materials will be retained by the County, or their appropriate salvage value shall be credited to the County, at the County’s discretion.

c. Equipment: For all equipment other than small tools, the Contractor will be entitled to rental rates as established herein, and agreed to in writing before the work is begun. Transportation costs directly attributable to Force Account work will be as stated below. Small tools will be considered any equipment which has a new cost of $1000 or less, and will not be eligible for any compensation. The Contractor shall provide the Project Officer a list of all equipment to be used in the work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The number and types of equipment engaged in the work will be subject to regulation by the Project Officer as deemed to be the most practical and economical for the work. No compensation will be allowed for equipment which is inoperable due to mechanical failure. Compensation for equipment shall be as follows:

1) Hourly Base Equipment Rental Rates (Owned Equipment)
   - For equipment authorized for use in the Force Account work that is owned by the Contractor, the Contractor shall be entitled to an Hourly Base Rental Rate as detailed in the following paragraphs. The Hourly Base Rental Rate for Contractor owned
equipment will not exceed 1/176 of the monthly rates of the schedule shown in the Rental Rate Blue Book modified in accordance with the Rental Rate Blue Book rate adjustment tables that are current at the time the force account is authorized. The rates for equipment not listed in the Rental Rate Blue Book schedule shall not exceed the hourly rate being paid for such equipment by the Contractor at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

2) Hourly Base Equipment Rental Rates (Rented Equipment) - If the Contractor does not possess or have readily available equipment necessary for performing the force account work and such equipment is rented from a source other than a company that is an affiliate of the Contractor, payment will be based on actual invoice rates when the rates are reasonably in line with established rental rates for the equipment in question and are approved by the Project Officer.

3) Hourly Operating Rates - Hourly Operating Rates shall be as established in the Blue Book estimated operating cost per hour. This operating cost will be full compensation for fuel, lubricants, repairs, servicing (greasing, fueling, and oiling), small tools, and any and all incidentals. If rental rates for the equipment being used in the work are not listed in the Blue Book or otherwise readily available, the Hourly Operating Cost will be 15% of the established Hourly Base Rental Rate. If invoices for Rental Equipment include the furnishing of fuel, lubricants, repair, and servicing, then the Contractor will not be entitled to any Hourly Operating costs for that equipment.

4) Equipment Usage - Equipment usage will be measured by time in hours of actual time engaged in the performance of the work. The Contractor shall be entitled to the applicable Hourly Base Equipment Rental Rate and Hourly Operating Rate for all approved Equipment Usage.

5) Equipment Standby - Standby time is defined as the period of time equipment authorized for Force Account work by the Project Officer is available on-site for the work but is idle for reasons not the fault of the Contractor or normally associated with the efficient and necessary use of that equipment in the overall operation of the work at hand. Hourly rates for Contractor owned equipment on standby, will be at 50 percent (50%) of the rate paid for equipment performing work. Operating costs will not be allowed for equipment on Standby. When equipment is performing work less than 40 hours for any given week
and is on standby, payment for standby time will be allowed for up to 40 hours, minus hours performing work. Payment for Standby will be allowed only for working days. Payment for Standby will not be made for the time that equipment is on the project in excess of 24 hours prior to its actual performance in the force account work.

6) Transporting Costs - When it is necessary to obtain equipment exclusively for Force Account work from sources beyond the project limits and the Project Officer authorizes the transporting of such equipment to the Project site, the cost of transporting the equipment will be allowed as an expense. Where the transport requires the use for a hauling unit, the allowable expense will consist only of the actual cost incurred for the use of the hauling equipment, or the applicable Blue Book cost, whichever is less. When equipment is transferred under its own power, the allowable Transporting cost shall be 50% of the Hourly Base Equipment Rental Rate.

7) Overhead and Profit - The Contractor shall be entitled to an additive of 10% on all appropriate and approved Equipment Rental, Operating, and Transporting costs as defined above.

d. Subcontracting: The Contractor shall receive the cost of work performed by a subcontractor as determined in (a), (b), and (c) above. In addition, the Contractor will be allowed an allowance per the schedule below for administrative costs and profit.

<table>
<thead>
<tr>
<th>Total Cost of Subcontract Work</th>
<th>Rate Schedule</th>
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<tbody>
<tr>
<td>$0 - $10,000</td>
<td>10%</td>
</tr>
<tr>
<td>&gt;$10,000</td>
<td>$1,000 + 5% above $10,000</td>
</tr>
</tbody>
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e. Other Costs: The Contractor shall not be entitled to any costs associated with Force Account Work other than those specifically identified in this section.

f. Statements: Payments will not be made for work performed on a force account basis until the Contractor has furnished the Project Officer duplicate itemized statements of all costs of such work detailed as follows:

1) Payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson
2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment
3) Quantities of materials, prices, and extensions
4) Transportation of materials
5) Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such
work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

7. CLAIMS FOR EXTRA COST

If the Contractor claims that any instructions by the Project Officer, by drawings or otherwise, will incur the Contractor extra cost under this Contract, then, except in emergencies endangering life or property, the Contractor shall give written notice thereof before proceeding to execute the work. Said notice shall be given promptly enough to avoid delaying the work and in no instance later than ten (10) calendar days after the receipt of such instruction. 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. No such claim shall be valid unless so made. If the Project Officer agrees that such instructions involve extra cost to the Contractor, any additional compensation will determined by one of the methods provided in "Changes in Work" above. The Contractor may not present as Extra Cost any claims which relate to any erroneous, contradictory or incomplete or infeasible requirements or directions in the Contract Documents that Contractor discovered during the bidding process but failed to report to the County, unless such erroneous, contradictory or incomplete or infeasible requirements or directions could only be ascertained upon commencement of the Work.

8. EXTENSIONS OF CONTRACT TERM AND CLAIMS FOR DAMAGES - CONDITIONS OTHER THAN WEATHER

The Contractor's relief for any claim for delay, other than Force Majeure, and which is caused by entities or conditions fully outside the control of the Contractor, subcontractors, Suppliers, and any other persons or firms associated in any with the Contractor, shall be an extension of the Contract Term and/or the Contractor's direct costs which result from the delay.

If the Contractor is entitled to compensation for delay as described above and where there is no change in the Work, the Contractor will be entitled to actual costs incurred as provided in "Force Account Work" above.

No extension of the Contract Term will be granted for any delay unless the Contractor demonstrates the claimed delay directly impacts the critical path of the Work, and any float has been consumed.

The Contractor shall not be entitled to any Contract adjustments (Term or Cost) unless the Contractor notifies the County of the delay and the cause of such delay in writing within two (2) business days of the onset of the delay. The Contractor's complete submittal for a time extension and any claimed damages

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shall be submitted no later than thirty (30) calendar days after cessation of the delay or within such longer period as the County may agree in writing to allow. The Contractor's full submittal to the County shall specify the nature of the delay claimed by the Contractor, the cause of the delay, the impact of the delay on the Contractor's Work schedule, and all supporting documentation.

The Contractor's sole relief on any claims for delay which is caused by Force Majeure shall be an extension of the Contract Term provided the Contractor gave the Project Officer timely written notice at the inception of such delay.

If the Contractor submits a claim for damages pursuant to this Section, the Contractor shall be liable to the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim that is determined through litigation to be false or to have no basis in law or fact. (Virginia Code §2.2-4335).

9. EXTENSIONS OF CONTRACT TERM - WEATHER DELAYS

The Contract Term will not be extended due to inclement weather conditions which are normal, as defined below, for Arlington County. The Contract Term includes an allowance for workdays (based on five (5) day workweek) which according to historical data may not be suitable for construction work. The Contractor may request extension to the Contract Term if it can demonstrate unusual and disruptive weather conditions per the requirements below:

a. That one or more of the Weather Conditions listed below was encountered; and,

b. The occurrence of the Weather Condition(s) resulted in an inability to prosecute work which would have otherwise been performed on the day(s) the Weather Condition(s) occurred; and,

c. The work which was not able to be completed was on the Critical Path and could not be completed only due to the Weather Condition(s) claimed.

The Contractor must provide notice of delay to the Project Officer no later than five (5) calendar days after the onset of the delay which satisfies the criteria listed above. A fully documented claim for a time extension under this section shall be submitted no later than thirty (30) calendar days after the cessation of the delay. It shall be the Contractor's responsibility solely to provide the necessary documentation to satisfy the Project Officer that the Weather Condition(s) claimed were encountered.

The Project Officer will determine the Contractor's entitlement to an extension of the Contract Term. A time extension of no more than one (1) day will be granted for one (1) day of lost work which satisfies the requirements above, regardless of the number of Weather Conditions encountered. The Contractor's sole
relief shall be an extension of the Contract Term and no claim for an increase in Contract Amount will be allowed.

The Weather Conditions listed below will be the only basis for consideration by the County, based upon the requirements listed above, as an extension of the Contract Term due to inclement weather or weather-related site conditions.

**Weather Condition #1: Unusually Heavy Precipitation** - Figure 1 illustrates the anticipated monthly inclement weather due to precipitation (Rain Days). If the number of days with precipitation in excess of 0.10", as recorded at Washington Reagan National Airport, exceeds the anticipated Rain Days, the Contractor will be entitled to an extension of one (1) day on the Contract Term for every day in excess of the Rain Days illustrated in Figure 1. The anticipated value of Rain Days for partial months at the beginning and end of the Contract shall be evaluated on a pro-rated basis.

<table>
<thead>
<tr>
<th>Avg days with precipitation of 0.1&quot; or more</th>
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<tbody>
<tr>
<td>Jan</td>
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</tbody>
</table>

**Condition #2: Temperature** - The Contractor may be entitled to an additional day for every day that the recorded high temperature at Washington Reagan National Airport is 32 degrees Fahrenheit or less, that has not already been claimed under Weather Condition #1 above.

10. **RELEASE OF LIENS**

The County, before making any payment including Final Payment, shall require the Contractor to furnish a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, and if required in either case, an affidavit that so far as the Contractor has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the County, to indemnify him against any lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall refund to the County all money that the latter may be compelled to pay in discharging such lien. However, the County may make payments in part or in full to the Contractor without requiring the releases or receipts, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.

11. **FINAL PAYMENT**

After the Contractor has completed all work and corrections to the satisfaction of the Project Officer and delivered all maintenance and operating instructions, schedules, quantities, bonds, certificates of inspection, maintenance record documents, and other items required as final payment submittal documents,
the Contractor may make application for final payment following
the procedure for progress payments. The Final Application for
Payment shall be accompanied by all documents required in the
Contract, including a complete and signed copy of the Final
Payment Release Form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

CONTRACT NUMBER: ____________  CONTRACTOR NAME: ____________

FINAL PAYMENT AMOUNT: ______________________________________

The Contractor hereby requests final payment in the amount
indicated on the above referenced Contract. The Contractor
agrees that its acceptance of final payment releases and forever
discharges Arlington County and its officers, employees, servants
and agents from any and all actions, claims, demands and
liability of whatever nature now existing or which may hereafter
arise as a result of or in connection with the above referenced
Contract.

The Contractor certifies that all of the debts for labor,
materials, and equipment incurred in connection with the above
referenced Contract have been fully paid.

AUTHORIZED SIGNATURE_________________ DATE ________________
ORDER NO.: S12  
CONTRACT ID NO.: C00103341N01

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## ORDER NO.: S12
### CONTRACT ID. NO.: C00103341N01

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**TOTAL ITEMS IN SECTION 0001 REGULAR BID ITEMS**

**TOTAL BID**

671,318.60