



Loudoun County, Virginia

INVITATION FOR BID

CONSTRUCTION OF THE POTOMAC GREEN NEIGHBORHOOD PARK IMPROVEMENTS

ACCEPTANCE DATE: Prior to 4:00 p.m. March 23, 2020 Local "Atomic" Time

IFB NUMBER: RFQ 192782

ACCEPTANCE PLACE: Department of Finance and Budget
Division of Procurement,
1 Harrison Street, SE, 4th Floor
Leesburg, Virginia 20175

PLEASE NOTE:

Plans and specifications CDs, and bid forms may be picked up at the Division of Procurement at the address above between the hours of 9:00 a.m. and 5:00 p.m. weekdays or call (703) 777-0403 or by downloaded from our web site: www.loudoun.gov/procurement. Each CD contains a geotechnical report. **A Geotechnical Report Release form signed by an individual authorized to bind the firm must be signed and submitted prior to obtaining a CD.**

A Pre-Bid Conference will be held on **February 18, 2020 at 1:30 p.m.** at the Loudoun County Department of Transportation and Capital Infrastructure Office located at 101 Blue Seal Drive, Suite 102, Leesburg, Virginia 20177-7500, Conference Room 2 for clarification of any questions on the drawings, specifications and site conditions. All questions related to this project should be submitted by March 6, 2020.

The terms and conditions contained in this Invitation for Bid and in the County-Contractor Agreement are not negotiable.

Requests for information related to this Invitation should be directed to:

Samira Mkaimel, CPPB
Contracting Officer
(571) 258-3820

Samira.Mkaimel@loudoun.gov

This document can be downloaded from our web site:
www.loudoun.gov/Procurement

Issue Date: February 4, 2020

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN ORDER TO PARTICIPATE IN THIS PROCUREMENT, PLEASE CONTACT THIS DIVISION AS SOON AS POSSIBLE.

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Attachments:

ATTACHMENT 1:	COUNTY-CONTRACTOR AGREEMENT (Contained herein)
ATTACHMENT 2	GEOTECHNICAL REPORT RELEASE FORM
ATTACHMENT 3	ESCROW AGREEMENT (Contained herein)
ATTACHMENT 4:	GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT
ATTACHMENT 5:	Plans and Specs (CD available after submission of Attachment 2 to the County of Loudoun, Office of Procurement)

Authorized By: s/Samira Mkaimel, CPPB Date: February 4, 2020
Contracting Officer

CONSTRUCTION OF THE POTOMAC GREEN NEIGHBORHOOD PARK IMPROVEMENTS

1.0 PURPOSE

The Intent of this Invitation for Bid (IFB) is for the County of Loudoun, Virginia (County) to obtain the services of a qualified General Contractor to construct the Potomac Green Neighborhood Park Improvements (Project). The Potomac Green Neighborhood Park is located at 20750 Marblehead Drive, Ashburn, Virginia 20147. Proposed construction improvements include ADA accessible rest room facility/concession stand, sidewalks and trails, pavilions, tennis courts, a bocce court, a playground, access road and parking improvements and other improvements as shown on Contract Documents. The General Contractor shall be responsible for protecting the existing parking lot, baseball field, rectangular fields, and other existing improvements including the existing irrigation system from damage. Any damage to those items must be repaired by the General Contractor. The Potomac Green Park shall be closed to the general public during construction. However, the General Contractor shall make the existing athletic fields available to Loudoun County staff during construction so they may perform maintenance. The General Contractor shall be responsible for safety and security of neighboring residents, Loudoun County staff, and the general public throughout the Project construction phase. The Potomac Green Neighborhood Park is located within a residential area; therefore, adherence to all local and state ordinances for work hours and noise levels shall be strictly enforced.

The site is considered unclassified above subgrade and all costs associated with the removal of all material above subgrade shall be borne by the Contractor. The costs associated with the removal of any and all unsuitable soils and/or rock encountered below subgrade (as defined in Specification 311000), during the construction of this Project shall be borne by the County. Blasting will not be permitted due to the location of the existing irrigation lines, surrounding neighborhoods, and public school.

The Contractor will be responsible for the removal of all vegetation as required by the Contract Documents, to include haul-off and disposal. Excess top-soil and spoils shall be removed from the site. Hauling and disposal of these materials shall be included in this Contract. Should the Contractor require the import of suitable materials to maintain the elevations and grades shown on the Contract Documents, then the Contractor shall be responsible for the costs of the suitable materials, inclusive of hauling, placement, and compaction.

The Contractor shall be responsible for all surveying to ensure the Project is installed per the Construction Documents. Any deviations from the Contract Documents shall be specifically requested via Request for Information (RFI) submitted to the Architect/Engineer of Record. All deviations shall be noted in the Contractor's "Record Set" of Construction Documents. Upon completion of the project, two (2) hard-copy sets, and one (1) digital copy of "Record Set" Construction Documents shall be provided to the County.

The County will require the Contractor awarded this Project to use e-Builder Construction Program Management software for all Project management

documentation and correspondence, including, but not limited to: Requests for Information (RFI's), submittals, meeting minutes, pay applications, potential change orders/change orders, close-out documentation, etc. The County will provide the Contractor two (2) licenses for its use and provide training for the Contractor. Basic training will be required and provided by the County at no cost to the Contractor. This level of training is at the recommendation of e-Builder and should provide proficiency. If the Contractor does not demonstrate proficiency with the software following this training, additional training required for complete proficiency will be at the Contractor's cost. Additional licenses may also be purchased at the Contractor's cost. Contact e-Builder for further information at www.e-builder.net.

2.0 COMPETITION INTENDED

It is the County's intent that this IFB permits competition. It shall be the bidder's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such notification must be received by the Purchasing Agent not later than fifteen (15) days prior to the date set for bids to close.

3.0 BIDDER'S MINIMUM QUALIFICATIONS

Bidders must demonstrate that they have the resources and capability to provide the materials and services as described herein. *All bidders must submit the documentation and information indicated below with their bid. Failure to provide any of the required documentation/information will be cause for bid to be deemed non-responsive and/or non-responsible and rejected.*

The following criteria shall be met in order to be eligible for this Contract:

- 3.1 Debarment: By signing the Pricing Page contained in the IFB, bidders are certifying that bidder is not currently debarred by any local or state government or the Federal Government. Bidders shall provide in their bid, documentation related to all debarments that occurred within the last ten (10) years.
- 3.2 Provide evidence of a contractor's certificate of registration, whether resident or nonresident of Commonwealth of Virginia, as required by the following:
 - Registered Commonwealth of Virginia Contractor: Class A. Include a copy of the Class A Contractors license in your bid.
- 3.3 Verification of Bonding Capability. Bidder shall include in their bid a letter from a surety or insurance company (with a Best's Financial Strength Rating of A or better and Financial Size Category VII or higher by A.M. Best Co.) stating that the Bidder is capable of obtaining a performance and payment bond based on the bidder's estimated contract value for the construction of the Project, which bonds will cover the Project and any warranty periods. The letter of surety shall clearly state the rating categorization noted above and reference the estimated contract value as identified in herein, in a manner similar to the notation provided below:

“As surety for [the above named Contractor], [XYZ Company] with A.M. Best Financial Strength Rating [rating] and Financial Size Category [Size Category] is capable of obtaining 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods as provided for in the Contract Documents on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project.” This letter shall also state the Bidder’s per project and total bonding program limits and that the Surety is authorized/licensed to do business in the Commonwealth of Virginia.

3.4 Experience requirements for the General Contractor.

- A. The General Contractor submitting a bid must demonstrate extensive successful experience in the construction of public facilities similar in scope to the plans and specifications contained herein. Demonstration of this experience shall be by means of providing a minimum of four (4) project references with a minimum construction costs of \$1,500,000 that have been completed within (10) ten years from the date of this IFB. Project references that are athletic fields and recreational facility buildings, located in a neighborhood setting, and include: ADA accessible rest room facility/concession stand, sidewalks and trails, pavilions, tennis courts, playgrounds, access road and parking improvements are preferred, however, all project references provided must demonstrate successful experience in the type of construction required by this Project.

Each project reference is to include the name and location of the project, project description of sufficient detail to allow determination of projects size and scope, contract costs, contract schedule milestones, photographs of sufficient quality to demonstrate the scope of the facility, and name, address, current phone number, and e-mail addresses of architects and owners. Bidder hereby releases listed references from all claims and liability for damages that may result from the information provided by the reference.

- B. A successfully completed project shall mean: 1) that the project was completed within the contract time, including any owner-approved time extensions, 2) that the project was completed at or below the contract award amount, including any subsequent owner-approved cost change orders, and 3) that the project was completed in accordance with the contract documents.

3.5 Bidders shall include in their bids the resumes of the Project Manager, Superintendent, and Quality Control Manager.

Resumes must demonstrate five (5) years’ experience in the same role on similar size and type of projects and include the following as a minimum:

- A. Biographical sketch, education, and construction related certifications and licenses related to the type of work they will be performing. The Quality Control Manager must have at the time

of bid submission a U.S Army Corps of Engineers certification for Construction Quality Control Management for Contractors or equivalent. The Superintendent must have at the time of bid submission an Occupational Safety and Health Administration (OSHA) ten-hour (10) certification. The Superintendent or Project Manager can also serve as the Quality Control Manager for this project.

- B. Project list for past projects that include a brief description of the project, role related to the project and completion date of the project to demonstrate five (5) years construction experience for the work they will be performing of similar size and type.
- C. Project list for current project assignments that include a brief description of the project, role related to the project, and completion date of the project.

By submitting a bid, the bidder agrees that the Project Manager, Superintendent, and Quality Control Manager identified in their bid shall be the Project Manager, Superintendent, and Quality Control Manager assigned to the project for the duration of the Project unless they are no longer employed by the bidder or the County has approved a substitution.

4.0 SPECIFICATIONS

The work to be performed as a result of this IFB shall be in accordance with the plans dated October 1, 2018 and specifications dated March 2019, prepared by William H Gordon Associates, Inc., the County's Architect/Engineers on this project.

5.0 DISCREPANCIES

Should a bidder find discrepancies in the plans and/or specifications or be in doubt as to the meaning or intent of any part thereof, the bidder shall request clarification from the County in writing, not later than the date established in the Instructions to Bidders. Any changes to the IFB that result from such a clarification request, will be communicated through a written addendum and posted on the Procurement home page at www.loudoun.gov/procurement. Failure to request such a clarification is a waiver of any claim by the bidder for additional expenses because its interpretation was different than the County's.

6.0 BUSINESS, PROFESSIONAL, AND OCCUPATIONAL LICENSE REQUIREMENT

All firms or individuals located or doing business in Loudoun County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL)" Tax Ordinance during the initial term of the Contract or any renewal period.

Wholesale and retail merchants without a business location in Loudoun County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Office of Commissioner of Revenue, telephone (703) 777-0260.

7.0 PAYMENT OF TAXES

All Contractors located or owning property in Loudoun County during the initial term of the Contract or any renewal period shall assure that all real and personal property taxes are paid.

The County will verify payment of all real and personal property taxes by the Contractor prior to the award of any Contract or Contract renewal.

8.0 NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The County is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, Loudoun County, may not, through its Contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

9.0 ETHICS IN PUBLIC CONTRACTING

The provisions contained in §§ 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the County. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

10.0 EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED

Every Contract of over \$10,000 shall include the following provisions:

- A. During the performance of this Contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any 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 nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient to meet this requirement.
- B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

11.0 DRUG-FREE WORKPLACE

Every Contract of over \$10,000 shall include the following provisions:

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

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

12.0 FAITH-BASED ORGANIZATIONS

The County does not discriminate against faith-based organizations.

13.0 EXEMPTION FROM TAXES

Pursuant to Va. Code § 58.1-609.1, the County is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge the County for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required

by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction project. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

14.0 CONSTRUCTION CONTRACT PERFORMANCE AND PAYMENT BONDS

Within fifteen (15) calendar days after the effective date of the County – Contractor Agreement, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the Contract:

- A. A performance bond satisfactory to the County, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to the County, for the faithful performance of the Contract in strict conformity with the plans, specifications, and conditions of the Contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract; and
- B. A payment bond satisfactory to the County, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. Labor and materials shall include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract.
- C. The amount of the performance and payment bonds shall increase without the necessity of any action by the County, to the same extent the Contract Price increases due to changes.
- D. All sureties providing bonds shall give written notice to the County at least thirty (30) days prior to the expiration or termination of the bond(s).
- E. If at any time, any surety or sureties become insolvent or are determined by the County to be unable to adequately secure the interests of the County, the Contractor shall within thirty (30) days after such notice from County to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to County. The premium on such bond(s) shall be paid by the Contractor at no additional cost to the County provided reasonable justification can be provided by the County for its determination.
- F. A prime Contractor shall not be precluded from requiring each subcontractor to furnish a payment bond with surety thereon in an amount equal to one hundred percent (100%) of the Contract with such subcontractor.

- G. The successful bidder's failure to furnish to the County acceptable bonds, within fifteen (15) days after the effective date of the County – Contractor Agreement shall be considered just cause for cancellation of the award and forfeiture of the construction contract bid security. In such event, the proposal guaranty shall become the property of the County, not as a penalty but in liquidation of damages sustained.

15.0 CONSTRUCTION CONTRACT BOND FORMS AND COPIES; ALTERNATIVE FORMS

In lieu of a payment or performance bond, the Contractor may furnish a certified check or cash escrow in the face amount required for the bond. If approved by the County Attorney, a Contractor may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords the same protection to the County equivalent to the corporate surety bond.

16.0 CONSTRUCTION CONTRACT RETAINAGES

The Contractor shall be paid ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the Contract. All amounts withheld may be included in the final payment. Any subcontract which provides for similar progress payments shall be subject to the same limitations.

17.0 ESCROW ACCOUNT FOR RETAINED FUNDS

Provided the Bid price exceeds \$200,000.00 and subject to the provisions of §2.2-4334 of the Virginia Public Procurement Act, the bidder shall have the option to request use of an escrow account procedure for utilization of funds retained by the County, and may request use of this option by so indicating in the space provided on the Bid Form. If the Contractor elects to use the escrow account procedure, the "Escrow Agreement" form included with this bid shall be executed by the Contractor and submitted to the Purchasing Agent within fifteen (15) calendar days of notification by the County that its bid has been accepted. If the "Escrow Agreement" is not submitted within the fifteen (15) day period, the Contractor shall forfeit such rights to the use of the escrow account procedure.

In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent, and the surety shall execute an Escrow Agreement form and submit same to the County for approval. The Contractor's escrow agent shall be a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth of Virginia. The Escrow Agreement form shall contain the complete address of the escrow agent and surety, and an executed escrow agreement will be authority for the County Administrator, or his designee, to make payment of retained funds to the escrow agent. After approving the Escrow Agreement, the County will pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the Contractor will not be paid to the escrow agent.

The escrow agent may, in accordance with stipulations contained in the Escrow Agreement, invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities.

Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the County Administrator, or his designee. When the final pay application is released for payment, the County will direct the escrow agent to settle the escrow account by paying the Contractor or the County monies due them as determined by the County Administrator, or his designee. The County reserves the right to recall retained funds and to release same to the surety upon receipt of written requests from the Contractor or in the event of default.

18.0 AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, limited partnership, or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the County pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The County may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

19.0 INSTRUCTIONS TO BIDDERS

19.1 Preparation and Submission of Bids

- A. Before submitting a bid, read the ENTIRE solicitation including the Terms and Conditions. Failure to read any part of this solicitation will not relieve a bidder of the Contractual obligations.
- B. Pricing must be submitted on Invitation for Bid pricing form only. Include other information, as requested or required.
- C. All bids must be submitted to the Division of Procurement in a sealed container. The face of the sealed container shall indicate the IFB number, time and date of opening, and the title of the IFB.
- D. All bids shall be signed in ink by the individual or authorized principals of the firm.
- E. All attachments to the Invitation for Bid requiring execution by the firm are to be returned with the bids.
- F. Bids must be received by the Division of Procurement prior to 4:00 p.m., local Atomic time on date identified on the cover of this document. Requests for extensions of this time and date will not be granted,

unless deemed to be in the County's best interest. Bidders mailing their bids shall allow for sufficient mail time to ensure receipt of their bids by the Division of Procurement by the time and date fixed for acceptance of the bids. Bids or unsolicited amendments to bids received by the County after the acceptance date and time will not be considered. Bids will be publicly accepted and logged in at the time and date specified above.

G. Bids may be submitted via one of the following options:

- US Mail to the County of Loudoun, Virginia, Division of Procurement, PO Box 7000, Leesburg, Virginia 20177-7000; or
- Hand delivered or private carrier (UPS/FedEx) to the County of Loudoun, Virginia, Division of Procurement, 1 Harrison Street, S.E., 4th Floor, Leesburg, Virginia 20175.

Faxed and e-mailed bids will not be accepted.

(Please note: Bidders choosing to submit bids via US Mail should allow at least an additional twenty-four (24) hours in the delivery process for internal County mailroom distribution.).

H. Each firm shall submit one (1) original of their bid and one (1) electronic copy on a USB flash drive to the County's Division of Procurement as indicated on the cover sheet of this Invitation for Bid.

19.2 Questions and Inquiries

Questions and inquiries, both oral and written, will be accepted from any and all bidders. However, when requested, complex oral questions shall be submitted in writing. The Division of Procurement is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other Loudoun County staff regarding the IFB may result in the disqualification of the bidder. Inquiries pertaining to the Invitation for Bid must give the IFB number, time and date of opening, and the title of the IFB. Material questions will be answered in writing with an Addendum provided, however, that all questions are received **by 5:00 p.m. March 6, 2020**. It is the responsibility of all bidders to ensure that they have received all Addendums and to include signed copies with their bid. Addendums can be downloaded from www.loudoun.gov/procurement.

19.3 Exceptions/Additions

No exceptions or additions to the Specifications/Scope of Work or Terms and Conditions shall be permitted. Any questions or concerns regarding any part of the IFB shall be submitted to the Division of Procurement prior to the date specified in the Questions and Inquiries section above. Bids containing any exceptions to the Specifications/Scope of Work or Terms and Conditions or submitting additional terms and conditions shall be deemed non-responsive and rejected. Exceptions or additions proposed after bid submission by the successful bidder shall not be accepted.

19.4 Inspection of Site

All bidders are encouraged to make an on-site inspection of the location where the work will be performed to become completely familiar with the existing conditions. Failure to comply with this requirement will not relieve the successful bidder of its obligation to carry out the scope of the resulting Contract. The park is open to public and can be inspected during normal business hours.

19.5 Firm Pricing for County Acceptance

Bid price must be firm for County acceptance for a minimum of ninety (90) days from bid opening date.

19.6 Proprietary Information

Trade secrets or proprietary information submitted by a bidder in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, **pursuant to § 2.2-4342 of the Code of Virginia, the bidder must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the bidder's information.** Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature.

19.7 Authority to Bind Firm in Contract

Bids MUST give full firm name and address of bidder. Failure to manually sign bid may disqualify it. Person signing bid should show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name and authorized signature must appear on bid in the space provided on the pricing page. Those authorized to sign are as follows:

If a sole proprietorship, the owner may sign.

If a general partnership, any general partner may sign.

If a limited partnership, a general partner must sign.

If a limited liability company, a "member" may sign or "manager" must sign if so specified by the articles of organization.

If a regular corporation, the CEO, President or Vice-President must sign.

Others may be granted authority to sign but the County requires that a corporate document authorizing him/her to sign be submitted with bid.

19.8 Withdrawal of Construction Contract Bid Due to Error

A bidder for a construction Contract may withdraw its 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. The bidder shall give notice in writing of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

19.9 Subcontractors

Please refer to Article 5: Subcontractors, of the *County of Loudoun General Conditions of the Construction Contract*.

19.10 Late Bids

LATE bids will be returned to bidder UNOPENED, if IFB number, opening date, and bidder's return address are shown on the container.

19.11 Rights of County

The County reserves the right to reject all or any part of any bid, waive informalities, and award the contract to the lowest responsive and responsible bidder to best serve the interest of the County. Informality shall mean a minor defect or variation of a bid from the exact requirements of the Invitation to Bid which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

19.12 Prohibition as Subcontractors Under Competitive Sealed Bidding

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.

19.13 Vendor Preference in Tie Bids

The Division of Procurement and all other departments of the County making purchases of goods, services, and construction shall give preference to goods, services, and construction sold by County and State vendors, in that order, in all cases of tie bids, quality and service being equal.

19.14 Anti-Trust Violations

Tie bids may cause rejection of bids by the Division of Procurement and/or prompt an investigation for Anti-Trust violations.

19.15 Basis for Award

Contract award will be made to the lowest responsive and responsible bidder based upon the lump sum.

Whenever the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident Contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident

Contractor of a state with an absolute preference, the bid preference shall not be considered.

19.16 Negotiation with the Lowest Responsible Bidder

Unless all bids are cancelled or rejected, the County reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the bid price and the specifications/scope of work to be performed.

19.17 Notice of Award

A Notice of Award will be posted on the County's web site (www.loudoun.gov/procurement) and on the bulletin board located in the Division of Procurement, 4th floor, 1 Harrison St, SE, Leesburg, 20175.

19.18 Protest

Bidders may refer to §§ 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process. Protests shall be submitted to the Chief Financial Officer, Department Finance and Budget.

19.19 Construction Contract Bid Security

Bid security is required for this Project. Bid security shall be a bond provided by a surety company selected by the bidder and authorized to do business in Virginia, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid. Non-compliance with this provision requires that the bid be rejected unless it is determined that the bid fails to comply in a non-substantial manner the security requirements.

The apparent low bidder's Contract Bid Security shall be subject to forfeiture if the apparent low bidder withdraws his bid prior to award, or fails to sign and return the County – Contractor Agreement. The Contract Bid Security shall be forfeited according to the forfeiture provisions in Code of Virginia (§ 2.2-4336) and the proposal guaranty.

19.20 Construction Contract Bond Forms and Copies; Alternative Forms

In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords the same protection to the County equivalent to the corporate surety bond.

19.21 Debarment

By submitting a bid, the bidder is certifying that bidder is not currently debarred by a local or state government or the Federal Government. A copy of the

County's debarment procedure in accordance with § 2.2-4321 of the Code of Virginia is available upon request.

19.22 Proof of Authority to Transact Business in Virginia

A bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder is not required to be so authorized. Any bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Purchasing Agent or his designee. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/default.aspx>.

19.23 W-9 Form Required

Each bidder shall submit a completed W-9 form with their bid. In the event of Contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

19.24 Insurance Coverage

Bidders shall include with their bid a copy of their current Certificate of Insurance that illustrates the current level of coverage the bidder carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for the County for submission with the bid.

19.25 Acknowledgement of Contract

By submitting a bid, the bidder acknowledges that it understands and agrees to the Terms and Conditions contained herein.

19.26 Legal Action

No bidder or potential bidder shall institute any legal action until all statutory requirements have been met.

19.27 Certification by Contractor as to Felony Convictions

No one with a felony conviction may be employed under this Contract and by the signature of its authorized official on the response to this Solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents, or subcontractors who will work under the Contract Documents have been convicted of a felony.

19.28 Unit Price Items

The Unit Price Items, identified on the Pricing Page, quantities, and extended prices are to be included in the Bidder's lump sum and used for bid evaluation purposes only; if the actual quantities, as measured by field

survey, are above/below those shown above, then the unit price will be used for addition/credit to the Contract amount. The activity schedule and schedule of values shall include each Unit Price Item as a separate and distinct item. Unit price Items are to be used with County authorization only.

19.29 Substitutions

Substitutions are defined as changes in products, materials, equipment, and methods of construction from those required by the Contract Documents and proposed by Contractor.

- A. Substitutions for Cause are changes proposed by Contractor that are required due to changed Project conditions, such as unavailability of product, regulatory changes, or unavailability of required warranty terms.
- B. Substitutions for Convenience are changes proposed by Contractor or Owner that are not required in order to meet other Project requirements but may offer advantage to Contractor or Owner.

The County will not consider substitutions for convenience during the bidding process. They will be considered after contract award. Refer to Article 4.15 – Equal Products in the General conditions of the Construction Contract for procedures. Substitution for Cause, once verified may be addressed during the bidding process at the discretion of the County.



Loudoun County, Virginia

Division of Procurement
1 Harrison Street, 4th Floor
Leesburg, Virginia 20175

PRICING PAGE

CONSTRUCTION OF THE POTOMAC GREEN NEIGHBORHOOD PARK IMPROVEMENTS

The firm of _____ hereby offers to achieve substantial completion of the Construction of the Potomac Green Neighborhood Park Improvements in accordance with this Invitation for Bid within two hundred and forty (240) calendar days after Notice to Proceed.

Attention bidders: Do not take any exceptions or make any qualifications to your bid.

1. Construction of the Potomac Green Neighborhood Park Improvements

Lump Sum= \$ _____

2. Return the following with your bid. If bidder fails to provide with their bid, items shall be provided within twenty-four (24) hours of bid opening.

ITEM: INCLUDED: (X)

- | | |
|--|-------|
| 1. W-9 Form (19.23): | _____ |
| 2. Certificate of Insurance (19.24): | _____ |
| 3. Addenda, if any (Informality) (19.11): | _____ |
| 4. Geotechnical Report Release Form (Attachment 2): | _____ |
| 5. One (1) electronic copy of the bid in a USB flash drive | _____ |

3. Failure to provide the following items with your bid shall be cause for rejection of bid as non-responsive and/or non-responsible. It is the responsibility of the bidder to ensure that it has received all addenda and to include signed copies with their bid (18.2).

ITEM: INCLUDED: (X)

- | | |
|--|-----------------------------|
| 1. Addenda, if any (19.2): | _____ |
| 2. Payment Terms: | _____ net 30 or _____ Other |
| 3. Proof of Authority to Transact Business in Virginia Form (Page 20): | _____ |
| 4. Bid Bond (19.19): | _____ |
| 4. Minimum Qualifications (3.0) | _____ |
| a. Debarment History, if required (3.1) | _____ |

- b. Virginia Contractor Class A license (3.2): _____
(Include certificate with bid)
- c. Verification of Bonding Capacity (3.3) _____
- c. References (3.4) _____
- e. Key Project Personnel Resumes (3.5):
 - Project Manager _____
 - Superintendent _____
 - Quality Control Manager _____

Bidder shall indicate below its intended use, or nonuse of the escrow provisions available:

I **DO** ___ OR I **DO NOT** ___ WISH TO USE THE ESCROW ACCOUNT FOR RETAINED FUNDS
AS PROVIDED FOR IN THIS BID DOCUMENT.

Person to contact regarding this bid: _____

Title: _____ Phone: _____ Fax: _____

E-mail Address: _____

Name of person authorized to bind the Firm (19.7): _____

Signature: _____ Date: _____

Address: _____

By signing and submitting a bid, your firm acknowledges and agrees that it has read and understands the IFB documents, to include the general Conditions of the Construction Contract and agrees to the Terms and Conditions as contained herein and that your Firm is not currently Debarred by a local or state government or the Federal Government.



Loudoun County, Virginia

www.loudoun.gov/procurement

Department of Finance and Budget

Division of Procurement

1 Harrison Street, S.E., 4th Floor, Leesburg, VA 20175

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL. FAILURE TO INCLUDE THIS FORM SHALL RESULT IN REJECTION OF YOUR BID/PROPOSAL

Pursuant to Virginia Code §2.2-4311.2, a bidder/offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid/ proposal the identification number issued to it by the State Corporation Commission ("SCC"). Any bidder/offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Any bidder/offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Purchasing Agent or his designee.

If this bid/proposal for goods or services is accepted by the County of Loudoun, Virginia, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information. **PLEASE NOTE: The SCC number is NOT your federal ID number or business license number.**

A. _____ Bidder/offeror is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such bidder's/offeror's Identification Number issued to it by the SCC is _____.

B. _____ Bidder/offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such bidder's/offeror's Identification Number issued to it by the SCC is _____.

C. _____ Bidder/offeror does not have an Identification Number issued to it by the SCC and such bidder/offeror is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets of paper if you need to explain why such bidder/offeror is not required to be authorized to transact business in Virginia.

Legal Name of Company (as listed on W-9)

Legal Name of Bidder/Offeror

Date

Authorized Signature

Print or Type Name and Title

HOW DID YOU HEAR ABOUT THIS INVITATION FOR BID?

RFQ-192782

Please take the time to mark the appropriate line and return with your bid.

<input type="checkbox"/> Associated Builders & Contractors	<input type="checkbox"/> Loudoun Times Mirror
<input type="checkbox"/> Bid Net	<input type="checkbox"/> Our Web Site
<input type="checkbox"/> Builder's Exchange of Virginia	<input type="checkbox"/> NIGP
<input type="checkbox"/> Email notification from Loudoun County	<input type="checkbox"/> The Plan Room
<input type="checkbox"/> Dodge Reports	<input type="checkbox"/> Reed Construction Data
<input type="checkbox"/>	<input type="checkbox"/> Tempos Del Mundo
<input type="checkbox"/> India This Week	<input type="checkbox"/> Valley Construction News
<input type="checkbox"/> LS Caldwell & Associates	<input type="checkbox"/> Virginia Business Opportunities
<input type="checkbox"/> Loudoun Co Small Business Development Center	<input type="checkbox"/> VA Dept. of Minority Business Enterprises
<input type="checkbox"/> Loudoun Co Chamber of Commerce	<input type="checkbox"/> RAPID

☐ Other _____

SERVICE RESPONSE CARD

RFQ-192782

Date of Service: _____

How did we do?

Please let us know how we did in serving you. We'd like to know if we are serving you at an acceptable level.

How would you rate the way your request for this document was handled?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

Did you have contact with Procurement staff? ☐

How would you rate the manner in which you were treated by the Procurement staff?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

How would you rate the overall response to your request?

Excellent ☐ Good ☐ Average ☐ Fair ☐ Poor ☐

COMMENTS: _____

Thank you for your response!

We can better assess our service to *you* through feedback from *you*.

Your Name: _____

Address: _____

Phone: _____ (day) _____ evening

Please return completed form to: Patty Cogle • Procurement •

ATTACHMENT 1(Proposed)**COUNTY-CONTRACTOR AGREEMENT**

THIS COUNTY-CONTRACTOR AGREEMENT ("Agreement") for construction of the Potomac Green Neighborhood Park Improvements herein after referred to as the "Project", executed in three (3) originals, is effective on the date it is fully executed by and between **COUNTY OF LOUDOUN, VIRGINIA** (herein referred to as the "County"), and _____ (herein referred to as the "Contractor").

In consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby agreed to between the County and Contractor.

This Agreement consists of and incorporates by reference the following attachments:

Attachment 1	The County's Invitation for Bid No.192782 dated February 4, 2020, including any addenda.
Attachment 2	The General Conditions of the Construction Contract, including any addenda.
Attachment 3	The Contract Plans and Specifications including and addenda
Attachment 4	The Contractor's bid dated _____.

In the event that Attachment 4 contradicts or limits this Agreement or Attachments 1 through 3, this Agreement and Attachments 1 through 3 shall prevail.

The capitalized terms herein shall have the same meanings as set forth in section 1.1 of the General Conditions of the Construction Contract.

Article 1**ARCHITECT/ENGINEER**

1.1 The Architect/Engineer (hereinafter referred to as the "A/E and as defined in the General Conditions) shall be *William H Gordon Associates, Inc.*, whose address is *4501 Daly Drive, Suite 200, Chantilly, Virginia 20151*. Provided, however, that the County may, at its sole discretion, amend this Article from time to time by designating a different person or organization to act as its A/E and advise the Contractor in writing, at which time the person or organization so designated shall be the A/E for purposes of this Contract.

Article 2

TIME OF COMMENCEMENT AND COMPLETION

- 2.1 The Contractor shall commence the Work as defined in the General Conditions of the Construction Contract upon the date established in the Notice to Proceed. Notice to Proceed will be issued as set forth in Article 8 of the General Conditions.
- 2.2 Time is of the essence in this Agreement.
- 2.3 The Contractor shall achieve Substantial Completion, as defined in the General Conditions no later than 240 calendar days after the date of the Notice to Proceed. This time period shall be designated as the Time for Completion.
- 2.4 The Contractor shall complete the Work within the following Milestone dates:
- | | |
|------------------------|---|
| <u>ACTIVITY:</u> | <u>DATE:</u> |
| Substantial Completion | 240 calendar days after Notice to Proceed |
| Final Completion | 30 Days after Substantial Completion |
- 2.5 The liquidated damages incurred by the County due to the Contractor's unexcused failure to complete the Work within the Contract Times, including any extensions thereof, and meet the Milestones designated in section 2.4 above, will be applied as follows:
- | | |
|------------------------|---|
| <u>Milestone</u> | <u>Liquidated Damages</u> |
| Substantial Completion | \$750 / for each consecutive Calendar Day |
| Final Completion | \$250 / for each consecutive Calendar Day |
- 2.6 If liquidated damages are assessed, the County will assess the amount of liquidated damages set forth in section 2.5 above cumulatively. This provision for liquidated damages does not bar the County's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.
- 2.7 The Contractor hereby waives any defense as to the validity of any liquidated damages stated in this Agreement as they may appear on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

Article 3

CONTRACT PRICE

- 3.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the County shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of _____ Dollars (\$_____) (herein referred to as the "Contract Price").

Article 4

PROGRESS PAYMENTS

- 4.1 The Contractor shall provide a Payment Schedule as referred to in section 9.6.3 of the General Conditions.
- 4.2 The Contractor hereby agrees that on or about the first day of the month for every month during the performance of the Work Contractor will deliver to the A/E an Application for Payment in accordance with the provisions of section 9.3 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the County and Contractor. Payment under this Contract shall be made as provided in the General Conditions.
- 4.3 An acceptable CPM Schedule Update shall be submitted in conjunction with each Application for Payment. Failure to provide an acceptable CPM Schedule Update will result in the rejection of the Application, and no Payment will be made until such time as an acceptable CPM Schedule Update is received.

Article 5

OTHER REQUIREMENTS

- 5.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond, and Certification of Insurance as required by the Contract Documents within fifteen (15) calendar days of the effective date of the County – Contractor Agreement. The Guarantee or Warranty Bond shall be submitted as described in section 9.8.5.2 of the General Conditions.
- 5.2 To the extent required by the Commonwealth of Virginia (see *e.g.* 54.1-1100 *et seq.* of the Code of Virginia) or the County of Loudoun, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.
- 5.3 A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or

Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the County pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The County may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 5.4 All notices and other communications made pursuant to the Contract Documents and not required to be made through e-Builder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO CONTRACTOR:

TO COUNTY:

County of Loudoun, Virginia
Department of Transportation and
Capital Infrastructure
P.O. Box 7500
101 Blue Seal Drive, Suite 102
Leesburg, VA 20177

Via delivery method (a) or (b)

County of Loudoun, Virginia
Division of Procurement
Purchasing Agent
1 Harrison Street, S. E.
Leesburg, VA 20175

Or

Via delivery method (c)

County of Loudoun, Virginia
Division of Procurement
PO Box 7000
Leesburg, VA 20177

Notice is deemed to have been received: (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid.

Article 6

IMMIGRATION REFORM AND CONTROL ACT OF 1986

- 6.1 By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

Article 7

ENTIRE CONTRACT AND SEVERABILITY

- 7.1 This Agreement, together with all attachments, represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or contracts, either written or oral. The Contract may be amended or changed only by an Amendment or Modification. Nothing contained in the Contract Documents shall create any Contractual relationship between the County, (or any agent, consultant, or independent Contractor employed by the County) and any subcontractor, sub-subcontractor, supplier or vendor of the Contractor, but the County shall be entitled to performance of all obligations intended for the County's benefit, and to enforcement thereof.
- 7.2 In the event that any provision of this Contract shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

Article 8

GOVERNING LAW/FORUM

- 8.1 This Contract shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of law provisions. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun or the United States District Court for the Eastern District of Virginia in Alexandria. Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia. Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.
- 8.2 Each of the parties irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either party for any claim, demand, action, or cause of action, arising out of this Agreement. Each of the parties hereby agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury.

Article 9

COUNTERPARTS

- 9.1 This Contract and any amendments or modifications hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

WITNESS the following signatures:

COUNTY OF LOUDOUN, VIRGINIA

Division of Procurement

1 Harrison Street, S.E.,

Leesburg, VA 20175

Phone: (703) 777-0403

Fax: (703) 771-5097

CONTRACTOR

Phone:

Fax:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Theresa J. Fontana
Assistant County Attorney

ACKNOWLEDGEMENT

Geotechnical/Geophysical Release Form

ATTACHMENT 2:

This form shall be signed and submitted prior to obtaining plans and specifications from the Division of Procurement. CD's will not be released if a signed form has not been submitted.

As evidenced by the Bidder's signature below, the site and soils data, photographs, boring and well construction diagrams, pilot project notes, and Geotechnical and/or Geophysical Engineering Report(s) dated July 22, 2016, prepared or compiled by GeoConcepts Engineering and related to **RFQ 192782, Construction of the Potomac Green Neighborhood Park** (Project) is being made available to the Bidder in good faith in order to apprise the Bidder of the information within the possession of the County. The Bidder understands that these report(s) are for informational purposes only and are not part of the Contract and the County provides no warranty as to the accuracy, completeness, or correctness of such report(s). These report(s) were developed for design and information purposes only. The Bidder agrees to indemnify, hold harmless, and defend the County, its employees, agents, servants, and representatives from and against any costs, claims, extension of Contract time, or liabilities of any kind resulting from the use of or reliance on these reports.

By making this information available, the County is not classifying the site. Additionally, this information is not a substitute for personal and independent investigation, interpretation, and judgment by the Bidder. In the event the Bidder elects not to perform his/her own investigation of the subsurface conditions prior to the submission of the Bid, the Bidder will relinquish the County from any liability, extension of Contract time, or cost associated with this decision. It is the obligation of the Bidder to make its own interpretation of all subsurface data that may be available and satisfy itself, through its own independent investigation, as to the nature, condition, and extent of the material to be excavated, graded, or driven through or any other geotechnical aspect of this Project.

If Bidder elects to conduct its own site investigation of County property, the Bidder shall indemnify, hold harmless, and defend the County, its employees, agents, servants and representatives from and against any and all claims, suits, demands, actions (regardless of the merits thereof) and damages of whatever nature arising out of or resulting from its site visit and any associated work, including jurisdictional labor disputes or other labor troubles that may occur during the performance of the Work.

Site investigation work shall be conducted between 9:00 am to 5:00 pm, Monday through Friday.

The Bidder is responsible for:

1. Coordinating the time and date of the site investigation with the County.
2. Any damage to adjacent property.
3. Backfilling and compacting borings or test pits prior to departing the site.
4. Coordinating with Miss Utility to locate utilities prior to any work being done.
5. Damage to onsite utilities.
6. Management of traffic and safety of the public on roads adjacent to the site.
7. Safety requirements for equipment and personnel brought to the site.

The submission of a Bid shall be considered conclusive evidence that the Bidder has satisfied itself as to the subsurface conditions that may be encountered in performing the work for the Project.

FIRM NAME: _____

Principal or authorized representative (Print Name)

Date

Principal or authorized representative (Signature)

Date

ESCROW AGREEMENT

ATTACHMENT 3:

THIS ESCROW AGREEMENT, made this _____ day of _____, 2020, among the **COUNTY OF LOUDOUN, VIRGINIA** ("County") and _____ ("Contractor") and _____ a _____ trust company, bank, or savings and loan institution with its principal office located in Virginia ("hereinafter referred to collectively as "Bank"); and _____ ("Surety"), provides:

I.

The County and the Contractor have entered into a Contract with respect to Project Name _____ Project No. _____ ("Contract"). This Escrow Agreement is pursuant to, but in no way amends or modifies, the Contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance of the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the Contract, the County Treasurer is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the County, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of the Contract or any other instrument or agreement between the County and the Contractor.

III.

The County shall from time to time pursuant to the Contract pay to the Bank amounts retained by it under the Contract. Except as to amounts actually withdrawn from escrow by the County, the Contractor shall look solely to the Bank for the payment of funds retained under the Contract and paid by the County to the Bank.

The risk of loss by the diminution of the principal of any funds invested under the terms of the Contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this escrow agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell, or otherwise transfer or dispose of its interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks or warrants drawn by the County Treasurer and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement:

- (1) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills.
- (2) Bonds, notes and other evidence of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,
- (3) Bonds or notes of the County of Loudoun,
- (4) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A," and
- (5) Certificates of deposit issued by commercial Banks located within the Commonwealth of Virginia, including, but not limited to, those insured by the Bank and its affiliates,
- (6) Any bonds, notes or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five (5) years after the date of its purchase by the Bank or deposit by the Contractor.

VI.

The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the

latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the Loudoun County Purchasing Agent, the Bank shall pay the principal of the fund, or any specified amount thereof, to the Treasurer of Loudoun County for deposit to the appropriate fund and account within the County's approved accounting structure. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

Upon receipt of a direction signed by the Loudoun County Purchasing Agent, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

VII.

For its services hereunder, the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration, such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the Contract are not affected hereby.

[SIGNATURE PAGE FOLLOWS]

WITNESS the following signatures, all as of the day and year first above written.

COUNTY OF LOUDOUN, VIRGINIA

CONTRACTOR

CFO, Department of Finance & Budget

Officer, Partner or Owner

Bank

SURETY

Title

Title

Address

Address