



FAIRFAX COUNTY

DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT

12000 GOVERNMENT CENTER PARKWAY, SUITE 427

FAIRFAX, VIRGINIA 22035-0013

www.fairfaxcounty.gov/dpsm

VIRGINIA

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 1-800-828-1140

ISSUE DATE: August 31, 2007	REQUEST FOR PROPOSAL NUMBER: RFP08-943415-40	FOR: Master Developer for the Adaptive Reuse of the Former Lorton Reformatory and Penitentiary
DEPARTMENT: Planning and Zoning	DATE/TIME OF CLOSING: October 4, 2007/ 2:00 p.m.	CONTRACT ADMINISTRATOR: Casey Sheehan/703- 324-3884 or; Kevin.sheehan@fairfaxcounty.gov

Proposals - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No or

Federal Social Security No.(Sole
Proprietor)

Prompt Payment Discount: ___% for payment within ___ days/net ___
days

Fairfax Business Prof. & Occupational
Licensing (BPOL) Tax No.

By signing this bid, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A.

BUSINESS CLASSIFICATION – CHECK ONE: ☐ LARGE ☐ SMALL **Described in Appendix B**

CHECK ONE: ☐ MINORITY-OWNED ☐ WOMEN-OWNED **Described in Appendix B**

CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

State in which Incorporated: _____

Vendor Legally Authorized
Signature

Date

Print Name and Title

Secretary

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION

(DPSM32) rev 011/06



SPECIAL PROVISIONS

1. SCOPE OF CONTRACT:

- 1.1. In accordance with the Public – Private Education and Infrastructure Act of 2002 (PPEA), the purpose of this Request for Proposal is to enter into a contract with a qualified firm to work with county staff in preparing a Master Development Plan for the adaptive reuse area of the former Lorton Reformatory and Penitentiary site of approximately 79-acres in accordance with the terms and conditions of the Request for Proposal. This Request for Proposals (RFP) seeks qualified firms with a combination of experience and expertise in adaptive reuse, historic buildings and historic district re-development, public-private partnerships, new residential, commercial, and education facility construction, and innovative funding mechanisms. The development plan will envision the development of the adaptive reuse area to serve the expanding south county region and create a unique destination functioning in harmony with the surrounding uses including single-family residential, senior living residential, schools, a planned arts center, and parks.
- 1.2. The 79-acre adaptive reuse site, located on the southwestern side of Silverbrook Road west of I-95 (tax map 107-1), is part of a 2,400 acre parcel of land that was acquired by the County from the Federal Government in 2002. The parcel is 14-miles from Washington, DC, and within one of the Country's most affluent and well-educated communities. The 79-acre parcel is part of a larger 511-acre historic district – the District of Columbia Workhouse and Reformatory Historic District – listed on the National Register of Historic Places in February 2006.
- 1.3. Fairfax County seeks proposals from developers who will work with the county over a 6-8 month period to identify project opportunities, constraints, and have the desire to establish a partnership with the County to create a unique and world-class development of residential, retail, commercial, and educational space within the former Reformatory and Penitentiary complex. The County is prepared, as appropriate, to enter into various types of financing arrangements as permitted by the Code of Virginia and/or the Reuse Plan, and that are consistent with the County's long standing financial policies.
- 1.4. Development plans and future development of the site will meet the requirements pertaining to the adaptive reuse of the historic district structures and other requirements as set forth in the Memorandum of Agreement (MOA), included as **Attachment A**. The demolition and removal of non-historic buildings has occurred. Future development may require the removal of additional buildings to accommodate new infill development. The Master Developer will assist the county in determining which, if any, of these buildings should be considered for removal. Future development should seek to retain and adaptively reuse to the greatest extent possible the historic buildings on the site in such a way as to preserve the historical integrity of the site. Draft architectural Standards and Guidelines for the adaptive reuse site were adopted in principle by the County's Architectural Review Board in the spring 2007. Conceptual development scenarios for the adaptive reuse site developed for the site by a citizen's task force were adopted into the Comprehensive Plan in 2006.
- 1.5. The Master Developer will assist in the identification of possible proffers and improvements attached to the project. These may include items such as road and frontage improvements, storm water management facilities and infrastructure construction. Existing and planned road, storm water, and infrastructure features are described in the body of this solicitation.
- 1.6. The property is currently zoned to the "Residential Conservation" (RC) District. The most appropriate zoning designations to accommodate mixed uses are the PDC or PRM planned development districts. The Fairfax County Zoning Ordinance can be found at <http://www.fairfaxcounty.gov/dpz/zoningordinance/>. A description of "P" district is found in Article 6 at <http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art06.pdf>
- 1.7. The Master Developer will assist the county in understanding the relationships between type and quality of development and development costs, and innovative approaches which combine high quality -- including attractiveness, durability, maintainability and flexibility -- with economical design concepts and construction techniques.

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2. PROJECT OVERSIGHT:

2.1. Laurel Hill Project Advisory Citizens Oversight Committee:

The Laurel Hill Project Advisory Citizens Oversight Committee ("Committee"), established by the Fairfax County Board of Supervisors, monitors the development of the Reformatory and Penitentiary areas. The Committee continues the work begun by the Laurel Hill Adaptive Reuse Citizen Advisory Task Force. The goal of the Committee is to ensure that the development process is objective and transparent to all County stakeholders and implemented in accordance with all relevant documents, including the Memorandum of Agreement, the County Comprehensive Plan (specifically those portions of the plan that pertain to the Reformatory and Penitentiary areas) and the final Laurel Hill recommendations approved by the Board of Supervisors. Status reports and updates to the Committee may be required.

Past activities of the Laurel Hill Project Advisory Citizens Oversight Committee can be reviewed in the archive of monthly newsletters at:

<http://www.fairfaxcounty.gov/dpz/laurelhill/projectadvisory.htm>

2.2. Department of Planning and Zoning:

The County Department of Planning and Zoning will dedicate full-time staff to work with the Master Developer. Additionally, the county has resource staff persons and established resource teams, including outside public/private development consultants, available to work directly with, and provide support to, the Master Developer for the duration of the project.

3. PRE-PROPOSAL CONFERENCE:

- 3.1. A pre-proposal conference will be held on September 17, 2007 at 2:00 P.M. in the Fairfax County Government Center, Conference Center Room 8, 12000 Government Center Parkway, Fairfax, Virginia 22035. Attendees requiring special services are asked to provide their requirements to the Department of Purchasing and Supply Management ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.
- 3.2. The purpose of the pre-proposal conference is to give potential offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal.
- 3.3. There will also be a site tour on September 11, 2007 at 1:30 P.M. The site tour will begin at the Laurel Hill Security Office, 8515 Silverbrook Road, Fairfax Station, Virginia 22039. All interested offerors are urged to attend

4. CONTRACT PERIOD AND RENEWAL:

- 4.1. This contract will begin on November 1, 2007, or date of award, whichever is later, through such time agreed to by the development team and the county.
- 4.2. Any contract awarded pursuant to this Request for Proposal is conditioned upon an annual appropriation made by the Fairfax County Board of Supervisors of funds sufficient to pay compensation due the Contractor under the contract. If such an appropriation is not made in any fiscal year, and the County lacks funds from other sources to pay the compensation due under the contract, the County is entitled, at the beginning of or during such fiscal year, to terminate the contract. In that event, the County will not be obligated to make any payments under the contract beyond the amount properly appropriated for contract payments in the immediate prior fiscal year. The County will provide the Contractor with written notice of contract termination due to the non-appropriation of funds at least thirty (30) calendar days before the effective date of the

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termination. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which funds for contract payments have not been appropriated.

5. SITE HISTORY AND BACKGROUND:

Information pertaining to site history and background can be found at the Department of Planning and Zoning's Laurel Hill website. <http://www.fairfaxcounty.gov/dpz/laurelhill/>

5.1. History of the Site and Early Planning Activities

Beginning in 1910, the United States Government began acquiring undeveloped land north of the Occoquan River for a prison workhouse for the District of Columbia. Title to this land was in the name of the United States, and it was a Federal Reservation, much like a military base, hence the name Lorton Reservation. Fairfax County, in its first Comprehensive Plan, dated 1958, recognized that this area of the County was largely impacted by the presence of these facilities and planned the area for Public Facilities, Governmental and Institutional uses.

Other governmental and institutional uses were established as the result of a February 14, 1973 Memorandum of Understanding between Fairfax County, the District of Columbia and the Metropolitan Washington Waste Management Agency. Under the terms of the Memorandum of Understanding, 801 acres were allocated for landfill uses, for the I-95 Energy/Resource Recovery Facility, for recreational uses, and for roads, buffer zones and related uses. Also in 1973, Fairfax Water expanded their operations by acquiring a former quarry located west of Ox Road (Rt. 123) along the Occoquan River. In 1990, the I-95 Energy/Resource Recovery Facility began operations and is under a 20-year management contract, renewable in 2011.

In 1991, language was adopted by the Board of Supervisors which encouraged the relocation of the D.C. Department of Corrections operations and redevelopment of the property. The text, in part, read "Development or redevelopment of the site should provide a planned mixed-use residential, education, employment, recreational community with a variety of housing and employment opportunities, with sufficient off-site transportation improvements."

On February 13, 1995, the Board of Supervisors established the Lower Potomac Land Use Citizens Advisory Committee to study the D.C. Department of Corrections property and make recommendations for future development potential. The resulting study provided the framework for future redevelopment scenarios.

In 1998, Congress authorized the Administrator of General Services to dispose of or convey the property in Fairfax County known as the Lorton Correctional Facilities Complex under the Lorton Technical Corrections Act of 1998. The Board of Supervisors in July, 1999, adopted a new plan that reduced the development potential and re-planned most of the Corrections Property for parkland. Portions of the parkland were designated for use by the Fairfax County Park Authority and the Northern Virginia Regional Park Authority. Park planning for the Fairfax County Park Authority portion of the site began in April 2003 with a park master plan approved in July 2004.

5.2. Laurel Hill Adaptive Reuse Citizens Advisory Committee

The Board of Supervisors, on March 10, 2003, assigned the responsibility for guiding the planning of the Occoquan Workhouse and the Central Facility to the Laurel Hill Adaptive Reuse Citizens Advisory Committee (referred to here as the "Task Force"). In April 2003, the Task Force voted unanimously to recommend the Lorton Arts Foundation's (LAF) arts, cultural and educational concept for the Occoquan site. The Board of Supervisors accepted the recommendation and voted to endorse the LAF concept the following month.

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On November 19, 2004, the Task Force voted unanimously in favor of its land use and process recommendations for the Reformatory and Penitentiary area, and submitted the recommendations to the Board of Supervisors on December 6, 2004. The Task Force recommendations were developed to accomplish the following desired outcomes:

- Preserve the essential historic core (both physical and symbolic) of the Workhouse and Reformatory/Penitentiary sites
- Minimize the present and future financial burden on the taxpayers
- Promote socially positive and acceptable reuses that compliment other development on site and in the surrounding community
- Provide flexibility and transparency in the actual development process going forward
- Permit adaptive reuse of Laurel Hill into something of far-reaching significance and consequence – both exciting and uplifting

The Task Force's Recommendations, and other background information pertaining to the Reformatory/Penitentiary site, are available online at:

<http://www.fairfaxcounty.gov/dpz/laurelhill/recommendations.htm>

In 2005, the Laurel Hill Project Advisory Citizens Oversight Committee was established to focus on the adaptive reuse activities at the reformatory and workhouse. This committee maintains an active role in the development of the Reformatory and Penitentiary, as described previously in section 2.1 of this document.

5.3. Comprehensive Planning Activities

The Area Plan recommendations for Laurel Hill can be found as follows: Fairfax County Comprehensive Plan, 2007 edition, Area IV, Lower Potomac Planning District as amended through 12-4-2006, LP1-Laurel Hill Community Planning Sector.

<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/area4/lowerpotomac.pdf>

6. ADAPTIVE REUSE PROJECT:

6.1. Adaptive Reuse of the Reformatory and Penitentiary

The portion of the former Lorton Prison that was the Reformatory and Penitentiary was identified by the Task Force for adaptive reuse to accommodate mixed-uses that include education, office and research, retail and residential uses. The residential components suggested were a mix of market rate and magnet housing. The magnet housing units should be developed as an ancillary use to other uses within the Reformatory and Penitentiary area and surrounding education, cultural and other public uses. The units are envisioned to provide housing to professionals such as educators and public safety specialists.

The development of the site may occur in one phase by reusing both the Reformatory and Penitentiary areas or in multiple phases. A multi-phase approach might focus on the Reformatory area as well as the future "Village Center" area, described below. Under any scenario, issues affecting the entire 79-acre site should be addressed through a coordinated development plan. Design sensitivity to historic architecture and the creation of a high quality project are key elements for any adaptive reuse proposal to be considered.

Development should seek to minimize County financial participation, and leverage that participation to create a viable, self-sustaining development.

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The Reformatory area consists of the former dormitories, administrative buildings, and cafeteria. An open space quadrangle creates a grassy separation of the dormitories. The Laurel Hill Project Advisory Citizens Oversight Committee (section 2.1) suggested such adaptive reuses in this area as magnet and market rate housing. The Task Force suggested a range of 50-125 loft type residential units in the adaptively reused existing structures, with flexibility to allow for exterior modifications necessary to meet the requirements of residential use. Proposals that modify exteriors must be considerate of the county's standards and guidelines and the potential impact that modifications may have on the availability of historic tax credits. Magnet housing units are envisioned to provide housing for professionals such as educators and public safety specialists.

Two buildings located in the southwest portion of the Reformatory, the Chapel (R-44, built in 1961) and the Program Building (R-89, built in 1987), are not on the list of contributing structures prepared for the MOA. These buildings may have potential for adaptive reuse. The Task Force did not suggest a specific function or use for the Chapel (estimated 18,000 – 22,000 GSF) or the two-story Program Building (approximately 16,300 GSF).

The Chapel, though not a contributing structure in the MOA, is a contributing structure in the National Register District and may thus be eligible for historic tax credits. The Program Building is neither listed in the National Register District nor a contributing structure in the MOA.

The Task Force recommendations envisioned a Village Center development between the reformatory and the ball field, consisting of a mix of retail, professional office, and residential uses. The existing buildings contain the large laundry building, the power plant building and smaller buildings associated with former prison functions. Open spaces, such as the one behind the cafeteria, are brick-paved and could serve as pedestrian plazas. The former cafeteria itself may be associated with the Reformatory area, the Main Street area, or both. The Task Force recommended a range of 40,000- 60,000 square feet of retail and professional office space in the Village Center. The Task Force concept was of a Village Center that served as a "Main Street" of combined rehabilitated contributing buildings along with new, infill construction. No specific determinations were made in the Task Force report for the location, type, or size of any new infill construction.

A Village Center could serve as a distinct retail destination of mixed uses, designed to create a unique environment for the Laurel Hill area as well as surrounding neighborhoods and visitors from around the county and the region. Uses may include restaurants, specialty stores, convenience retail and small professional office uses. The creation of a "unique" or "distinct" environment may involve innovations related to the type of uses, the mix of uses, innovative adaptive reuse ideas, the interplay of adaptive reuse design with new construction, or the creation of retail, commercial, office or residential opportunities that stand in contrast to familiar development schemes.

The Task Force report noted that consideration may also be given to the development of an additional block of condominium/loft units in the Village Center, east of the "Main Street." The report recommended a range of 10-30 residential units.

The Task Force recommended that the Ballfield area contain a recreational amenity for the site and surrounding users. The ball field grandstands, or bleachers, and associated structures are identified as contributing features in the National Register District and the MOA. Recreational amenities should include pedestrian linkages to the Laurel Hill Greenway trail, adjacent park areas and the reuse areas.

The adaptive reuse of the Penitentiary may include the rehabilitation of the existing quadrangle for a range of education and education-related uses, supporting office and

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research facilities, or other uses. The two adjacent buildings outside the wall were originally Officers Quarters. These buildings have adaptive reuse potential and can be developed within the context of the adjacent Penitentiary, adjacent new construction, or some combination. Any other uses such as residential housing should reflect market needs or opportunities that minimize dependence on schools – such as dedicated senior living and graduated care uses. The Task Force recommended education uses from 50,000 to 125,000 square feet.

A perimeter wall surrounds the Penitentiary. The wall is approximately 15 – 25 feet in height and has been lowered in recent years due to safety concerns. The wall is not listed as a contributing structure in the MOA but is a contributing feature in the National Register District. The Task Force Report's final concept plan shows the potential for vehicular access through the wall. Proposed modifications of the wall should be considered in the context of the National Register designation.

6.2. Historic Preservation and Design Guidance

6.2.a. Historic Preservation

Development of the site should emphasize the rehabilitation of historically relevant structures for adaptive reuse. Alterations and additions to buildings should complement existing architecture and be in accordance with the Secretary of Interior's Standards for rehabilitating historic buildings and the architectural standards and guidelines described above.

New construction may be necessary to address the needs of future users. New construction should be undertaken in a manner that is compatible with and complementary to the existing character of the historic district, and which considers the distinctive architecture and landscape of the area. The location of new buildings should be carefully considered in context of the historic building patterns.

In 2001, the General Services Administration entered into a Memorandum of Agreement (MOA) with the Advisory Council on Historic Preservation, the Virginia Department of Historic Resources, Fairfax County, the Lorton Heritage Society, the Fairfax County Park Authority, Fairfax County Public Schools, the South County Federation, and the Northern Virginia Regional Park Authority. A copy of the MOA is provided in Attachment A. The MOA, negotiated as part of the transfer of Laurel Hill from federal to county ownership, stipulates the requirements for future actions affecting the eligible historic district.

A National Register of Historic Places District was created at Laurel Hill in February, 2006. This National Register designation allows developers to seek certain tax credits as part of the adaptive reuse of buildings within the District. Listing on the National Register carries no federal requirement that the designated contributing and non-contributing resources or structures at Laurel Hill be restored or maintained.

6.2.b. Architectural Standards and Guidelines

The county has undertaken the development of architectural standards and guidelines to assist developers with the adaptive reuse and new construction. These standards and guidelines will be reviewed and approved by the ARB and will reflect previous lessons learned from the architectural review of proposed adaptive reuse and new construction for both the Lorton Arts Foundation (Occoquan Workhouse) and Spring Hill development. A draft version of the standards and guidelines is available for review on the Laurel Hill website.

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7. EXISTING AND PLANNED INFRASTRUCTURE, AMENITIES, AND IMPROVEMENTS:

7.1. Transportation, Public Transportation, and Local Access

The Laurel Hill Community Planning Sector is served by an extensive transportation network. Primary highway access into the area is provided by Interstate 95 and U.S. Route 1 – located to the east and south, and the Fairfax County Parkway, located to the north of Planning Sector LP1. Also, Virginia Route 123 passes north/south through the western portion of LP1. Secondary roadway access into LP1 is provided by five arterial roads: Lorton Road, Silverbrook Road, Furnace Road, Hooes Road, and Pohick Road. Additionally, Southrun Road is a recently-constructed arterial road that provides vehicular, transit, and pedestrian access to the LP1 area via Silverbrook and Pohick Roads.

7.2. County Trail System

The County intends for the Laurel Hill Greenway to inter-connect with the redevelopment area and the adjacent areas and be integrated in a manner that creates a focal feature of the area. The Greenway, which opened to the public in the spring of 2006, is now temporarily located through the adaptive reuse area. A permanent location for the trail will be constructed between the Spring Hill Senior Living property and the present penitentiary wall, continuing between the reformatory and Spring Hill, once the Spring Hill development is completed.

7.3. Laurel Hill House

The Laurel Hill House, located adjacent to and southeast of the Reformatory and Penitentiary site and the surrounding 20-acre gardens are heritage resources included in the National Register District. The 20-acre garden is part of the Park Authority's Community Park whereas the Laurel Hill House and the immediately surrounding area are considered part of the adaptive reuse site. The adaptive reuse of the Reformatory and Penitentiary could potentially utilize the Laurel Hill House and surrounding area.

7.4. Public Facilities

The Laurel Hill area has several major countywide public facilities, including the I-95 Landfill, the I-95 Resource/Recovery Facility and the Fairfax Water. The I-95 Landfill and the I-95 Energy/ Resource Recovery Facility are planned for long term retention while the I-95 Landfill is under closure procedures of 30-year duration.

Additional public facilities are anticipated as the area develops. These uses include an elementary school (located adjacent to the County's Laurel Hill property), a middle school, and a potential fire station or substation to serve the surrounding area and new residential development.

7.5. Building Stabilization, Hazardous Material Abatement, On Site Improvements

The Reformatory and Penitentiary site has undergone – and is still undergoing – a variety of improvements including building demolitions, residential living in the adjacent Spring Hill development, asbestos abatement, and structural improvements. The county is aggressively implementing a program of hazardous material abatement, weatherization, and stabilization. This work expected to continue through 2007.

7.6. Utilities

The built features in the Reformatory and Penitentiary area are the direct result of the former prison operations and their related uses. This infrastructure was appropriate to the unique use and requirements of the prison, but is out of date and unsuitable to support future site activity.

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The Reformatory and Penitentiary site contains a network of steam tunnels that provided heat to structures on the site. The potential exists for new utility lines to be located or routed within the existing tunnels. The utilization of the steam tunnels would minimize the amount of excavation on the site.

7.7. Water Systems

Fairfax Water (FW) currently does not have distribution facilities within the former prison property and will not accept water infrastructure or facilities formerly owned by the federal government into their system. The age of the existing systems implies that they have exceeded their expected service life and are unsuitable for future site activity. Water service is, however, available and water lines are in place adjacent to the subject property.

7.8. Sanitary Sewer Systems

Prior to its transfer to the County in 2002, the former prison property was served by a sewer system operated by the District of Columbia's Department of Correction. This is no longer functional. The County has expanded the Approved Sewer Service Area (ASSA) in order to accommodate the redevelopment and adaptive reuse of Laurel Hill. Facilities associated with the adjacent Spring Hill development can accommodate any flow requirements from the Reformatory and Penitentiary facility up to approximately 135,000 gallons per day.

7.9. Electrical Power and Natural Gas

The adjacent Spring Hill development has installed a Dominion Power duct bank for 3-phase power. This will give Dominion Power access to all parts of the adaptive reuse site. Stubbed conduits are being installed at intervals to allow connectivity with the adaptive reuse site. This bank will also contain a Verizon conduit for telephone service. The capacity of the power line is estimated to be sufficient to handle all power needs on the adaptive reuse site.

Gas transmission lines traverse the Laurel Hill property from west-to-east, generally following Furnace Road, crossing I-95 just north of the Construction Debris Landfill. Gas service is available to the entire Laurel Hill property, and Washington Gas will design the access solution for each development area. Gas infrastructure and supply will not be a constraint to future development.

7.10. Telecommunications

Numerous telecommunications facilities lace the former prison property. Verizon operates copper and fiber optic systems adjacent to the property. Overhead or buried copper lines access nearly all the existing building areas. Buried fiber optic runs adjacent to Furnace Road, Lorton Road, Silverbrook Road, and borders the western edge of the adaptive reuse site. Verizon will evaluate the adequacy of existing telephone systems for any particular development on an individual case basis.

8. MASTER DEVELOPER SUPPORT:

The project will be organized into two phases:

Phase 1 – Project Planning. The Master Developer will work closely with the County to craft a Laurel Hill Development Plan (LHDP). This will be the business plan for the project and will set forth the terms of the Development Agreement. Phase 1 payment is discussed in Section 8.1.3 of this solicitation.

Phase 2 – Project Implementation. The Master Developer will implement the LHDP, based on the acquisition of required approvals, and the appropriate transition and transfer of assets.

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8.1. Phase 1 – Project Planning

- 8.1.1 The LHDP process is expected to require approximately six months of coordinated, intensive effort between the County and the developer. The selected Master Developer will assist the county in identifying methods for making the project economically feasible, preparing a development outlining types of development, density, and schedule, and an operations, maintenance, and property management plan.
- 8.1.2 Deliverable: The LHDP deliverable will be in Microsoft Word Format and on CD. The LHDP will consist of three main components acceptable to the County:
- 1) Development Plan
 - Site Plan
 - Narrative explaining project vision
 - Additional drawings/schematic plans as appropriate
 - 2) Financial Plan and Transactional Instruments, including:
 - Capital budget by phase
 - Sources and Uses of Funds Table
 - Detailed Development & Operating Pro Forma
 - Structure of Public/Private Partnership
 - 3) Operations, Maintenance, and Property Management Plan
- 8.1.3 Payment: The County intends to negotiate a contract to compensate the selected Master Developer for services rendered. In return, the County will be granted full and unlimited rights to use the LHDP, including the right to provide the LHDP to other developers in this or other related projects. The County is under no obligation to continue to Phase 2 with the Master Developer.
- 8.1.4 Conditions: If the County and Master Developer are unable to reach agreement on the LHDP, or the plan is not otherwise acceptable to the County, or the offeror fails to provide the LHDP within the agreed time, the County may terminate the Master Developer work on the project. At its own discretion, the County may continue to proceed with the project by working with another Master Developer deemed most advantageous to the government or by seeking new RFP responses. Therefore, offerors within the competitive group are requested to keep their responses to this RFP open for 18 months following the LHDP contract award.
- 8.1.5 Financial Plan and Transactional Instruments. The Financial Plan will include the development of a financing strategy that minimizes the cost of the project to County taxpayers for public improvements and is in keeping with the County's high standards of credit quality.

Possible financing strategies may include, but are not limited to:

- Use of privately arranged short term borrowing to be redeemed with public or privately arranged permanent financing
- Long term operating contracts for public facilities consistent with deed and market rate restrictions
- Revenue sharing options from any of the facilities financed and built by the offeror
- Historic tax credits as part of the rehabilitation and adaptive reuse of historic buildings.

Other financing strategies will be considered that minimize the County's need to make financial outlays or borrowing, and reduce the overall costs of the project to the County.

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8.1.6 Development Plan. The Development Plan will consist of information for understanding the site opportunities and constraints, the type of development best suited for the site, and development timing. The Development Plan should include, but is not limited to, information pertaining to

- The zoning designation of the property
- Code compliance
- A phasing plan that indicates areas and uses to be developed
- Proposed location and size of sanitary sewer mains and service lines
- Proposed location and size of water mains, service lines and hydrants
- Proposed location and size of electrical service
- Proposed location and size of storm drainage facilities, or Low Impact Development opportunities, on the property and adjacent to the property
- Location, grade and dimensions of paved surfaces
- Location of existing and proposed dimensions of parking areas, individual parking spaces and drive aisles, driveways, curb cuts, easements and rights-of-way, walkways, transit stops, and bicycle parking areas

Operations, Maintenance, and Property Management Plan. This plan will describe the strategies and costs associated with property operations, maintenance, and management. The plan will describe operations, utilities and maintenance budgets for annual operations, county services, furnishings, maintenance and repair, and utilities

8.2. Phase 2 – Project Implementation

The County desires to have the successful LHDP Master Developer implement the approved plan in whole or in phases as mutually agreed to by all parties.. Use of other developers for portions of the project will require County approval. Once the County approves the LHDP, the Master Developer may be given approval to begin transition toward project implementation. This approval will mark the beginning of Phase 2 of the project. Once the LHDP is accepted, the County expects transition to project implementation to occur within approximately 90 days.

County and selected Master Developer will agree on specific triggers that evidence the Master Developer has begun project implementation. If Master Developer fails to initiate project implementation during the 90 day window, County will have right to offer the implementation opportunity to another development entity. In the event that County approval to begin project implementation is delayed, the Master Developer will retain exclusive right to the 90 day window for an agreed upon period. The County, in conjunction with other agencies who have a vested interest in the site, will take the lead in developing a lease agreement for the subject site, or portions of the site. The Master Developer will be expected to facilitate implementation in a manner consistent with the approved LHDP and with prudent business practices.

The County would normally expect tasks to be performed by the Master Developer, the County, or both, between submission of the LHDP and payment by the County of the contract price. The Master Developer will work with the County to identify these tasks, related costs, or any other costs to the Master Developer between LHDP submission, acceptance and financial closing. The County will work with the Master Developer to jointly determine responsibility for these tasks, a working schedule, and any compensation.

9. SUBMISSION REQUIREMENTS:

Instructions - Candidate Master Developers are required to comply with the following provisions while preparing their proposals. Where instructions conflict and no order of precedence is specified, the most stringent requirement applies. A reference to, or direction to comply with, a particular Section shall include, as appropriate, all subsections thereunder. Any information concerning the Solicitation given to any prospective Candidate Master Developer will be furnished promptly to all other prospective Candidate Developers. If the information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective Candidate Master Developers, the information will be furnished as an

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amendment to the Solicitation.

Section	Description	Maximum Page Limit
Part A	Background and Firm / Team Qualifications	15 pages
Part B	Project Strategy	10 pages
Part C	Project Experience and References	15 pages
Part D	Resumes of Key Staff	10 pages
Part E	Unique Capabilities	5 pages
Part F	Work Samples	N/A
Part G	Cost Proposal – Billing Rates	N/A

9.1. **Part A – Background and Firm / Team Qualifications:**

Provide background and general qualifications for the firm and team members describing capability and credentials for assisting the county with the Master Development plan for the adaptive reuse site. Cite specific information about the firm, the firm's reputation, knowledge and working experience in the regional market, similar type of endeavors, and successes. Demonstrate organizational strength and capacity. Demonstrate experience with funding mechanisms utilized by local or county governments, developers, and development partnerships. Indicate any experience with:

- a. public / private development relationships in urban environments
- b. experience related to historic buildings, historic districts, or adaptive reuse projects
- c. experience with county and other regulatory agencies of the type having jurisdiction or participation related to adaptive reuse sites

9.2. **Part B – Project Strategy:**

Provide strategy relevant to the accomplishment of the Master Development plan. The selected firm must utilize strategies that reflect an understanding of the project background, challenges, and parameters as described in sections 2, 5, 6 and 7. For the purpose of this RFP, please provide an outline of the strategy your team will use to create the Master Development plan. The outline should address:

- a. sequential steps needed to create a successful Master Development plan
- b. milestones and key decision points
- c. frequency of meetings between the Master Developer and:
 - o County Staff
 - o Task Force / Advisory groups
- d. role that the Master Developer should play in facilitating private development on the site use of outside consultants, as needed (expenses related to outside consultants will be the sole responsibility of the selected Master Developer)

9.3. **Part C – Project Experience and References:**

Provide descriptions of relevant project work including:

- a. Date and location of the work performed
- b. Client
- c. Relevance to this solicitation
- d. Reference names and contact information
- e. Highlight projects that demonstrate an ability to work within budget and schedule constraints.

9.4. **Part D – Resumes of Key Staff:**

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Provide resumes of key staff. Resumes should not exceed two pages in length. Key staff is those persons who would work on the project on a day-to-day capacity during the period of performance. The period of performance is expected to be 6 – 7 months.

9.5. **Part E – Unique Capabilities:**

Describe any unique capabilities, experience, tools, or perspective related to the Master Development plan. This section may expand on items presented in any of the previous sections or introduce new information related to the candidate firm or team.

9.6. **Part F – Work Samples:**

Firms responding to the RFP may submit work samples. Please limit work samples to a maximum of three relevant projects. Please indicate if the work samples contain proprietary information and if they are to be returned to the candidate firm.

9.7. **Part G – Cost Proposal**

The offeror must submit a cost proposal in a separate binder fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee. The following information should be submitted as part of the business proposal:

- a. Offerors must provide an estimated labor hours and total price breakdown for each sequential step described in Part B(a).
- b. Offers must provide direct labor and labor overhead costs for each person proposed in the proposal.
- c. Travel and per diem or subsistence costs, if any supported by breakdown including destination, duration and purpose.
- d. Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc.

Caution: Failure to break down cost elements may render the Business Proposal non-responsive.

10. BASIS FOR AWARD:

- 10.1. The County of Fairfax reserves the right to award the contract in the aggregate, by individual service, or any combination, whichever is in the best interest of the County.
- 10.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below. Based upon this review, the cost proposals of the highest rated offeror(s) will then be reviewed.
- 10.3. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Selection Advisory Committee. This committee will then conduct a final evaluation of the proposals. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.

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- 10.4. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The Committee will make appropriate recommendations to the County Executive and Board of Supervisors, if appropriate, prior to actual award of contract.
- 10.5. This Solicitation contemplates a real estate development, financial and management business transaction that uses a one-step proposal process to encourage maximum flexibility in proposal development.
- 10.6. Proposal Evaluation Criteria
- The following factors will be considered in the award of this contract:
- a. Background and Firm/Team Qualifications
 - b. Project Strategy
 - c. Project Experience and References
 - d. Proposed Staff
 - e. Unique Capabilities
 - f. Work Samples
 - g. Cost Proposal
- 10.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.
- 10.8. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.
- 10.9. Oral Presentations - Master Candidate Developers may be required to make oral presentations after submittal of written proposals to exhibit their understanding of the Solicitation requirements. During the proposals evaluation process, the County may submit written questions to the Candidate Master Developers. The County will retain responses in its official file as a historical record of the presentation slides and responses to County questions. These materials will be used in the County's evaluation process. Written responses, along with any County-requested revisions, will be evaluated as part of the Candidate Master Developer's proposals.
- 10.10. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.
- 10.11. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted

11. CONSULTING SERVICES:

- 11.1. The Contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Monday through Friday.

12. PRICING:

- 12.1. The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years will be based on the Consumer

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Price Index (CPI-U), may be based on the Consumer Price Index (CPI-U), Table 10, Selected Local Areas, Washington, DC-MD-VA, or other relevant indices.

- 12.2. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.).
- 12.3. Price decreases shall be made in accordance with paragraph 43 of the General Conditions & Instructions to Offerors. (Appendix A)

13. TRADE SECRETS/PROPRIETARY INFORMATION:

- 13.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials.
- 13.2. The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the offeror.
- 13.3. **Virginia Freedom of Information Act**

Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act ("FOIA") except as provided by Section 56-575.4 (G) of the PPEA.

In order to prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to Section 56-575.4 (G) of the PPEA, the private entity submitting the information must (i) invoke the exclusion from FOIA when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County will determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided in the *Fairfax County Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002*, Section IV (A)(1).

14. CONTACT FOR CONTRACTUAL MATTERS:

- 14.1. The person to contact concerning contractual matters pertaining to this Request for Proposal is:
Casey Sheehan, CPPB, Contract Specialist
Department of Purchasing and Supply Management
Telephone: (703) 324-3884
Kevin.sheehan@fairfaxcounty.gov

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- 14.2. Offerors are cautioned not to contact members of the Selection Advisory Committee (SAC). SAC members will not consider information other than the materials provided by the Contract Administrator, e.g., proposals. If a SAC member is approached by anyone outside the SAC who may have a material interest in this procurement, it will be immediately reported to the Contract Administrator.

15. CONTACT FOR TECHNICAL MATTERS:

- 15.1. The person to contact concerning technical matters pertaining to this Request for Proposal is:

Chris Caperton, Laurel Hill Coordinator
Department of Planning and Zoning
Telephone: (703) 324-1375
chris.caperton@fairfaxcounty.gov

16. REQUIRED SUBMITTALS:

- 16.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

17. SUBMISSION OF PROPOSAL:

- 17.1. One (1) original (duly marked) and four (4) copies and one (1) electronic copy of the **Parts A – F** of the proposal, and one (1) original (duly marked) and four (10) copies and one (1) electronic copy of the **Part G (Cost proposal)** as described in the Section 11, Submission Requirements, shall be delivered to the following address. Electronically stamped delivery receipts are available.

Department of Purchasing and Supply Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013
Telephone: 703-324-3201

- 17.2. Offerors are reminded that changes to the request for proposal, in the form of addenda, are often issued between the issue date and within three (3) days before the opening / closing of the solicitation. Any information concerning the Solicitation given to any prospective Candidate Master Developer will be furnished promptly to all other prospective Candidate Developers. If the information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective Candidate Master Developers, the information will be furnished as an addendum to the Solicitation. All addenda **MUST** be signed and submitted to the Department of Purchasing and Supply Management, 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035 before the time and date of the opening/closing of the bid or must accompany the bid. Notice of addenda will be posted on eVA and the DPSM current solicitation webpage. Offerors are encouraged to monitor the web page for the most current addenda at www.fairfaxcounty.gov/dpsm/solic.
- 17.3. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.

Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired. Elaborate artwork, expensive paper, bindings, visual and other presentation aids are not required. The County encourages Offerors to use recycled paper, wherever possible.

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- 17.4. By executing the cover sheet (DPSM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.
- 17.5. **Solicitation Number** - Proposal shall be marked with the Solicitation number. Every page in the proposal shall have the Solicitation number, the volume number, and the consecutive page number (using Arabic numerals 1, 2, 3.). All volumes shall include the candidate firm identity and the volume number on the cover page. Each volume shall have a transmittal cover letter of no more than one page. This page will not count against the page count for the volume.
- 17.6. **Incomplete Submittals** - Incomplete submittals and/or submittals without mandatory forms may be rejected.
- 18.7 **Electronic Copies** - One electronic copy shall be submitted on a CD-ROM, in a protective sleeve. The CD-ROM and protective sleeve shall be clearly marked with title, Solicitation number, and the candidate firm's name. CD-ROMs will be included with the "original" paper copies of each volume as identified in the Solicitation. The information submitted must be checked and determined to be virus-free prior to submission. The electronic submittals shall be compatible with the following equipment and software products:
- o Pentium Class PCs
 - o Microsoft Office 2000 (Excel, Word, PowerPoint)
 - o Microsoft Project 98
 - o Adobe Acrobat Reader 6.0
 - o AutoCAD format for all drawings.

The electronic copy of the proposal shall be an exact duplicate of the original paper proposal. The CD-ROMs will be used for proposal evaluation. MS Excel spreadsheets shall be submitted in a format that allows all formulas within the spreadsheet to be reviewed and manipulated. If there are discrepancies between the electronic proposal and the original paper proposal, however, the paper original shall be deemed to govern.

18. LATE PROPOSALS:

- 18.1. **Proposals received in the Office of the County Purchasing Agent after the date and time prescribed shall not be considered for contract award and shall be returned to the offeror.**

19. PERIOD THAT PROPOSALS REMAIN VALID:

- 19.1. Proposals will remain valid for a period of one-hundred and twenty days (180) calendar days after the date specified for receipt of proposals.

20. CONSULTING SERVICES:

- 20.1. The Contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Monday through Friday.

21. INSURANCE:

- 21.1. The Contractor is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the contractor or by the County. The contractor assumes all risks of direct and indirect 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.

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21.2. The Contractor shall, during the continuance of all work under the Contract provide the following:

- a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
- b. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage's for explosion, collapse, and underground hazards, where required.
- c. The contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
- d. The contractor agrees to maintain Professional Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff.
- e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- f. Rating Requirements:
 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VI.
 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
- g. Indemnification:

Article 63 of the General Conditions and Instructions to Bidders (Appendix A) shall apply.
- h. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent and/or Risk Manager before any work is started.
- i. If the Contractor delivers services from a County-leased facility, the Contractor is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the contractor while in their care, custody and control for use under this contract.

21.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five day written notice to the County Purchasing Agent and/or Risk Manager. The Contractor

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shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

- 21.4. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 21.5. The County of Fairfax, its employees and officers shall be named as an additional insured in the Automobile, General Liability and Professional Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage is primary to all other coverage the County may possess.
- 21.6. If an "ACORD" Insurance Certificate form is used by the Contractor's Insurance agent, the words, "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

22. METHOD OF ORDERING:

- 22.1. The County may use four (4) different methods of placing orders from the final contract: Purchase Orders (PO's); Blanket Purchase Orders (BP's); Small Orders (SO's); and, approved County procurement cards.
- 22.2. A Blanket Purchase Order (BP) may be issued to the Contractor on behalf of each County Agency who will be ordering items or services covered in the contract. The BP indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia. Each BP will cite a specific period of time, and will indicate an agency authorization order code to be used when ordering to identify those employees authorized to place calls. No specific dollar limitation will be indicated on the BP's.
- 22.3. Orders may be placed orally by authorized employees of the County identifying themselves with their agency authorization order code, BP call number, and their name. The Contractor may contact agency personnel listed on the Purchase Order to verify the authorization of the employee placing the call.
- 22.4. A Purchase Order (PO) or Small Purchase Order (SO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO or SO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 22.5. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently under contract with JPMorgan/Master Card. Contractors are encouraged to accept this method of receiving orders.

Questions regarding establishing an account with Master Card should be referred to: MC/Master Card Merchant Services at 1-800-762-6663. It is anticipated that participating contractors will accept procurement card orders.

- 22.6. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 22.7. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

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- 22.8. The Department of Purchasing and Supply Management has the capability to issue purchase orders electronically and transmit them to vendors by fax. For more information about the Fax Purchase Order program, call (703) 324-3268, TTY 1-800-828-1140.

23. REPORTS AND INVOICING:

- 23.1. The Contractor must maintain all records in compliance with federal and state regulations. The Contractor(s) must submit to each program administrator, monthly statistical reports and an annual tabulated report

24. PAYMENTS:

- 24.1. The County will negotiate any payment schedule(s) with the Contractor.

25. ELECTRONIC PAYMENT OPTION:

- 25.1. The Vendor ACH Payment Program of Fairfax County allows payments to be deposited directly to a designated financial institution account. Funds will be deposited into the account of your choice automatically and on time. Payment information (confirmation of payments) is provided via email and all transactions are conducted in a secure environment. The program is totally free as part of the Department of Finance's efforts to improve customer service. For more information or to obtain a Vendor Agreement (ACH credits), please contact the Department of Finance at 703-324-3122 or via email to ACHpayments@fairfaxcounty.gov. A copy may also be picked up at the Department of Purchasing and Supply Management.

26. CHANGES:

- 26.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractors cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.
- 26.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.

27. DELAYS AND SUSPENSIONS:

- 27.1. The Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. If, after giving the County Purchasing Agent written notice, the Contractor elects to stop work because the County does not supply data or services, the County will extend the Contractor's time of completion by a period of time reasonably suited for completion of work.
- 27.2. The County will pay the Contractor for all work completed to the date of suspension plus all the Contractor's cost related to the delay, omission or any consequent work stoppage by the Contractor and its personnel. The Contractor may continue its work on the other phases of the project with an appropriate extension of time of performance upon delivery of the data or services to be provided by Fairfax County. If the Contractor decides to proceed without the data and services that were to be provided by the County, any error or omission of the Contractor that resulted from the County's omission will not constitute default by the Contractor.

28. ACCESS TO AND INSPECTION OF WORK:

- 28.1. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

29. PROJECT AUDITS:

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- 29.1. The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the contractor under the following conditions:
- a. If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs;
 - b. In the event of a disagreement between the contractor and the County on the amount due the Contractor under the terms of this contract;
 - c. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,
 - d. If it becomes necessary to determine the County's rights and the contractor's obligations under the contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.
- 29.2. These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.
- 29.3. Unless otherwise provided by applicable statute, the contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- 29.4. Fairfax County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.
- 29.5. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

30. OTHER SERVICES:

- 30.1. The Contractor must establish formal evaluation and quality control procedures to monitor each facet of the final contract. The evaluation and quality control procedures must provide sufficient information to allow the County's administrators to monitor the program's progress and effectiveness. The County's administrators will use the quality control report to evaluate the effectiveness of the program on an annual basis. The Contractor will submit the quality control report to the Contract Administrator identified in the final contract not later than June 1 of each contract year.

31. DATA SOURCES:

- 31.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing or evaluating County data.

32. SAFEGUARDS OF INFORMATION:

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- 32.1. Unless approved in writing by the County Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Contractor under the final contract.

33. ORDER OF PRECEDENCE:

- 33.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, (Appendix A).

34. SUBCONTRACTING:

- 34.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>; local chambers of commerce and other business organizations.
- 34.2. As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

35. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 35.1. Reference Paragraph 75, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the *resultant* contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your offer. (See Appendix B for sample listing).
- 35.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 35.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 35.4. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 35.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

36. NEWS RELEASE BY VENDORS:

- 36.1. As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

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37. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 37.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment.

Your acceptance of this contract acknowledges your commitment and compliance with ADA.

- 37.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

COUNTY OF FAIRFAX COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. AUTHORITY -The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. DEFINITIONS-

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONSULTANT SERVICES: Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

OPEN MARKET PROCUREMENT (OMP): A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.

PROFESSIONAL SERVICES: Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

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RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING

3. BID FORMS-Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope provided with the solicitation. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. LATE BIDS & MODIFICATIONS OF BIDS-

- a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:
 1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or
 2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.
- b. If the County declares administrative or liberal leave, scheduled bid openings or receipt of proposals will be extended to the next business day.
- c. The time of receipt of bids at the specified location is the time-date stamp of such location on the bid wrapper or other documentary evidence of receipt maintained by the specified location.
- d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

5. WITHDRAWAL OF BIDS-

- a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
 1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.
 2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the

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- same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
 - e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
 - f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
 - g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.
- 6. ERRORS IN BIDS-**When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
- 7. MAILING OF BIDS** – All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted either a) in the special mailing envelope provided by the Department of Purchasing and Supply Management or b) have the solicitation number, subject, and date/time of opening/closing clearly marked on the outside of any other wrapper used.
- 8. COMPLETENESS-**To be responsive, a bid must include all information required by the solicitation.
- 9. ACCEPTANCE OF BIDS/BINDING 90 DAYS-**Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
- 10. CONDITIONAL BIDS-**Conditional bids are subject to rejection in whole or in part.
- 11. BIDS FOR ALL OR PART-**Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
- 12. AREA BIDS-**For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
- 13. TIME FOR RECEIVING BID-**Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.
- 14. BID OPENING-**All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: <http://www.fairfaxcounty.gov/dpsm/solic.htm>.
- Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.
- 15. OMISSIONS & DISCREPANCIES-**Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.
- Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
- 16. RESPONSE TO SOLICITATIONS-**In the event a vendor cannot submit a bid on a solicitation, he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.
- 17. BIDDER INTERESTED IN MORE THAN ONE BID-**If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

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18. TAX EXEMPTION-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

19. PROHIBITION AGAINST UNIFORM PRICING-The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

20. QUESTIONS CONCERNING SPECIFICATIONS-Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

21. BRAND NAME OR EQUAL ITEMS-Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

22. FORMAL SPECIFICATIONS-When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. FEDERAL SPECIFICATIONS-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

AWARD

24. AWARD OR REJECTION OF BIDS-The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;

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- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
- b. General Conditions and Instructions to Bidders,
- c. Special Provisions and Specifications,
- d. Pricing Schedule,
- e. Any Addenda/Amendments/Memoranda of Negotiations

26. TIE-BIDS – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

27. PROMPT PAYMENT DISCOUNT-

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

28. INSPECTION-ACCEPTANCE-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

29. DEFINITE BID QUANTITIES-Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

30. REQUIREMENT BID QUANTITIES-On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

31. TERMINATION OF CONTRACTS-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.

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- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

32. TERMINATION FOR CONVENIENCE-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

33. TERMINATION OF CONTRACT FOR CAUSE-

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

34. CONTRACT ALTERATIONS-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

36. FUNDING-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

37. DELIVERY/SERVICE FAILURES-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

38. NON-LIABILITY-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

39. NEW GOODS, FRESH STOCK-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

40. NON-DISCRIMINATION-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 other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance,

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Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

41. VENDOR RELATIONS DIVISION-

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract.
- c. As used in this contract, the term small business means an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.
- d. As used in this contract, the term "minority business" means a business concern that is at least **51%** owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least **51%** of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native American, Eskimo or Aleut.
- e. As used in this contract, the term women-owned business means a business concern that is at least **51%** owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least **51%** of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.
- f. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
- g. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

42. GUARANTEES & WARRANTIES-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

43. PRICE REDUCTION-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. **FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT.** Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

44. CHANGES-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

General Conditions and Instructions to Bidders

45. PLACING OF ORDERS-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

46. SHIPPING INSTRUCTIONS - CONSIGNMENT-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

47. RESPONSIBILITY FOR SUPPLIES TENDERED-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. INSPECTIONS-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

49. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

50. POINT OF DESTINATION-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

51. ADDITIONAL CHARGES-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

52. METHOD AND CONTAINERS-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

53. WEIGHT CHECKING-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

54. DEMURRAGE AND RE-SPOTTING-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

55. REPLACEMENT-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

56. PACKING SLIPS OR DELIVERY TICKETS-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,

General Conditions and Instructions to Bidders

7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

57. BILLING-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

58. PAYMENT-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

59. PARTIAL PAYMENTS-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

61. GENERAL GUARANTY-Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

62. SERVICE CONTRACT GUARANTY-Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure

General Conditions and Instructions to Bidders

on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

63. INDEMNIFICATION-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

64. OFFICIALS NOT TO BENEFIT-

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

65. LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

66. REGISTERING OF CORPORATIONS-Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

67. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

68. VIRGINIA FREEDOM OF INFORMATION ACT-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the

General Conditions and Instructions to Bidders

protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

- d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

BIDDER/CONTRACTOR REMEDIES

69. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
 - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The contractor has abandoned performance or been terminated for default on any other Fairfax County project;
 7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

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- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

72. PROTEST OF AWARD OR DECISION TO AWARD-

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

73. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

74. LEGAL ACTION-No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

75. COOPERATIVE PURCHASING-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

General Conditions and Instructions to Bidders

76. PROFESSIONAL AFFILIATION-The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

77. DRUG FREE WORKPLACE-During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, 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.

APPROVED:

/S/ David P. Bobzien
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

RFP CHECKLIST

NAME OF OFFEROR: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

Name and addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: _____
Telephone Number: () _____
E-Mail Address: _____

Fiscal Representative: _____
Telephone Number: () _____
E-Mail Address: _____

The following documents which are included in this Solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- A. County of Fairfax Acceptance Agreement (Cover Sheet, DPSM32)
- B. Special Provisions & Specifications
- C. Appendix A (General Conditions and Instructions to Bidders)
- D. Appendix B (RFP Checklist, Price Summary & Instructions, BPOL Form, Debarment/Suspension Certification, Listing of Local Public Bodies, Business Classification Schedule, Subcontractor's Notification Form).

Typed Name and Title

Signature

Date of Submission

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
 Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

Signature

Date

For Office Use Only:

- Company name and address: _____

- Amount of Contract Award \$ _____
- Fairfax County Department: _____
- Department Contact _____ Phone No. _____
- Company Contact _____ Phone No. _____
- Nature of business _____

Complete and return this form or a copy of your current Fairfax County Business License with your proposal. Contract award may not be made without it.

CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: _____

Signature/Date: _____/_____

Company Name: _____

Address: _____

City/State/Zip: _____

SSN or TIN No: _____

Listing Of Local Public Bodies

REFERENCE PARAGRAPH 35 OF THE SPECIAL PROVISIONS,"USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended, a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Manassas Park, Virginia
	Alexandria Sanitation Authority		Manassas, Virginia
	Alexandria, Virginia		Manassas City Public Schools, Virginia
	Arlington County, Virginia		Maryland-National Capital Park & Planning Commission
	Arlington Public Schools, Virginia		Metropolitan Washington Airports Authority
	Bowie, Maryland		Metropolitan Washington Council of Governments
	Charles County, Maryland		Montgomery Community College
	Charles County Public Schools, MD		Montgomery County, Maryland
	Chevy Chase Village, MD		Montgomery County Public Schools, MD
	Clark County Administrative Services		Northern Virginia Community College
	College Park, Maryland		Northern Virginia Regional Commission
	Culpeper County, Virginia		Orange County Public Schools, Virginia
	Culpeper County Public Schools		Prince George's County, Maryland
	District of Columbia		Prince George's County Public Schools, MD
	District of Columbia Courts		Prince William County Public Schools, VA
	DC Water and Sewer Authority		Prince William County, Virginia
	District of Columbia Schools		Prince William County Service Authority
	Fairfax County Water Authority		Rappahannock County Public Schools, VA
	Fairfax, Virginia (City)		Rockville, Maryland
	Falls Church City Public Schools		Shenandoah County Public Schools, VA
	Falls Church, Virginia		Spotsylvania County Schools, Virginia
	Fauquier County, Virginia		Stafford County, Virginia
	Fauquier County Schools, Virginia		Stafford County Public Schools, Virginia
	Fauquier County Water & Sanitation Authority		Takoma Park, Maryland
	Frederick City, Maryland		Vienna, Virginia
	Frederick County Maryland		Upper Occoquan Sewage Authority
	Frederick County Schools, Maryland		Virginia Railway Express
	Gaithersburg, Maryland		Washington Suburban Sanitary Commission
	Greenbelt, Maryland		Washington Metropolitan Area Transit Authority
	Herndon, Virginia		Winchester, Virginia
	Leesburg, Virginia		Winchester Public Schools
	Loudoun County Sanitation Authority		Others
	Loudoun County, Public Schools, VA		
	Loudoun County, Virginia		
	Madison County Public Schools, VA		
	Manassas Park Public Schools, VA		

Complete and return this form with your proposal. Contract award may not be made without it.

Vendor Name

BUSINESS CLASSIFICATION SCHEDULE

DEFINITIONS

Small Business/Organization – is an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years..

Minority Business – is a business concern that is at least **51%** owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least **51%** of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native America, Eskimo or Aleut.

Woman-Owned Business – A business concern that is at least **51%** owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least **51%** of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING ONE (1) OF THE SIX (6) BOXES IN THE CHART BELOW. This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.

Examples:

A small business, Asian woman owned, would mark box X on line 3.

A large business, African-American owned, would mark box V on line 3.

A small non-profit would mark box B on line 1.

A large business, publicly traded on NYSE or NASDAQ, would mark box Y on line 1.

<u>Line</u>	<u>SMALL BUSINESS</u>	<u>LARGE BUSINESS</u>	<u>OWNERSHIP</u>
1.	___ B	___ Y	Regardless of Ownership
2.	___ C	___ A	Women-Owned
3.	___ X	___ V	Minority-Owned

PLEASE RETURN THIS FORM WITH YOUR BID PACKAGE. CONTRACT AWARD MAY NOT BE MADE WITHOUT IT.

NAME OF FIRM: _____



COUNTY OF FAIRFAX
DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT
SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013

Fax: 703-324-3228

SUBCONTRACTOR (S) NOTIFICATION FORM

Contract Number/Title: _____

Prime Contractors Name: _____

Prime Contractor's Classification Code: _____ (from Business Classification Schedule)

You are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification (use code numbers from previous page) of each first-tier subcontractor (ref. paragraph 34, Special Provisions). Please complete this form and return it with your bid package.

Please check here if you are not using a subcontractor: _____

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	VENDOR CLASSIFICATION

Complete and return this form with your proposal. Contract award may not be made without it.

MEMORANDUM OF AGREEMENT
BETWEEN THE GENERAL SERVICES ADMINISTRATION (GSA), THE BUREAU OF LAND MANAGEMENT (BLM), THE COUNTY OF FAIRFAX, VIRGINIA (THE COUNTY), THE FAIRFAX COUNTY PARK AUTHORITY (FCPA), THE FAIRFAX COUNTY PUBLIC SCHOOLS (FCPS), THE FEDERATION OF LORTON COMMUNITIES (FOLC), THE LORTON HERITAGE SOCIETY (LHS), THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY (NVRPA), THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES (VDHR), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (THE COUNCIL).

PURSUANT TO 36 CFR SECTION 800.6
REGARDING THE TRANSFER OF THE LORTON CORRECTIONAL
COMPLEX OUT OF FEDERAL OWNERSHIP

WHEREAS, the General Services Administration (GSA) proposes the transfer of the Lorton Correctional Complex, a property of approximately 2,700 acres, out of Federal ownership; and

WHEREAS, the General Services Administration plans to transfer portions of the Lorton Correctional Complex to the following parties: the County of Fairfax, Virginia, the Fairfax County Park Authority, the Fairfax County Public Schools, the Northern Virginia Regional Park Authority, and the Bureau of Land Management (BLM), and

WHEREAS, BLM may exchange the portion called the Lorton Exchange Tract (in excess of 200 acres north of Silverbrook Road identified in the Fairfax County Reuse Plan, dated July 26, 1999 as land available for residential development in Land Units 1 and 2) for Meadowood Farm (in excess of 800 acres) on Mason Neck.

WHEREAS, the BLM has conducted Phase IA and B studies on the Lorton Exchange Tract and determined that the exchange may have an adverse effect on the following potentially-eligible archaeological sites: 44 FX 2485 and 44 FX 2487; and

WHEREAS, the BLM has completed Phase IA studies for Meadowood Farm and will conduct additional studies needed to comply with Section 106 of the National Historic Preservation Act after the BLM has acquired the property and identified the proposed undertakings associated with management of the farm, and these compliance activities will be covered under separate Memorandum of Agreement documents; and

WHEREAS, GSA has determined that future development may have an adverse effect on yet unidentified archaeological resources in areas that have a high potential for disturbance and have a moderate or high sensitivity for the presence of archaeological sites (see Attachment C); and

WHEREAS, consultation by GSA with VDHR has resulted in the determination that the Lorton Correctional Complex contains a National Register-eligible Historic District of approximately 552 acres with 136 contributing resources and 106 non-contributing resources (hereinafter "Eligible District"); and

WHEREAS, a specific delineation of the boundaries of the Area of Potential Effect to historic structures, the Eligible District and the contributing resources within has been made in the January, 2000 *Final Historic Structures Determination of Eligibility Report*, prepared by GSA and concurred with by the Virginia Department of Historic Resources. (Report located in the files of VDHR, site number 029-947)

WHEREAS, GSA has determined that the property transfer will have an adverse effect upon the Eligible District, has consulted with the Virginia State Historic Preservation Officer (VDHR), and the Advisory Council on Historic Preservation (the Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and has entered into this MOA in order to alleviate this adverse effect; and

WHEREAS, GSA and VDHR have also invited the Bureau of Land Management (BLM), the County of Fairfax Virginia, the Fairfax County Park Authority, the Fairfax County Public Schools, the Federation of Lorton Communities, the Lorton Heritage Society, and the Northern Virginia Regional Park Authority to participate in the consultation and to concur in this Memorandum of Agreement.

NOW THEREFORE, if GSA decides to proceed with the property transfer in a manner consistent with the terms that have been the subject of consultation to date, upon the execution of this MOA GSA and the entities to whom GSA transfers the property in whole or in part shall ensure that the following stipulations are carried out.

Stipulations

GENERAL STIPULATIONS

- 1) **Enforcement of Compliance with the Stipulations of this MOA:** All parties to this agreement who accept title from GSA to property which is the subject of this MOA agree to enforce the terms of this MOA as a condition of the transfer.
- 2) **Archival documentation:** GSA shall turn over survey materials from GSA's Determination of Eligibility Report, and other related archival material housed with the D.C. Department of Corrections or District of Columbia Archives that enters into GSA custody and control, to the Virginia Room of the Fairfax Public Library, and/or another repository located within Fairfax City or County designated by the Fairfax Public Library. The materials include, at a minimum, any plans and drawings, 35mm photographic negatives, and a complete set of 3 ½" x 5" prints, along with a written photo log and photographic contact sheets.
- 3) **Creation of museum/display:** One or more building(s)-- to be identified by the County after consultation with LHS and FCPA--will be used for the creation of a permanent display or museum dedicated to the history of the Prison, the D.C. Department of Corrections, and/or the surrounding community. The museum may be operated by the FCPA or the County or LHS. However, there is no requirement to operate the museum unless funding is available. In the event that an organization such as the American Correctional Association (ACA) establishes a museum at Lorton, this requirement may be assigned to that organization as part of the conditions upon their use of the Lorton property. This would have to be coordinated with that organization. Coordination with the organization establishing a museum would be the responsibility of the County or the FCPA, whichever organization is in possession of the structure(s) proposed for museum use. If both possess the structure(s), coordination will be required with both.
- 4) **Stabilizing Contributing Resources:** While GSA has custody and control of the Lorton property, GSA will follow the procedures outlined in Preservation Brief 31, *Mothballing Historic Buildings*, to secure and stabilize all contributing resources within the Eligible District until the property is transferred out of Federal ownership.

Resources that are unlikely to be adaptively re-used may be excluded from this requirement by mutual agreement of the County, FCPA, LHS, GSA, and VDHR.

NEW CONSTRUCTION, ALTERATION, DEMOLITION, AND ADAPTIVE USE OF STRUCTURES WITHIN THE ELIGIBLE DISTRICT

- 5) **Rehabilitations according to Secretary of the Interior's Standards:** All exterior rehabilitations or exterior alterations of contributing structures within the Eligible District shall be performed in keeping with the *Secretary of the Interior's Standards for Rehabilitating Historic Buildings*, U.S. Department of the Interior, National Park Service, 1995. Ordinary and necessary repairs and routine maintenance that do not materially affect the external visual appearance of historic features shall not be considered alterations under this stipulation.
- 6) **Designation as a historic overlay district and review of undertakings within the Eligible District:**

If the Eligible District is a locally-designated historic overlay district, all parties to this MOA agree that any undertaking within the Eligible District shall be reviewed according to the following process:

An "undertaking" shall be defined for the purposes of this MOA as a project, activity, or program which alters structures or grounds within the Eligible District funded in whole or in part under the direct or indirect jurisdiction of a signatory to this MOA, including those actions carried out by or on behalf of a signatory to this MOA; those carried out with the financial assistance of a signatory to this MOA; and

those requiring a permit, license or approval of a signatory to this MOA. The following shall not be considered an "undertaking:" Alterations to interiors of contributing structures, unless the specific interior feature is listed in Attachment A; demolition of non-contributing structures within the Eligible District, and alterations to the interior of non-contributing structures within the Eligible District.

Examples of an undertaking include, but are not limited to: alteration of the exterior of a contributing structure, demolition of a contributing structure, new construction within the Eligible District, re-grading or landscaping of 2,500 square feet or more, and road construction of roads that have not been identified in the approved reuse plan.

Should the Fairfax County Board of Supervisors designate the Eligible District as a historic overlay district, the laws and regulations of Fairfax County shall apply to the review of undertakings within the Eligible District. (Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Part 2, 7-200, et seq., Historic Overlay Districts), with the following additions:

- a) Undertakings that may affect structures with contributing interior features, as identified by Attachment A, shall also be subject to Fairfax County Architectural Review Board (ARB) review. (Note: The interiors of the buildings of the Central and Maximum Security facilities will be surveyed by GSA for potential historic significance following the release of care & custody of those facilities to GSA by the D.C. Department of Corrections.)
- b) The party proposing the undertaking shall submit plans, photographs and other pertinent documentation to the ARB. The documentation submitted shall meet or exceed the minimum standards required by the ARB for review of a project within a locally-designated Fairfax County historic overlay district. Copies of the documentation shall be simultaneously forwarded by the ARB to the LHS and VDHR. LHS and VDHR shall have thirty (30) days prior to the meeting of the ARB to provide comment in writing on the proposed undertaking to the ARB. Upon expiration of the thirty (30) day period, or receipt of comments from both VDHR and LHS, the undertaking may be placed on the agenda of the ARB for review according to the procedures and regulations of the ARB.
- c) Should changes be made to the proposed undertaking as a result of the meeting and decisions of the ARB, the record of the changes and the ARB meeting at which the decision was made shall be forwarded to both VDHR and the LHS.
- d) Any signatory to this MOA shall have the same rights granted to persons aggrieved by any decision of the ARB in 7-204.9 of the Fairfax County Zoning Ordinance, except as limited by Administrative Condition B5, to wit:

7-204.9: "Any person aggrieved by any decision of the ARB may appeal such decision to the Board of Supervisors, provided such appeal, which specifies the grounds for appeal, is filed in writing with the Clerk to the Board of Supervisors within thirty (30) days of the ARB's decision."

Any signatory to this MOA shall also have the right, if aggrieved by the decision of the Board of Supervisors, to appeal such decision to the Circuit Court of Fairfax County as outlined in 7-204.11 of the Fairfax County Zoning Ordinance.

The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.

7) Review of undertakings within the Eligible District if the Eligible District is not a Fairfax County historic overlay district

If the Eligible District is designated as a local historic overlay district, all parties to this MOA agree that any undertaking within the Eligible District shall be reviewed according to the following process:

- a) For the purposes of this MOA, the ARB shall have those powers and responsibilities granted to it over the Eligible District that it has over a locally-designated Fairfax County historic overlay district, as defined in the Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Part 2, 7-200, et seq., Historic Overlay Districts. Undertakings that may affect structures with contributing interior features, as identified by Attachment A, shall also be subject to ARB review.

- b) The party proposing the undertaking shall submit plans, photographs and other pertinent documentation to the ARB. The documentation submitted shall meet or exceed the minimum standards required by the ARB for review of a project within a locally-designated Fairfax County historic overlay district. Copies of the documentation shall be simultaneously forwarded by the ARB to the LHS and VDHR.
- c) LHS and VDHR shall then have thirty (30) days to provide comment in writing on the proposed undertaking to the ARB. Upon expiration of the thirty (30) day period, or receipt of comments from both VDHR and LHS, the undertaking may be placed on the agenda of the ARB for review according to the procedures and regulations of the ARB.
- d) Should changes be made to the proposed undertaking as a result of the meeting and decisions of the ARB, the record of the changes and the ARB meeting at which the decision was made shall be forwarded to both VDHR and the LHS.
- e) If the LHS or VDHR should object to the decision of the ARB, the LHS or VDHR or both may formally protest the decision in writing to the Clerk to the Fairfax County Board of Supervisors within fifteen (15) calendar days of the decision. Upon expiration of this fifteen (15) day period, if no written comment from VDHR or LHS has been recorded formally objecting to the ARB's decision, the undertaking may be approved or implemented by the Fairfax County Board of Supervisors with no further opportunity for objection under the procedures of this MOA granted to either the VDHR or LHS.
- f) Upon receipt of any such objection from VDHR or LHS, a thirty (30) day moratorium period shall be placed on the execution of the undertaking. During this thirty (30) day period, a historic preservation issues meeting or conference call shall be held with representatives of the objecting party (VDHR, LHS or both), the party proposing the undertaking, Fairfax County, and the Council. Other parties may attend this meeting and provide comment during a designated comment period within the meeting. Failure of the objecting party to make themselves available for such a meeting within the thirty (30) day period shall render their objection void at the expiration of the thirty (30) days. An extension of fifteen (15) days may be requested in writing to the Clerk of the Fairfax County Board of Supervisors prior to the expiration of the thirty (30) day period by the objecting party. If representatives of the party proposing the undertaking fail to make themselves available during this thirty (30) day period, the moratorium period shall be extended until the meeting is held.
- g) During this meeting, the parties shall negotiate regarding specific objections to the undertaking. The Council shall act as mediator of the process, suggesting preservation treatments and processes that may serve to provide a compromise between the party proposing the undertaking and the objecting party (ies). Within fifteen (15) calendar days of the historic preservation issues meeting, the following shall be forwarded to the Fairfax County Board of Supervisors:
 - 1. If the proposed undertaking is a demolition, the results of the adaptive use study undertaken as per stipulation 8.
 - 2. The written objection of the objecting parties.
 - 3. Minutes from the meeting between the objecting party (ies) and the party proposing the undertaking that have been prepared by the Council.
 - 4. A written response from the party proposing the undertaking to the objecting party.
 - 5. The comments of the Council.
- h) The Fairfax County Board of Supervisors shall then act to approve or disapprove the decision of the ARB according to the procedures stated in the laws and regulations pertaining to a Fairfax County historic overlay district.
- i) The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.
- 8) **Adaptive use studies of contributing resources:** If any contributing resources are proposed for demolition within the Eligible District, other than those listed in Attachment B, such resources shall be examined for the feasibility of adaptive use. The performance of such studies shall be the responsibility of the party proposing the demolition.

There is no requirement to perform feasibility studies for the contributing resources listed in Attachment B, if proposed for demolition.

- a) Within 6 months of the date of the execution of the agreement, the County shall have prepared a proposed scope and format for the feasibility study. The proposed scope and format for the study shall be circulated to VDHR, the LHS, and the Council. LHS and VDHR shall then have thirty (30) days to object to the scope or

format for the study. Should VDHR or the LHS object to the scope or format for the study, they may register in writing a formal objection to the Clerk of the Fairfax County Board of Supervisors. Should neither VDHR nor LHS object to the proposed scope or format within the thirty (30) day period, the Fairfax County Board of Supervisors shall act to approve or disapprove the scope and format for the study.

- b) Upon receipt of any such objection from VDHR or LHS, a meeting or conference call shall be held with representatives of the objecting party (VDHR, LHS or both), the Fairfax County Board of Supervisors, and the Council. Other parties may attend this meeting and provide comment during a designated comment period within the meeting. Failure of the objecting party to make themselves available for such a meeting within a thirty (30) day period shall render their objection void at the expiration of the thirty (30) days. An extension of fifteen (15) days may be requested in writing to the Clerk of the Fairfax County Board of Supervisors prior to the expiration of the thirty (30) day period by the objecting party. If representatives of the party proposing the undertaking fail to make themselves available during this thirty (30) day period, the moratorium period shall be extended until the meeting is held.
- c) Within fifteen (15) calendar days of the meeting, the following shall be forwarded to the Fairfax County Board of Supervisors:
 - 1. The written objection of the objecting parties.
 - 2. Minutes from the meeting, that have been prepared by the Council, between the objecting party (ies) and the party proposing the scope and format of the feasibility study.
 - 3. The comments of the Council.
- d) The Fairfax County Board of Supervisors shall then act to approve or disapprove the proposed scope and format for the feasibility studies. Once the scope and format have been approved by the Fairfax County Board of Supervisors, it shall be used for all future studies. Any changes to the scope or format shall require a new circulation of the proposed scope or format to LHS and VDHR, with an opportunity for objection granted to LHS and VDHR and approval of the new scope or format by the Fairfax County Board of Supervisors.
- e) The feasibility study shall be included with the documentation provided to the Fairfax County ARB under stipulation 6 or 7, whichever is applicable.
- f) If it is found by the party proposing demolition that it is not feasible to reuse the contributing buildings, and this finding is concurred with by the Fairfax County Board of Supervisors, then demolition may proceed following the completion of the photographic documentation required in stipulation number 9. If the party proposing demolition states that it is not feasible to reuse the buildings, but the Fairfax County Board of Supervisors does not agree, the Fairfax County Board of Supervisors shall be empowered to place a moratorium on demolition for a period of a minimum of three months, to require that the property be offered on the open market at fair market value to persons or entities who are willing to adaptively reuse the contributing resource. The precise length of the moratorium period will be determined according to the Fairfax County Zoning Ordinance, Overlay and Commercial Revitalization District Regulations, Historic Overlay Districts, 7-204.12(C). If the contributing resource is the property of Fairfax County, the moratorium period shall be for a minimum of six months. If a suitable purchaser cannot be found within the moratorium period, the party proposing the demolition may proceed to demolish the contributing resource after complying with stipulation number 9.
- g) The procedure described under this stipulation shall take effect upon transfer of the Eligible District out of Federal ownership. Should a portion of the Eligible District be transferred out of Federal ownership while the Federal government retains ownership of the remainder of the Eligible District, the requirements of this stipulation shall apply to only those portions that have been transferred out of Federal ownership.
- 9) **Photographic documentation:** Any contributing buildings that are to be demolished shall be photographed with a large format (4" x 5" minimum negative) camera using black & white film prior to their demolition. Photographic recordation shall be done to the standards of the Historic American Buildings Survey (HABS). The number and angle of views shall be coordinated with FCPA prior to the taking of the photographs and completed photos shall be approved by FCPA prior to demolition. Such photographs shall be submitted to the Virginia Room of the Fairfax County Public Library, the District of Columbia Archives, and VDHR. The negatives shall be submitted to VDHR. The photographic documentation shall be the responsibility of the party proposing the demolition.
- 10) **Development of redevelopment or adaptive use strategies:** All parties to this MOA agree that they shall invite LHS, FOLC, VDHR, the ARB, the Fairfax County Economic Development Authority (EDA), Fairfax County Redevelopment and Housing Authority, and the Fairfax County History Commission to participate in the development of any redevelopment or adaptive use strategies for private development within the Eligible District. Such participation shall include, at a minimum, a period of thirty (30) calendar days prior to the

release of any Requests for Proposal (RFPs) related to redevelopment or adaptive use for the LHS, ARB and VDHR to comment on the proposed RFP.

ARCHAEOLOGICAL STUDIES

The prehistoric and historic archaeological resources shall be identified and evaluated and treatment plans shall be developed for National Register-eligible properties in accordance with the procedures outlined below before approval of any ground-disturbing activities at the Lorton Correctional Complex. The specific procedures are outlined below.

11) **Phase I Studies (Identification):**

- a) GSA has conducted a Phase IA study of the entire Lorton Correctional Complex property. The BLM has completed a Phase IB of the Lorton Exchange Tract.
- b) GSA shall perform Phase IB testing at the Lorton Correctional Complex property, excluding the Lorton Exchange Tract. The testing shall encompass those areas that have a high potential for disturbance from implementation of the Fairfax County Land Use Plan and have a moderate or high sensitivity for the presence of archaeological resources. This totals approximately 224 acres, and is delineated in Attachment C to this MOA. GSA shall submit a report meeting the federal standards entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742, September 29, 1983), VDHR's Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations Act, 1992 Session Amendments (June 1992) to VDHR for review and comment. If no comments are received within 30 days, GSA can assume concurrence with the recommendations on eligibility made in the report.
- c) If, in the future, ground disturbing activities are proposed by the future owners of the Lorton property in areas of moderate or high sensitivity that have yet to undergo Phase IB testing (approximately 436 acres), the party proposing the ground-disturbing activity shall perform Phase IB field testing for archaeological resources and shall consult with VDHR and the County on the need for Phase II testing. If Phase II testing is determined to be required by the County in consultation with VDHR, then the party shall perform the Phase II testing and any required Phase III Treatment.
- d) All field testing shall be performed according to the published standards of VDHR for archaeological investigations within the Commonwealth of Virginia. To wit: Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742, September 29, 1983), VDHR's Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations Act, 1992 Session Amendments (June 1992).

12) **Phase II studies (Evaluation):**

Avoidance of potentially eligible archaeological sites is considered by VDHR to be the preferred treatment of identified sites. Avoidance of archaeological sites would obviate the need for Phase II investigations, reducing the cost of the undertaking and protecting the site.

- a) In areas where GSA conducts Phase IB testing, GSA in consultation with the VDHR and the County of Fairfax will identify the potentially-eligible archaeological resources and determine the need for Phase II-level studies.
- b) The owner of a property containing archaeological sites shall conduct Phase II archaeological studies prior to undertaking ground-disturbing activities that may adversely affect archaeological sites 44 FX 2485, 44 FX 2487, or any sites identified as per stipulation 11.
- c) Phase II-level studies shall be done in accordance with "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" and the "Virginia Department of Historic Resources Guidelines for Archaeological Investigations."
- d) Based on the results of the Phase II studies, the County of Fairfax shall determine, in consultation with the VDHR, if the sites meet the National Register criteria for eligibility (36 CFR Part 60.4). If the VDHR does not object to the County's recommendation on eligibility within thirty (30) days of receiving the recommendation and supporting documentation, then the County will assume concurrence. If a site is not eligible for listing in the National Register, then the proposed activities may proceed.

13) Phase III (Treatment of Archaeological Resources):

- a) If an archaeological site is determined to be eligible for listing in the National Register, then a treatment plan shall be prepared by the owner of the potentially impacted site in consultation with the County and VDHR. The preferred treatments are avoidance, preservation in situ, or incorporation into protected areas. Avoidance, preservation in situ, and incorporation into protected areas shall all be explored before data recovery is selected as a treatment option. If a preferred treatment is not implemented, then the treatment plan will involve data recovery and, if appropriate, curation of artifacts and public interpretation.
- b) The County shall submit the treatment plan to the VDHR for review and comment prior to its implementation. The VDHR will have thirty (30) days to review the plan and comment. Any comments received within thirty (30) days of VDHR's receipt of the plan shall be addressed in the final treatment plan. If the VDHR does not comment within thirty (30) days, then the County will assume concurrence and proceed with implementing the plan.

14) Dispute Resolution for Archaeological Resources:

- a) If the County of Fairfax and the VDHR disagree on the National Register eligibility of a site, then VDHR will refer the eligibility issue to the Council and the Council will obtain an opinion from the Keeper of the National Register.
- b) If the County and VDHR disagree regarding the impacts of the project or the appropriate treatment plan, then VDHR will obtain the comments of the Council. The Council will provide comments within thirty (30) days of receiving the request for comment and the supporting documentation.
- c) If after receiving the comments of the Council or the Keeper, the County and VDHR still cannot agree on an issue of National Register eligibility, anticipated effects on eligible properties, or treatment, then the County, in cooperation with the VDHR, will submit the issue to the Board of Supervisors for resolution.

15) Land Title Transfers:

GSA and BLM, if BLM ultimately consummates the exchange and transfers title to the Lorton Exchange Tract, shall in any deed conveying any of the Lorton Correctional Complex property place a covenant on the property which requires compliance with the provisions of this MOA and specifies that such covenant shall run with the land. The County and GSA /BLM shall have the responsibility for enforcing the provisions of this MOA.

Administrative Conditions

A. Amendments

Any party to this MOA may propose to GSA that the MOA be amended, whereupon GSA shall consult with the other parties to this MOA to consider such an amendment in accordance with 36 CFR Part 800.6.

B. Resolving Objections

1. Should any party to this MOA object in writing to GSA regarding any action carried out or proposed with respect to the implementation of this MOA, GSA shall consult with the objecting party to resolve the objection. If after initiating such consultation GSA determines that the objection cannot be resolved through consultation, GSA shall forward all documentation relevant to the objection to the Council including GSA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - a) Advise GSA that the Council concurs in GSA's proposed response to the objection, whereupon GSA shall respond to the objection accordingly;
 - b) Provide GSA with recommendations, which GSA shall take into account in reaching a final decision regarding its response to the objection; or
 - c) Notify GSA that the objection will be referred for comment, and proceed to refer the objection and comment.

2. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, GSA may assume the Council's concurrence in its proposed response to the objection.
3. GSA shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; GSA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to any such measure or its manner of implementation be raised by a member of the public, GSA shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.
5. Nothing in this agreement shall prevent a party to this agreement from seeking redress in a court of law to enforce the terms of this agreement, except in the case where any party to this Memorandum of Agreement is given the opportunity to raise objections and does not raise any objections in a timely manner. Such party shall not be permitted to seek redress in a court of law to enforce the terms of this Memorandum of Agreement with respect to the matter to which it raised no timely objections. If a court of law should find that the process outlined in either stipulation 6 or 7, whichever is applicable, was not followed, the party proposing the undertaking agrees to an immediate moratorium on the undertaking that shall continue until the process is completed.

C. Review of Implementation

If the stipulations have not been implemented within two years after execution of this MOA, the parties to this agreement shall review the MOA to determine whether revisions are needed. If revisions are needed, the parties to this MOA shall consult in accordance with 36 CFR Part 800.6 to make such revisions.

D. Termination

1. If the BLM discontinues its role in the proposed exchange or if the exchange proposal is suspended, then the BLM will cease to be a party to this MOA as it relates to the Lorton Exchange Tract. If the BLM discontinues its role, then GSA shall assume the BLM's responsibilities as delineated in this MOA.
2. If GSA determines that it cannot implement the terms of this MOA, or if the Council or the VDHR determines that the MOA is not being properly implemented, GSA or the Council or the VDHR may propose to the other parties to this MOA that it be terminated.
3. The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
4. Should such consultation fail, GSA or the Council or VDHR may terminate the MOA by so notifying all parties.
5. Should this MOA be terminated, GSA shall either:
 - a) Consult in accordance with 36 CFR Part 800.6 to develop a new MOA; or
 - b) Request the comments of the Council pursuant to 36 CFR Part 800.7.

Execution of this Memorandum of Agreement by GSA, the Council, and VDHR, and implementation of its terms, evidence that GSA has afforded the Council an opportunity to comment on the property transfer and its effects on historic properties, and that GSA has taken into account the effects of the undertaking on historic properties.

GENERAL SERVICES ADMINISTRATION

(Signed by)

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES
ADVISORY COUNCIL ON HISTORIC PRESERVATION
COUNTY OF FAIRFAX
FAIRFAX COUNTY PARK AUTHORITY
FAIRFAX COUNTY PUBLIC SCHOOLS
FEDERATION OF LORTON COMMUNITIES
LORTON HERITAGE SOCIETY
NORTHERN VIRGINIA REGIONAL PARK AUTHORITY