



Montgomery County Government

MEMORANDUM

March 22, 1996

TO: County Council

VIA: Marilyn J. Praisner, Chair *MJP*
Management and Fiscal Policy Committee

FROM: Joan M. Pedersen, *JMP* Audit Contract Administrator
Office of Legislative Oversight

SUBJECT: Selection of Independent Auditor and Approval of Contract

BACKGROUND

On January 26, 1996, in accordance with Council Resolution 12-154, Council Procedures for the Selection of the Independent Auditor, the MFP Committee authorized the Office of Legislative Oversight (OLO) to enter into contract negotiations with the firm that received the highest rating in response to Council RFP No. 603100001, and prepare a draft contract for the Committee's approval.

On behalf of the MFP Committee and the Council, OLO met with representatives of Arthur Andersen LLP to discuss contract terms for the independent auditor contract. As a result of negotiations, the agreed upon total fee to be charged the Council for the FY 96 audits will be \$154,300. The total fee provides for professional services to complete the County's financial audit, the single audit of Federal grants, the fire and rescue corporation audits, and the Federal Transit Act grant certification. This fee is \$1,388 *below* the current FY 95 contract fee for these same services.

For contract renewals, all fixed fees and the hourly rate for additional auditing/accounting staff services will be increased by the actual change in the September to September Washington, D.C. Consumer Price Index-All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics, up to a maximum of four percent (4%). This cap is one-half percent *lower* than the maximum rate stipulated in the current auditor's contract.

The MFP Committee met on March 11, 1996 to review the proposed contract terms negotiated with Arthur Andersen LLP, and endorsed the recommendations contained in the summary of OLO Project 96-6 (attached at Circles 1-2).

MFP COMMITTEE RECOMMENDATIONS

The MFP Committee recommends that the Council approve Arthur Andersen LLP to perform the annual independent audit of the County's financial records and actions for the period specified, and authorize the Council President to execute the attached contract.

The attached resolution (Circle 3) is submitted to the Council for introduction, and the proposed contract (Circles 4-18) is submitted for Council review and approval.

Attachments

1. Council Resolution, Contract for Annual Audit of County Financial Records.
2. Draft of contract negotiated with Arthur Andersen LLP.

NOTICE

For purposes of economy, limited distribution is being made of the draft contract document. Anyone wishing to review the draft contract may make arrangements through the Council's Office of Legislative Oversight.



Montgomery County Government

OLO Project 96-6

Selection of Independent Outside Auditor

A. Authority

Council Resolution No. 13-223, FY 96 Work Program of the Office of Legislative Oversight, adopted July 18, 1995.

B. Scope

Section 315 of the Montgomery County Charter requires the Council to annually contract with a certified accounting firm to perform an independent audit of the County's financial statements and supporting documentation. It is the Council's policy to re-bid for independent auditing services every four years. As the designated Contract Administrator on behalf of the Council, the Office of Legislative Oversight (OLO) provided support to the Council and the Management and Fiscal Policy Committee the process of selecting an auditing firm and negotiating a contract.

C. Process

This project included several activities relating to the evaluation and selection of a firm to provide independent auditing services, including:

- Design and preparation of the Council's Request for Proposals No. 6031000001, to solicit proposals from national certified public accounting firms to provide independent auditing services for Fiscal Years 1996, 1997, 1998, and 1999.
- Oversight of and participation in the first-tier evaluation process to rank the proposals and identify the top three proposers.
- Assistance and technical support to the Council's Management and Fiscal Policy (MFP) Committee during the second-tier evaluation process to rank the top three firms.

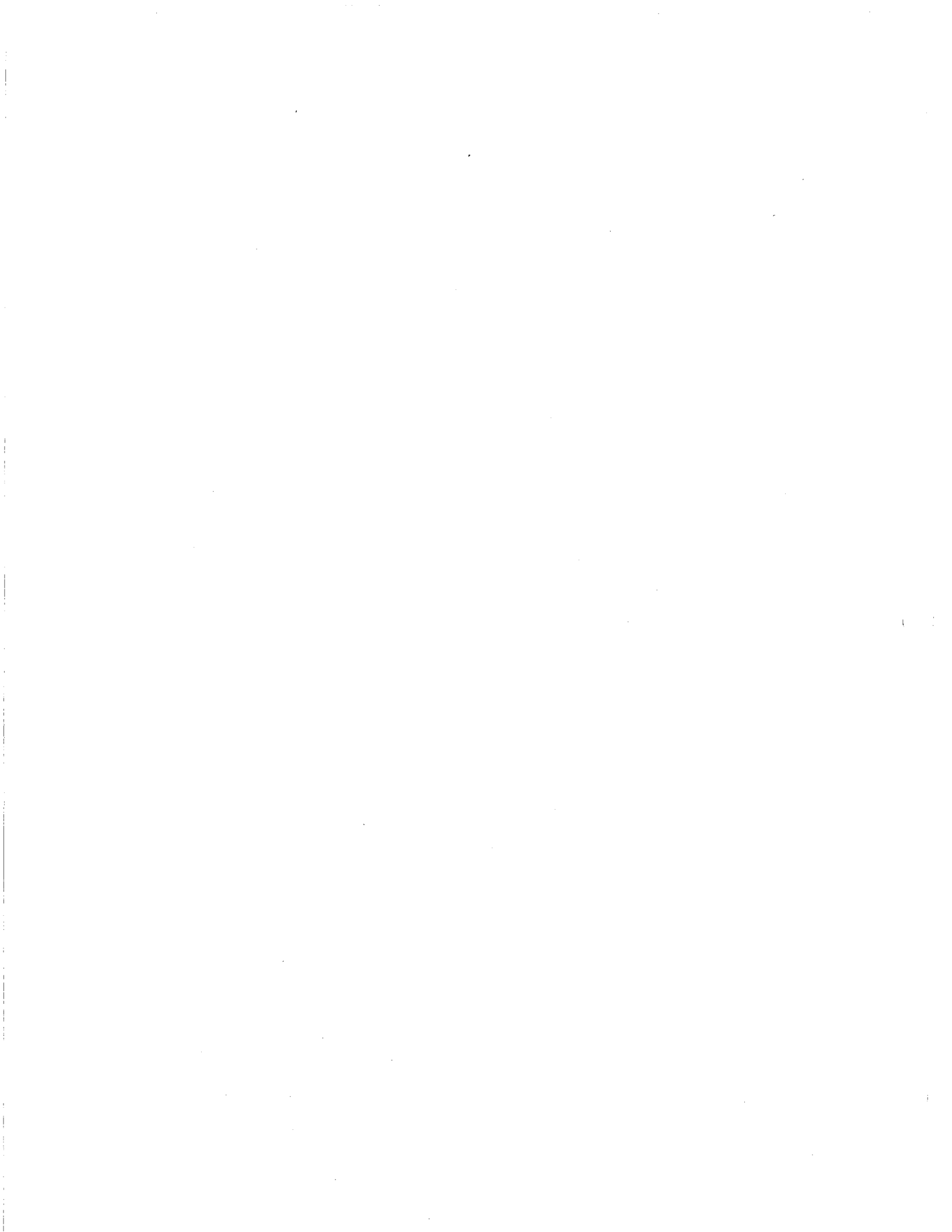


- Negotiation of contract terms with the top ranked firm, and preparation of a draft contract on behalf of the MFP Committee.
- Preparation of a final contract, Council packets and resolutions, and follow-up on behalf of the Council and the MFP Committee to obtain the necessary signatures and accomplish closure on the independent auditor selection process.

D. OLO Recommendations

At the Council's Management and Fiscal Policy Committee meeting of March 11, 1996, OLO recommended that the Committee take the following actions:

1. Review and approve the contract negotiated by OLO with Arthur Andersen LLP.
2. Recommend that the Council affirm the MFP Committee's selection of Arthur Andersen LLP, and approve the contract negotiated by OLO.
3. Sponsor a resolution for the Council to formally endorse the MFP Committee's selection of Arthur Andersen LLP and authorize the Council President to execute a contract with Arthur Andersen LLP.



Resolution No. _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
For Montgomery County, Maryland

By: County Council

Subject: Contract for Annual Audit of County Financial Records

Background

1. Section 315 of the Montgomery County Charter states that:

“The County shall contract with, or otherwise employ, a certified public accountant to make annually an independent post-audit of all financial records and actions of the County, its officials and employees. The complete report of the audit shall be presented to the Council and copies of it shall be made available to the public.”

2. Section 11B-7(b) of the Montgomery County Code provides that the Council’s selection of the independent auditor shall be solely the responsibility of the County Council acting according to procedures prescribed by the Council.

3. Council Resolution No. 12-154, adopted April 9, 1991, established Council Procedures for the selection of the independent auditor. The Council Procedures direct the Council’s Management and Fiscal Policy Committee to perform the functions of the Contractor Qualification and Selection Committee for the review and evaluation of proposals and recommend an independent auditor to the County Council.

4. The Management and Fiscal Policy Committee, after careful review and evaluation of the top three proposals, unanimously recommends that the firm of Arthur Andersen LLP be selected for the four-year engagement to begin with the independent audit for the fiscal year ending June 30, 1996.

Action

The County Council for Montgomery County, Maryland, approves the Management and Fiscal Policy Committee recommendation to appoint Arthur Andersen LLP to perform the annual independent audit of the County’s financial records and actions. The County Council authorizes the President of the Council to execute on its behalf a contract with Arthur Andersen LLP to perform the independent audit services for the fiscal year ending June 30, 1996, and may renew this contract for fiscal years 1997, 1998, and 1999.

This is a correct copy of Council action.

Mary A. Edgar, CMC
Acting Secretary of the Council

CONTRACT

This Contract is entered into between Montgomery County, Maryland on behalf of the County Council for Montgomery County, Maryland (referred to in this Contract as the "Council") and Arthur Andersen, LLP, 1666 K Street, N.W., Washington, D.C. 20006, (referred to in this Contract as the "Auditor"). The Council and the Auditor together are referred to in this Contract as the "Parties".

BACKGROUND

1. On November 1, 1995, the Council's Management and Fiscal Policy (MFP) Committee issued Request for Proposal (RFP) No. 603100001 to obtain an Auditor to provide the following services:

A. Financial Audit. Examine the Combined Financial Statements, Notes, Combining Financial Statements, Individual Fund Financial Statements and the Account Groups of Montgomery County, Maryland.

Separate Auditor's reports are required for the Comprehensive Annual Financial Report (CAFR) and the General Purpose Financial Statements (GPFS), the "liftables" to be issued separately. The Auditor's opinion may place reliance on reports issued by other auditors as they relate to component units and joint ventures. Requirements for the financial audit also include:

- 1) **Maryland State Uniform Financial Report.** Review and attest to the County's uniform financial report submitted to the Maryland State Division of Fiscal Services, and transmit completed forms as required.
- 2) **Single Audit Act.** Examine the combined statement of revenues and expenditures and schedules of Federal grant programs of Montgomery County, Maryland and review internal accounting and administrative controls. The Auditor's report must include the Auditor's opinion on the general purpose financial statements and the combined statement of revenues and expenditures of Federal grant programs, the Auditor's report on the study and evaluation of internal control systems, and the Auditor's report on the entity's compliance with applicable laws and regulations.
- 3) **Management Letters.** Prepare detailed management letters, to be submitted to the County Council within forty-five (45) days after completion of the Auditor's field work. These management letters should include comments, recommendations and suggestions for improvements in accounting procedures, internal controls, management actions and other relevant areas.
- 4) **Official Statement.** The County will include in its Official Statement, the General Purpose Financial Statements, notes, and Auditor's opinion from the latest available Comprehensive Annual Financial Report.
- 5) **Certificate of Achievement.** The Government Finance Officers Association (GFOA) annually awards a Certificate of Achievement for Excellence in Financial Reporting to governmental units whose Comprehensive Annual Financial Report (CAFR) conforms to the program's standards. Montgomery County, Maryland has consecutively received this certificate for the past twelve years. Since the program's specific standards require financial disclosure greater than required under generally accepted accounting principles, the Auditor is expected to assist the County to ensure that the CAFR is in compliance with the GFOA's standards.

6) **Fiscal Year Closing.** The County annually has a planning meeting with the component units included in the Montgomery County, Maryland reporting entity, to discuss the fiscal year closing process and identify any issues that may impact the timing of the closing. The Auditor is expected to participate in this meeting, specifically to discuss any mandated reporting changes that would be applicable to the current and the subsequent fiscal year.

7) **Arbitrage.** The Auditor must review and report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements.

8) **Progress Reports/Annual Conference.** The Auditor must provide monthly reports outlining the progress of work to date and any accounting or auditing concerns which have come to the Auditor's attention and have an impact on any items included in this scope of services. Periodically, conferences with the Council may be required to discuss the Auditor's reports and management letters.

B. Fire Departments and Rescue Squad. Examine the financial records, prepare Budgetary and GAAP Financial Statements, reconcile fund balance, and assist with preparation of the official notes to the financial statements of the 18 independent fire departments and one rescue squad as they relate to monies appropriated by the County Council. Separate Auditor's reports including the financial statements and the Auditor's opinion, are required for each of the 18 independent fire departments and one rescue squad.

The Auditor must prepare a detailed management letter to be submitted to the County Council within forty-five (45) days after completion of the Auditor's field work, and should include comments, recommendations, and suggestions for improvements in accounting procedures, internal controls, management actions and other relevant areas.

C. Federal Transit Act (FTA) Grant. Review underlying documentation and certify to data contained within the County's Section 15 Annual Report to the FTA, and particularly to the Section 9 Statistics Summary, Form 006, included in that report. A separate Auditor's report and Section 9 Data Certification are required based upon examination requirements and procedures specified by FTA and agreed to by the County.

D. Enhanced 9-1-1 Trust Fund. Review the County's report to the Emergency Number Systems Board on expenditures for the operation and maintenance of the County's 9-1-1 Trust Fund. A separate Auditor's opinion is required based upon criteria developed by the Emergency Number Systems Board for the State of Maryland. The County may exercise its option to award multi-year examination of this segment, not to exceed a three-year period. These professional services must be delivered only upon specific authorization of the Emergency Number Systems Board, as evidenced by the issuance of a Notice-to-Proceed.

E. Period of the Audit. The audit period for the first year of the engagement is from July 1, 1995 through June 30, 1996 (Fiscal Year 1996). The Contract is renewable for three additional years, one year at a time, at the Council's option. The audit period for each subsequent year will be the fiscal year beginning July 1 and ending June 30.

F. Optional Auditing Services. The Council may, from time to time, require additional audits or audit-related services (such as analysis of the impact of GASB statements). In that event, the Contract must be amended to include the additional work. These additional professional services may be delivered only upon specific authorization of the Contract Administrator of this Contract, as evidenced by the issuance of a Notice-to-Proceed.

G. Optional Accounting Services. The Council may, from time to time, require professional accounting services from the Auditor to assist with the close of the County's books, the preparation of draft schedules to support each fund and draft financial statements, to close the books of tax funded fire and rescue departments, and other related professional services. These professional services may be delivered only upon specific authorization of the Contract Administrator of this Contract, as evidenced by the issuance of a Notice-to-Proceed.

H. Consent Letters. The Council may require, from time to time, that the Auditor perform tests and analyses as deemed necessary in accordance with generally accepted auditing standards to issue a consent letter authorizing the County to use the Auditors' opinion in County debt offering documents. These services must be delivered after the issuance of a Notice-to-Proceed by the County's Director of Finance.

I. Comfort Letters. The Council may require, from time to time, that the Auditor perform tests and analyses as deemed necessary in accordance with generally accepted auditing standards to update the Auditors' opinion and issue a comfort letter for inclusion in County debt offering documents. These services must be delivered after the issuance of a Notice-to-Proceed by the County's Director of Finance.

2. The Council adopted Resolution **NUMBER** on March 12, 1996, authorizing the Council President to contract with Arthur Andersen, LLP , a certified public accountant firm, to perform the annual independent audit of the County's financial records and actions for the Fiscal Year ending June 30, 1996.
3. The approved FY 1996 Operating Budget for nondepartmental accounts includes funds for the Contract with a certified public accountant firm to perform the independent audit.
4. The Council's Management and Fiscal Policy (MFP) Committee evaluated the Auditor's proposal in accordance with evaluation criteria stated in the RFP and recommended the Auditor for Contract award.
5. The County Council determined that the Auditor is responsible and qualified to provide the auditing services, and approved the MFP Committee recommendation.
6. The Parties, therefore, agree to the following terms:

ARTICLE I. SCOPE OF WORK

A. Basic Work. The Auditor must perform all auditing services set forth in Section II, Scope of Services, Items A through C, of the RFP, as described in Section 1, Technical Approach, of the Auditor's proposal dated December 15, 1995, as amended by letter dated February 6, 1996.

B. Enhanced 9-1-1 Trust Fund. The Auditor must perform all auditing services set forth in Section II, Scope of Services, Item D, of the RFP, as described in Section 1, Technical Approach, of the Auditor's proposal of December 15, 1995, as amended February 6, 1996. This work may encompass one or more audit years, not to exceed three fiscal years, as directed by the Emergency Number System Board (Board) of the Maryland Department of Public Safety and Correctional Services. The Board may require direct correspondence and a separate agreement with the Auditor before authorizing the work.

C. Additional Work. Additional work within the general scope of this Contract may be authorized by Contract amendment.

D. Changes to Scope of Services. The terms of this Contract may be subject to amendment upon the issuance of accounting or auditing standards which significantly affect the Auditors' scope of work. In such circumstances, the Council and the Auditor will agree on the Contract modification prior to performing the work.

ARTICLE II. COMPENSATION

A. Payment for Auditing Services described in Request for Proposal No. 6031000001, Section II, Items A. and B.

1) The Council will pay the Auditor a fixed fee of \$147,000 for Fiscal Year 1996 audit services performed under this portion of the Contract in five payments, according to the following schedule:

- Twenty percent (20%) of the agreed upon fee will be paid on June 1st, August 1st, October 1st, and December 1st, upon the Office of Legislative Oversight's (OLO) determination that the Auditor is making satisfactory progress toward completion of all auditing services.
- The final payment of twenty percent (20%) of the fee will be paid after acceptance of all audit deliverables as described in the proposal Section 1, Technical Approach.

2) The Auditor must send all invoices for auditing services under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or designee.

B. Payment for Auditing Services Described in Request for Proposal No. 6031000001, Section II, Item C.

1) The Council will pay the Auditor a fixed fee of \$7,300 for services related to the Fiscal Year 1996 FTA Grant audit and certification.

2) The Auditor will be paid in two equal installments, with the first installment to be paid upon completion of the Auditor's field work related to the audit, and the second installment to be paid after acceptance of the audit deliverables described in Section 1, Technical Approach, of the Auditor's proposal.

3) The Auditor must send an invoice for auditing services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or designee.

C. Payment for Auditing Services Described in Request for Proposal No. 6031000001, Section II, Item D.

1) Under the authority granted to the Council by the Emergency Number System Board (Board), the Council will authorize payment to the Auditor of a fixed fee of \$3,200 for services related to an audit of the Enhanced 9-1-1 Trust Fund encompassing a single fiscal year; and an additional fixed fee of \$3,200 for each fiscal year period added to the scope of the audit.

2) The Auditor will be paid after acceptance of the audit deliverables as required by the Board and provided by the Auditor in accordance with the audit approach described in the Auditor's proposal, Section I, Technical Approach.

3) Payment for this audit will be made by the Emergency Number Systems Board of the Maryland Department of Public Safety and Correctional Services. The Auditor must send an invoice for auditing services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850.

Upon verification of the correctness of the invoice, the Office of Legislative Oversight will forward the invoice along with any necessary documents and reports to the Emergency Number Systems Board to effect payment.

D. Payment for Optional Auditing and Review Services in Request for Proposal No. 6031000001, Section II, Item E.1.

1) The Council will pay the Auditor for additional audits, audit related services (such as analysis of the impact of GASB statements), and reviews, as approved under a contract amendment, in accordance with the following hourly rates, subject to a not to exceed amount:

	<u>Audit and Review Services</u>
Partner	\$ 145
Manager	110
Senior Accountant/Consultant	65
Staff Accountant/Consultant	45

2) The Auditor must send all invoices for services rendered under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or designee.

E. Payment for Optional Accounting Services in Request for Proposal No. 6031000001, Section II, Item E.2.

1) The Contract fee for professional services rendered by the Auditor's staff accountants/consultants to assist with closing of the books or preparing related draft financial schedules and statements for the Department of Finance; the individual fire departments and rescue squad; or other County departments that may require assistance, as approved under a contract amendment, will be at the composite rate of \$45.00 per hour

2) The Auditor must send an invoice for services rendered under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices will be paid from Department of Finance funds upon approval of the Director of Finance, or from Fire and Rescue funds upon approval of the Chairman of the Fire and Rescue Commission, or from other specific department funds upon approval of the appropriate department director.

F. Payment for Optional Work in Request for Proposal No. 6031000001, Section II, Item E.3.

1) The Contract fee for services associated with providing each letter consenting to the use of the Auditor's Report on the County's fiscal year 1996 financial statements will be \$3,000, which includes out-of-pocket expenses.

2) The Contract fee for services associated with providing each comfort letter in relation to the use of the Auditor's Report on the County's fiscal year 1996 financial statements will be \$5,000, which includes out-of-pocket expenses.

This fee assumes a standard comfort letter requires an estimated 64 hours of effort (40 senior hours, 16 manager hours, and 8 partner hours). Procedures in addition to those normally required for issuance of a comfort letter, which are requested by the County's underwriters, must be reviewed by the Auditor with the County's Director of Finance, and any additional procedures agreed upon must be performed by the Auditor and billed at the rates specified in Article II, Section D(1).

3) The payment for these services will be made from the Cost of Issuance appropriation after delivery of the appropriate consent or comfort letter.

4) The Auditor must send an invoice for services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the County's Director of Finance.

G. Fees for Subsequent Years.

1) The Contract fees for subsequent years' Auditor services (Fiscal Years 1997, 1998, 1999) will be the preceding year fixed fees or composite hourly rate increased by the actual percent change in the September to September Washington, D.C. Consumer Price Index-All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics for the applicable year, or four percent (4.0%), whichever is less. The Contract fees for optional auditing and review services, as agreed to in this Contract, will remain in effect in subsequent years (Fiscal Years 1997, 1998, 1999).

ARTICLE III. TERM

A. All work under this Contract, up to and including the exit conference with the MFP Committee must be completed within eighteen calendar months beginning on the date established in a written Notice-to-Proceed provided to the Auditor by the Contract Administrator.

B. The Council, at its option, may renew the Contract for three additional years, one year at a time.

C. The period for performance of any additional work must be established in a Contract amendment providing for the additional work.

ARTICLE IV. STAFFING

A. Key personnel for this project are those persons identified as partners, managers, and seniors included in the client services team, as depicted on the organization chart in Section II, page 6, of the Auditor's proposal dated December 15, 1995, as amended February 6, 1996.

B. The key personnel specified in this Contract must work on this project at the level of effort proposed by the Auditor unless a change in either the key personnel or level of effort is approved by the Contract Administrator. If it should become necessary to replace any of the key personnel on the Auditor's staff, the new personnel's qualifications and experience must be at least equal to those of the replaced staff.

ARTICLE V. CONTRACT ADMINISTRATOR

A. The person identified below has the responsibility and authority to perform the functions of the Contract Administrator for this Contract:

Name: Joan M. Pedersen
Title: Audit Contract Administrator

Address: Office of Legislative Oversight
100 Maryland Avenue, Room 509
Rockville, Maryland 20850
Telephone: (301) 217-7995

B. During any prolonged absence of the designated Contract Administrator, the Director of the Office of Legislative Oversight will serve as the alternate Contract Administrator.

C. Unless the Council President changes this delegation of authority, in writing, no other person is authorized to perform the functions of the Contract Administrator for this Contract.

ARTICLE VI. TERMS AND CONDITIONS

A. **Council is the Principal Client.** As required by Section 315 of the Charter, the County Council is the principal client of the Auditor. The Council, through the MFP Committee, must be kept fully informed of any problems and issues arising during the course of the audit as well as progress being made on completion of the audits.

B. **Other Contracts with the County.** In order that the Auditor/client relationship be maintained between the Auditor and the Council, any additional work during the period of the Contract which the Auditor or its affiliates propose to perform for Montgomery County, Maryland, over and above the auditing services specified in this Contract, must be subject to the prior concurrence of the Council. The concurrence must be expressed through the Management and Fiscal Policy (MFP) Committee after verifying that there is no conflict of interest or unfair advantage.

C. **Minority Business.** The Auditor will subcontract to certified minority, female, or disabled-owned (MFD) firms, a certain percentage of the Contract fees for the basic Fiscal Year 1996 financial audit, the fire departments and rescue squad audits, and the 1996 FTA Grant certifications, in accordance with the Minority Owned Business Addendum To General Conditions Of Agreement Between County Council And Auditor.

D. **Communication with the Component Units Included in the Montgomery County, Maryland Reporting Entity.** A copy of all correspondence from the Auditor to the component units included in the Montgomery County, Maryland reporting entity must be sent to the Contract Administrator at the same time the correspondence is sent to the addressee.

E. **Confidential Information.** Some material to be reviewed by the Auditor in performance of this Contract is confidential or proprietary in nature. The Auditor must not divulge confidential or proprietary information to any party other than the County officials directly involved.

F. **Verification and Audits.** All audit working papers, status reports, financial reports, briefings, billings, and other information developed for this Contract are subject to verification. This verification may be done by authorized representatives of the Council, the cognizant Federal agency and the General Accounting Office.

Accordingly, the Auditor and all subcontractors must maintain for a period of five years, books, records, documents, and other evidence directly pertinent to the performance of work under this Contract in accordance with appropriate accounting procedures and accepted professional practices. The authorized representatives of the Council have full access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Auditor must provide proper facilities within their offices, if requested, for performance of such inspections and audits.

G. Publication or Release of Data. The Auditor must not publish or release any data, tentative conclusions, reports, correspondence, descriptions, procedures, calculations, compilations or other information relative to this Contract, without written concurrence of the Council.

H. General Conditions. This Contract is subject to the "General Conditions of Agreement Between County Council and Auditor" and "Minority Owned Business Addendum To General Conditions Of Agreement Between County Council And Auditor" which are made a part of this Contract and incorporated herein as Attachment A. In addition, RFP No. 6031000001 and the Arthur Andersen, LLP Proposal, as amended, are incorporated into this Contract by reference and made a part hereof.

I. This Contract, consisting of eight pages, Attachment A to this Contract, Request For Proposal No. 6031000001, and the Arthur Anderson, LLP Proposal, dated December 15, 1995, as amended by letter dated February 6, 1996, constitute the entire agreement between the Council and the Auditor. Any modifications will not become binding on either party until reduced to writing and accepted by both parties.

J. In the event of conflicts between or among the content of documents, the following priority must be given: (1) This Contract; (2) Attachment A, General Conditions of Agreement Between County Council and Auditor and the Minority Owned Business Addendum to General Conditions of Agreement Between County Council and Auditor; (3) Request For Proposal No. 6031000001; and, (4) the Arthur Andersen, LLP Proposal, as amended.

WITNESS:

Arthur Andersen, LLP

BY: _____ Date: _____

Montgomery County, Maryland

BY: _____ Date: _____

Gail Ewing, President
Montgomery County Council

Approved as to form and legality by:

Mass Hansen Date: 3/5/96
County Attorney

**GENERAL CONDITIONS OF AGREEMENT
BETWEEN COUNTY COUNCIL AND AUDITOR**

1. ACCURATE INFORMATION, ACCOUNTING SYSTEM AND AUDIT. To the best of its knowledge, the Auditor certifies that all information provided by the Auditor or information that may be provided by the Auditor in connection with this contract is true and correct and can be relied upon by the County Council (Council) in awarding, modifying, making payments, or taking any other action with respect to this contract, including resolving claims and disputes. Any false or misleading information is a ground for the Council to terminate this contract for cause and to pursue any other appropriate remedy.

The Auditor certifies that the Auditor's accounting system, for purposes of recording time and preparing and submitting invoices, conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

Representatives of the Council may examine the Auditor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The Auditor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with Federal or State funds, the appropriate Federal or State authorities may also examine these records. The Auditor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AUDIT SERVICES. The Auditor will conduct the audits in accordance with generally accepted auditing standards. Accordingly, the Auditor will examine, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assess the accounting principles used and significant estimates made by management, and evaluate the overall financial statement presentation.

As part of the audit, the Auditor will consider, solely for the purpose of determining the nature, timing and extent of its audit procedures, the County's internal control structure. This consideration will not, however, be sufficient to enable the Auditor to render a separate opinion on the effectiveness of the internal control structure over financial reporting.

The object of the Auditor's audit is to obtain reasonable assurance about whether the financial statements are free of material errors or irregularities. While an effective internal control structure reduces the likelihood that errors or irregularities (including misappropriation of assets), may occur and remain undetected, it does not eliminate that possibility. For that reason, and because selective testing is used in the audit, the Auditor cannot guarantee that material errors or irregularities, if present, will be detected.

3. COUNTY'S RESPONSIBILITIES. The financial statements referred to in Section 2, above, are the responsibility of the County's management. In this regard, management is responsible for properly recording transactions in the accounting records and maintaining an internal control structure sufficient to permit the preparation of reliable financial statements. Management is also responsible for making available to the Auditor, upon request, all of the County's original accounting records and related information, and County personnel to whom the Auditor may direct inquiries.

As required by generally accepted auditing standards, the Auditor will make specific inquiries of the County's management and others about representations embodied in the financial statement and the effectiveness of the internal control structure. Generally accepted auditing standards also require that the Auditor obtain a representation letter covering the financial statements from certain members of the County's management. The results of the audit tests, the responses to the Auditor's inquiries, and the written representations comprise the evidential matter upon which the Auditor will rely in forming an opinion on the financial statements.

4. AMERICANS WITH DISABILITIES ACT. The Auditor agrees to comply with the nondiscrimination requirements of Titles II and III of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended, 42 U.S.C. §12101, et seq.

5. APPLICABLE LAWS. This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulation is incorporated by reference and made a part of this contract. In the case of any inconsistency between this contract and the Procurement Regulation, the Procurement Regulation governs. The Auditor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable Federal, State, and local laws, codes, and regulations. For purposes of litigation involving this contract, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

6. ASSIGNMENTS AND SUBCONTRACTS. The Auditor may not assign or transfer this contract, any interest herein or claim hereunder, except as expressly authorized in writing by the Council. Unless performance is separately and expressly waived in writing by the Council, an assignment does not release the Auditor from responsibility for performance of this contract. Unless otherwise provided in the contract, the Auditor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Council.

7. CHANGES. The Council may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the Auditor is entitled to receive. Any claim about an adjustment in time or money due to a change must be given in writing to the contract administrator within 30 days from the date the Council issued the change or the claim will be deemed waived. Any failure to agree upon the time or money adjustment must be resolved under the "Disputes" clause of this contract. The Auditor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

8. CONTRACT ADMINISTRATION. In accordance with the Montgomery County Code Section 29A-5(b)(9), the Office of Legislative Oversight (OLO) will administer the Auditor's contract. The contract administrator, subject to restrictions enumerated below, is the Office representative designated by the Director of OLO, and is authorized to:

- (a) serve as liaison between the County and Auditor;
- (b) give direction to the Auditor to ensure satisfactory and complete performance;
- (c) monitor and inspect the Auditor's performance to ensure acceptable timeliness and quality;
- (d) serve as records custodian for this contract;
- (e) accept or reject the Auditor's performance;
- (f) furnish timely written notice of the Auditor's performance failures to the Council and to the County Attorney, as appropriate;
- (g) prepare required reports;
- (h) approve or reject invoices for payment;
- (i) recommend contract modifications or terminations to the Council; and
- (j) issue notices to proceed.

The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, effect a procurement, interpret ambiguities in contract language, or waive the County's contractual rights.

9. DISPUTES. Pending final decision of a dispute hereunder, the Auditor must proceed diligently with the contract performance. Disputes under this contract may be resolved pursuant to Montgomery County Procurement Regulations, Section 14.2. subject to the following modifications:

- (a) A dispute that cannot be resolved with the contract administrator by agreement must be filed with the Director of Legislative Oversight.
- (b) References in Section 14.2 to "Director" and "CAO" mean the Director of the Office of Legislative Oversight.
- (c) Only the following provisions of Section 14.2 apply: 14.2.1, 14.2.2.1, 14.2.2.2, 14.2.2.4, 14.2.2.5, 14.2.2.6, 14.2.2.7, 14.2.2.8, 14.2.2.9, 14.2.2.10, 14.2.3, 14.2.4, and 14.2.5

10. DOCUMENTS, MATERIALS AND DATA. The County has the right to use and reproduce the Auditor's report and any additional special reports that may have been requested by the Council as an additional service. The County may use this information for its own purposes, or use it for reporting to State and Federal agencies. The working papers prepared in conjunction with the audits are the property of the Auditor, constitute confidential information, and will be retained by the Auditor in accordance with the Auditor's policies and procedures.

Upon request to the Auditor, the County will have access to the working papers. The County may also receive and use copies of the working papers upon request to the Auditor, provided that: (i) the County will not use the working papers to represent the County's financial condition to third parties without the prior written consent of the Auditor, which consent will not be unreasonably withheld; and (ii) the County will not rely on any notations, comments or individual conclusions appearing in the working papers, as such notations, comments or conclusions do not stand alone and should not be read as an opinion. Further, the Auditor makes no representation as the sufficiency or appropriateness, for the County's purposes, of the working papers.

The Auditor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The Auditor must keep confidential all documents, materials, and data prepared or developed by the Auditor or supplied by the County; provided, however, that nothing in this Agreement shall prohibit or restrict the Auditor from disclosing confidential information (i) required by professional standards to be disclosed in connection with rendering such professional services (including disclosures required in reporting on the examination of financial statements), provided that the Auditor has given notice to and received consent from the Council, which consent will not be unreasonably withheld, (ii) requested pursuant to investigations or proceedings conducted by private or state professional organizations, provided that the Auditor has given notice to and received consent from the Council, which consent will not be unreasonably withheld, or (iii) requested in the course of a review of the Auditor's professional practice as part of a voluntary quality review program, provided that any entity that has access to the confidential information as part of the quality review program shall be bound by the confidentiality-disclosure restrictions included in this contract.

In the event the Auditor receives a subpoena or other validly issued administrative or judicial process requesting the confidential information, the Auditor shall provide prompt notice to Council of such receipt and reasonable time for the Council to respond. The Auditor shall thereafter be entitled to comply with such subpoena or other process to the extent required by law.

11. DURATION OF OBLIGATION. The Auditor agrees that all of the Auditor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these general conditions, if any, which directly or indirectly, are intended by their nature or by implication to survive performance of the Auditor, do survive the completion of performance, termination for cause, or the termination for convenience of the contract.

12. ENTIRE AGREEMENT. There are no promises, terms, conditions, or obligations other than those contained in this contract; and this contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto with the exception of express warranties given to induce the purchase of goods or services by the County.

13. ETHICS REQUIREMENTS. The Auditor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) A prohibition against making or offering to make certain gifts, Section 11B-51(a).
- (b) A prohibition against kickbacks, Section 11B-51(b).
- (c) A prohibition against contingent fees, Section 11B-53.
- (d) Certain employment restrictions regarding employment of present and former public employees, Section 11B-52.

The Auditor agrees not to knowingly breach this contract by employing a present or former county employee or official in violation of Sections 11B-52, 19A-12, and 19A-13 of the Montgomery County Code.

the warranty brought to its attention within a reasonable time after the work is performed. The Auditor further warrants that it will observe and comply with all Federal, State, County and local laws, ordinances and regulation in performing the services listed.

15. IMMIGRATION REFORM AND CONTROL ACT. The Auditor warrants that both the Auditor and any subcontractor do not and will not hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (the Act), including, but not limited to, any verification and record keeping requirements. The Auditor further assures the Council that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

16. INCONSISTENT PROVISIONS. Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the Auditor, the General Conditions of Agreement Between County Council and Auditor supersede the Auditor's terms and conditions in the event of any inconsistency.

17. INDEMNIFICATION. The Auditor shall indemnify and save the County harmless from any loss, cost, damage and other expenses, including reasonable attorney's fees and litigation expenses relating to bodily injury or death of any person or damage to real and/or tangible personal property incurred while the Auditor is performing services to the extent proximately caused by the negligent or willful acts or omissions of the Auditor, its personnel or agents in the performance of the audits hereunder. For the purpose of this paragraph, County includes its boards, commissions, agencies, agents, officials and employees.

The Auditor further acknowledges that this section is not a limitation on liability and that the Auditor is responsible for that which it is found, by a court of competent jurisdiction, to be legally culpable.

18. INDEPENDENT CONTRACTOR. The Auditor is an independent contractor. The Auditor and the Auditor's employees or agent are not agents of the County.

19. INSPECTIONS. Council representatives have the right to monitor, inspect and evaluate or test all supplies or services called for by the contract at all reasonable places (including the Auditor's place of business) and times (including the period of preparation or manufacture).

20. INSURANCE. Prior to execution of the contract by the Council, the Auditor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the following insurance with an insurance company licensed or qualified to do business in the State of Maryland evidenced by a Certificate of Insurance and/or copies of the insurance policies. Auditor's insurance must be primary.

The Auditor must submit to the Audit Contract Administrator proof of insurance prior to award of this contract and any contract modifications, as evidence of compliance with this provision. The County must be named as an additional insured on all liability policies. In no event may the insurance coverage be less than shown in this Attachment.

- **Worker's Compensation.** Meeting all requirements of Maryland Law and with the following minimum limits:
 - Bodily Injury by Accident: \$100,000 each accident
 - Bodily Injury by Disease: \$500,000 policy limits
 - Bodily Injury by Disease: \$100,000 each employee
- **Professional Liability.** Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the Council with a limit of liability of at least \$1,000,000 coverage per claim and aggregate, with a maximum deductible of \$25,000. Auditor agrees to provide a one-year discovery period under this policy.

- **Commercial General Liability.** Minimum \$500,000 combined single limit for bodily injury and property damage coverage per occurrence including the following coverages:
 - Contractual Liability
 - Independent Contractors
 - Premises and Operations
 - Products and Completed Operations
- **Automobile Liability.** A minimum limit of liability of three hundred thousand dollars (\$300,000), combined single limit, for bodily injury and property damage coverage per occurrence including the following:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles
- **Additional Insured.** Montgomery County Government must be named as an additional insured on all liability policies.
- **Policy Cancellation.** Forty-five days written notice of cancellation or material change in any of the policies is required.
- **Certificate Holder:**
 - Montgomery County Government
 - ATT: Joan M. Pedersen
 - Contract Administrator
 - 100 Maryland Avenue, Room 509
 - Rockville, Maryland 20850
 - Contract # 603100001

21. **NON-CONVICTION OF BRIBERY.** The Auditor hereby declares that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any State or the Federal government.

22. **NON-DISCRIMINATION IN EMPLOYMENT.** The Auditor agrees to comply with the nondiscrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable State and Federal laws and regulations regarding employment discrimination. The Auditor assures the Council that in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation. The Auditor must bind its subcontractors to the provisions of this section.

23. **PAYMENTS.** No payment may be made under this contract unless funds for the payment have been appropriated and encumbered by the Montgomery County Council. The Auditor is under no obligation to perform work under this contract unless the funds to pay the Auditor for such work have been appropriated and encumbered. Under no circumstances will the County pay the Auditor for legal fees.

24. **PERSONAL PROPERTY.** All furniture, office equipment, equipment, vehicles and other similar types of personal property specified in the contract and purchased with funds provided under the contract will become the property of Montgomery County upon the termination or expiration of this contract, unless expressly stated otherwise.

25. **TERMINATION FOR CAUSE.** The Council may terminate the contract in whole or in part from time to time whenever the Council determines that the Auditor is:

- (a) defaulting in performance or is not complying with any material provision of the contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

Prior to a termination for cause, the Council will give the Auditor written notice specifying the cause. The notice will give the Auditor 10 days from the date the notice is issued to cure the default or make progress satisfactory to the Council in curing the default unless a different time is given in the notice.

If the Council determines that a default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Council may terminate the contract immediately upon issuing oral or written notice to the Auditor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the Auditor must compensate the Council for additional costs that would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. Any termination for cause must be considered a termination for convenience as of the date the Auditor was advised of the termination for cause, if there was no cause.

The Auditor may terminate the contract if the Auditor determines that the Council is defaulting in performance or is not complying with any material provision of the contract. Prior to termination for cause, the Auditor will give the Council written notice specifying the cause. The notice will give the Council 30 days from the date the notice is issued to cure the default or make progress satisfactory to the Auditor in curing the default unless a different time is given in the notice. In addition to any other remedies provided by law or the contract, the Council must compensate the Auditor for the services which are documented and performed in accordance with the standards set forth in this contract, by the Auditor prior to termination.

26. TERMINATION FOR CONVENIENCE. The performance of work or services under this Agreement may be terminated immediately upon written notice in whole or in part, when the Council determines this to be in its best interest. The termination is effective 10 days after the notice is issued, unless a different time is given in the notice. The Council is liable only for payment for performance of the services which are documented and performed in accordance with the standards set forth in this contract, prior to the effective date of the termination.

27. TIME. Time is of the essence.

28. FORCE MAJEURE. Neither party is liable for any delays or failures in performance due to circumstances beyond its control.

29. WORK UNDER THE CONTRACT. Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements and issuance of any required notice to proceed.

**MINORITY OWNED BUSINESS ADDENDUM TO
GENERAL CONDITIONS OF AGREEMENT
BETWEEN COUNCIL AND AUDITOR**

- A.** This Contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled (MFD) procurement program.
- B.** Auditor must subcontract 20% of the total dollar value of the Contract, including all modifications and renewals, to certified minority owned businesses. This requirement may be waived under appropriate circumstances by submission of a request to the Office of Procurement. The request must explain why a waiver is appropriate.

The Director of Procurement or designee (Director) may waive, in whole or in part, the 20% subcontracting goal if the Director determines that: (1) the Auditor has made a good faith effort to subcontract with a certified minority owned business; (2) subcontracting would not be appropriate or would diminish the purpose or performance of the Contract; or (3) there are no known certified minority owned businesses available and/or capable of providing the goods or services. In determining if a waiver should be granted, the Director may require the Auditor to submit additional information; the Director may require the Auditor to submit some or all of this information on forms approved by the Director.

Attachment A

- C.** The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the Contract between Council and Auditor. In a multi-term Contract, Auditor must ensure that there is a MFD Subcontract Performance Plan in effect for each term. In the event this Contract is renewed or modified to increase compensation payable to Auditor, the Auditor must submit a proposed modification of the Plan to meet the minority owned business subcontractor participation goal required under Paragraph B. Auditor must submit a proposed Plan modification to the Office of Procurement 60 days prior to a Contract renewal.
- D.** Auditor must include in each subcontract with a minority owned business covered under the MFD Subcontractor Performance Plan a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Auditor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E.** County approval of the MFD Subcontractor Performance Plan must not create a contractual relationship between the Council and the minority owned business subcontractor.
- F.** Auditor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G.** Before receiving final payment under this Contract, Auditor must submit documentation showing compliance with the MFD Subcontractor Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, canceled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Auditor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the Contract.
- H.** If the Auditor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, Auditor is in breach of this Contract. In the event of a breach of Contract under this addendum, Auditor must pay to the Council liquidated damages equal to the difference between all amounts the Auditor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Auditor and Council acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to calculate and that the liquidated damages provided for in this addendum are fair and reasonable. In the event of a breach under this addendum, Council may, in addition, terminate the Contract. As the result of a breach under this addendum, the Director of Procurement must also find Auditor non-responsible for purposes of future procurements with the County for the ensuing 2 years.

