



## ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item  
Meeting of September 25, 2010

### SUPPLEMENTAL REPORT

**DATE:** September 21, 2010

**SUBJECT:** Approval and authorization for contract with NVRC for Four Mile Run

**DISCUSSION:** Please find the five attachments that were omitted from the original Board Report.

**Attachment A-** NVRC-D.I.R.T MOA

**Attachment B-** NVRC-RKK MOA

**Attachment C-** NEA Grant Award Letter

**Attachment D-** NVRC- D.I.R.T. Contract and Scope of Work

**Attachment E-** NVRC-RKK Draft Contract

County Manager: MB

County Attorney: SMY MIN

Staff:

33.

MEMORANDUM OF AGREEMENT  
FOR THE EXECUTION OF THE NEA GRANT  
As Part of the  
FOUR MILE RUN RESTORATION PROJECT

The Northern Virginia Regional Commission ("NVRC") and the County Board of Arlington County ("Arlington County") do hereby enter into the following Memorandum of Agreement.

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the mutual understanding of the roles, rights and responsibilities to be assumed by the parties in managing the contract between D.I.R.T. Studio and NVRC for design consultation relating to the Four Mile Run Restoration Project (Attached as Exhibit 1), which contract is funded by National Endowment of the Arts ("NEA") grant monies and matching funds from Arlington County.

II. RECITALS

A. This partnership created by this Agreement is limited to the design efforts associated with the design phase of the tidal corridor restoration document development for the demonstration project. D.I.R.T. Studio will be under contractual agreement with NVRC through the development of the tidal corridor 90% design construction documents.

B. The demonstration project is located in the tidal portion of Four Mile Run, extending from U.S. Route 1 to an area just upstream of Commonwealth Avenue in Alexandria and South Eads Street in Arlington. The project focuses on wetland, stream bank, and riparian restoration. The design strategy and enhancements will occur, for the purposes of this grant within these boundaries.

C. Arlington County has determined that NVRC can effectively coordinate the design process for the D.I.R.T. Design Enhancements and administer the use of NEA Grant monies. The grant funding of \$20,000 will be matched dollar for dollar in cash by Arlington County in the amount of \$20,000.

D. Arlington County enjoys an ongoing relationship with NVRC through their membership on the commission and as signatory parties to the Four Mile Run Watershed Management Program Memorandum of Agreement (1977, revised in 1998) and through the Four Mile Run Restoration Project contractual agreement with Arlington County and the City of Alexandria.

### III. TERMS OF AGREEMENT

#### A. Responsibilities of Arlington County

##### 1. Funding for the Match required for this NEA Grant.

Arlington will provide \$20,000 to fulfill the grant match requirement for the NEA grant that has been awarded to NVRC for these consulting services. The funding will be tied to the Scope of Work ("SOW") in the Contract between D.I.R.T. consulting services (Exhibit 1). A project budget, including the respective amounts to be contributed by Arlington is attached as part of this MOA as Exhibit 2.

##### 2. Programmatic Participation

Arlington shall be responsible for monitoring progress of the D.I.R.T. project development by designating a Project Administrator to whom NVRC will make regular reports. This liaison shall be a current member of the Agency Coordination Group ("ACG") and will participate in consultant team meetings and project steering.

Arlington County Public Art Staff will jointly coordinate all aspects of D.I.R.T. Studio's work in coordination with NVRC on behalf of the ACG.

Communication between D.I.R.T. Studio and the Project Stakeholders, as defined in Exhibit 1, shall be the primary responsibility of Arlington County Public Staff and D.I.R.T.

##### 3. Coordination and Approval of documents

Arlington shall oversee the work of D.I.R.T. Studio in accordance with the D.I.R.T. Studio contract SOW. Arlington will coordinate and shepherd all materials from D.I.R.T. through the ACG and the Near Stream subcommittees for the duration of the project. This coordination includes securing approval of the deliverables by the ACG and/or its designated subcommittee. Once deliverables are accepted, Arlington will approve invoices from D.I.R.T. and forward approval notice to NVRC for processing.

##### 4. Project Administrator/Authorized Point of Contact Duties

The duties of the Project Administrator/Authorized Point of Contact shall include the following:

- Ensuring that there is one point of contact for the consultants to communicate with throughout the process. That point of contact will be: Arlington County Public Art staff person Angela A. Adams.

- Monitoring the Contractor's progress with regards to project scope, milestones and schedule, delivery, quality of work, and fulfillment of project elements and design.
- Facilitating coordination with the localities to ensure consensus with: development, selection, and approval of design enhancements.
- Managing the contractors;
- Maintaining liaison with localities, including making regular reports to the designated liaisons and the ACG on progress and issues in completing the project.
- Coordinating the completion of any amendments to this Agreement, should any be proposed in accordance with Section III.D.
- Providing information and documentation to NVRC's administrative offices for timely payment of expenses and preparation of invoices associated with this project.

5. Projected Funding

Arlington may be asked to advance funds to NVRC, based on NVRC's projected cash outlays for a 30-day period. Advances shall be subject to such procedures for requesting, justifying and reporting by NVRC. It is understood that NEA funds will be disbursed on a cost-reimbursement basis; therefore, it is agreed that if NEA funds are not advanced, Arlington County's advances to NVRC, if granted, shall be considered part of Arlington County's commitment of \$20,000 in matching funds.

B. Responsibilities of NVRC

1. Reporting, Schedule and Approval of Deliverables

NVRC shall be responsible for fulfilling all applicable requirements of the NEA Grant that is associated with award, allocation, and management of the NEA grant funds. This includes the processing of the approved invoices in accordance with the D.I.R.T. Studio SOW schedule of payments.

a. Point of Contact

NVRC shall designate the following staff member to serve in the capacity of NEA Grant Administrator for the project: Sayedul Choudhury, Senior Water Resources Planner. Should it become necessary to designate a successor, NVRC shall provide reasonable notice of the change in designation to the parties to this Agreement.

b. Meeting Coordination

NVRC point of contact will be responsible for all administrative organization of meetings with all project-related parties, including arrangements and orchestration of the meetings.

3. Financial Management and Invoicing

NVRC shall be responsible for proper management of the NEA Grant funds allocated to the NVRC, including:

- Maintaining required documentation of expenses;
- Making timely payment of expenses;
- Adhering to applicable federal, state and local laws and regulations;
- Including this element of the Four Mile Run demonstration project in NVRC's annual A-133 audit;
- Retaining financial records as required for audit by the jurisdictions, VADEQ or USEPA.

C. Effective Date and Duration

This Memorandum of Agreement shall be effective upon signing by the authorized representatives of all the parties, and shall continue until the project is complete, unless otherwise agreed by all the parties.

D. Amendments to the Memorandum of Agreement

This Memorandum may be amended at any time by the concurrence of both the parties. Proposed amendments shall be prepared in writing, and must be approved in writing by both the parties to be in effect.

E. Severability

Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid or unenforceable, the remaining provisions shall nevertheless remain in effect.

APPROVED:

BY:

DATE:

County of Arlington

\_\_\_\_\_  
Authorized Representative

APPROVED:

BY:

DATE:

Northern Virginia Regional  
Commission

\_\_\_\_\_  
Authorized Representative

APPENDIX  
GENERAL DEFINITIONS/DESCRIPTIONS

- A. ACG: Oversight and steering of the Four Mile Run Restoration Project is accomplished by a staff level group called the Agency Coordination Group (ACG). This group consists of staff from Arlington County, City of Alexandria, the US Army Corps of Engineers (USACE), the Northern Virginia Regional Commission, and the two co-chairs from the citizen-comprised Joint Task Force for the project. The ACG functions to shepherd and oversee the project. The ACG, with input from the Joint Task Force, works closely with the USACE to develop the feasibility study and implement the Master Plan for the project.
- B. Demonstration Project: The first implementation step of the Four Mile Run Restoration Project Master Plan has been coined the "Demonstration Project". This Project is described in general terms beginning on page 90 of the Master Plan (March 2006). The Demonstration Project will be funded from a variety of federal and local sources. Management of this demonstration project is the focus of this Memorandum of Agreement.
- C. Four Mile Run Restoration Project: The collaborative project to restore and revitalize the lower reaches of Four Mile Run, generally bounded from the Shirlington Road Bridge to the mouth at the Potomac River and neighboring properties along the corridor. The general plan for this work can be found in the Four Mile Run Restoration Project Master Plan adopted by Arlington County and the City of Alexandria in March 2006.
- D. JTF: The Joint Task Force (JTF) is an 18-member task force composed of citizens from Arlington County and the City of Alexandria. Most of the citizen representatives are from communities bordering the run and were selected by the City/County Managers from the respective jurisdictions. There are two members on the task force (included in the 18-member group) whose selection varied from the other 16 members: a citizen representative was appointed by Congressman Jim Moran and a representative from the Potomac Yards development project was jointly appointed by the chief administrative officers from Arlington and Alexandria.

The JTF focuses on garnering public input to the project and generating public support for the project. The JTF has hosted "listening sessions" and workshops to better understand community values and desires for the project. They provide input to the Agency Coordination Group (ACG).

- E. Master Plan: The Four Mile Run Restoration Master Plan describes the overall vision for the Four Mile Run Restoration Project. The plan was developed through a collaborative, multi-year effort. The plan was adopted by Arlington County and the City of Alexandria in March 2006.

- F. NEA Grant: The National Endowment of Arts has awarded NVRC a grant in the amount of \$20,000. Arlington County is providing the required match in the amount of \$20,000.
- G. Northern Virginia: The geographic area encompassing the Counties of Arlington, Fairfax, Loudoun and Prince William, and the towns within their boundaries; and the Cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park.
- H. NVRC: The Northern Virginia Regional Commission, established in 1969 as the regional planning district commission for Northern Virginia, pursuant to Articles 1 and 2, Chapter 34, of the Acts of the Virginia General Assembly of 1968, and by resolutions of the governing bodies of its constituent member governmental subdivisions.
- I. STAG: The US Congress has provided State and Tribal Assistance (STAG) monies for use in the Four Mile Run Watershed. The monies are allocated through the Virginia Department of Environmental Quality to Arlington County and/or the City of Alexandria from federal fiscal years 2004, 2005, and 2006 (approximately, \$400K, \$1.0M, and \$1.5M, respectively). These funds are disbursed by the Virginia Department of Environmental Quality and overseen by the USEPA. The recipient jurisdictions will have a local matching requirement.
- J. USACE: The US Army Corps of Engineers (USACE) is working with the two jurisdictions and the Northern Virginia Regional Commission to develop an overall feasibility study for the Four Mile Run Restoration Project.
- K. USEPA: The US Environmental Protection Agency (USEPA) has provided funding for the development of the Master Plan and a portion of the demonstration project.
- L. VADEQ: The Virginia Department of Environmental Quality (VADEQ) holds the STAG monies that will be used in conjunction with other monies to design and construct the demonstration project.

MEMORANDUM OF AGREEMENT  
FOR THE EXECUTION OF THE ENGINEERING SUPPORT  
FOR THE DIRT STUDIO DESIGN CONCEPTS  
As Part of the  
FOUR MILE RUN RESTORATION PROJECT

The Northern Virginia Regional Commission ("NVRC") and the County Board of Arlington County ("Arlington County") do hereby enter into the following Memorandum of Agreement.

I. PURPOSE OF AGREEMENT

The purpose of this agreement is to set forth the mutual understanding of the roles, rights and responsibilities to be assumed by the parties in managing the Contract between Rummel, Klepper & Kahl, LLP ("RKK") and NVRC (Attached as Exhibit 1) for engineering support for the D.I.R.T. Studio design concepts relating to the Four Mile Run Restoration Project, which contract is entirely funded by Arlington County.

II. RECITALS

A. This partnership created by this Agreement is limited to the design efforts associated with the design phase of the tidal corridor restoration document development for the demonstration project. The consultant hired to support these efforts will be under contractual agreement with NVRC through the development of the tidal corridor 90% design construction documents.

B. The demonstration project is located in the tidal portion of Four Mile Run, extending from U.S. Route 1 to an area just upstream of Commonwealth Avenue in Alexandria and South Eads Street in Arlington. The project focuses on wetland, stream bank, and riparian restoration. The design strategy and enhancements will occur, for the purposes of this grant within these boundaries.

C. Arlington County has determined that the NVRC can effectively coordinate the engineering support for the D.I.R.T. Design Enhancements and administer the funds to RKK, not to exceed \$10,000. The engineering support funding of \$10,000 will be the responsibility of Arlington County.

D. Arlington County enjoys an ongoing relationship with NVRC through their membership on the Commission and as signatory parties to the Four Mile Run Watershed Management Program Memorandum of Agreement (1977, revised in 1998) and through the Four Mile Run Restoration Project contractual agreement with Arlington County and the City of Alexandria.

### III. TERMS OF AGREEMENT

#### A. Responsibilities of Arlington County

##### 1. Funding for the required engineering support for this initiative.

Arlington will provide up to \$10,000 to pay for the engineering support of RKK for the development of drawings created by D.I.R.T. Studio. The funding will be tied to the Scope of Work ("SOW") in Exhibit 1.

##### 2. Programmatic Participation

Arlington County Public Art Staff will jointly coordinate all aspects of RKK's work in coordination with D.I.R.T. and NVRC on behalf of the ACG.

##### a. Project Administrator/Authorized Point of Contact Duties

The duties of the Project Administrator/Authorized Point of Contact shall include the following:

- Ensuring that there remains one point of contact for the consultants to communicate with throughout the process. That point of contact will be: NVRC staff person: Sayedul Choudhury.
- Facilitating coordination with the localities to ensure consensus with: development, selection, and approval of design enhancements.
- Managing the contractors.
- Monitoring the Contractor's progress with regards to project scope, milestones and schedule, delivery, quality of work, and fulfillment of project elements and design.
- Maintaining liaison with localities, including making regular reports to the designated liaisons and the ACG on progress and issues in completing the project.
- Coordinating the completion of any amendments to this Agreement, should any be proposed in accordance with Section III.D.
- Providing information and documentation to NVRC's administrative offices for timely payment of expenses and preparation of invoices associated with this project.

##### 3. Projected Funding

Arlington may be required to advance funds to NVRC, based on NVRC's projected cash outlays for a 30-day period. Advances shall be subject to such procedures for requesting, justifying and reporting by NVRC.

#### B. NVRC

##### 1. Reporting, Schedule and Approval of Deliverables

RKK shall be responsible for fulfilling all applicable requirements, and NVRC shall be responsible for ensuring that the applicable requirements are

fulfilled within the RKK Engineering Support Contract. This includes the processing of the approved invoices in accordance with the RKK SOW schedule of payments.

a. Point of Contact

NVRC shall designate the following staff member to serve in the capacity of Contract Administrator for the project: Sayedul Choudhury, Senior Water Resources Planner. Should it become necessary to designate a successor, NVRC shall provide reasonable notice of the change in designation to the parties to this Agreement.

The duties of the Project Administrator/Authorized Point of Contact shall include the following:

- Ensuring that there remains one point of contact for the consultants to communicate with throughout the process. That point of contact will be: NVRC staff person: Sayedul Choudhury.
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- Providing information and documentation to NVRC's administrative offices for timely payment of expenses and preparation of invoices associated with this project.

b. Meeting Coordination

NVRC point of contact will be responsible for all administrative organization of meetings with all project-related parties, including arrangements and orchestration of the meetings.

2. Coordination and Approval of documents

NVRC shall oversee the work of RKK in accordance with the RKK contract SOW. NVRC will coordinate and shepherd all materials from RKK through the ACG and the Near Stream subcommittees for the duration of the project. This coordination includes securing guidance of the deliverables by the ACG and/or its designated subcommittee. Once deliverables are accepted, NVRC, with the review of Arlington public art staff, will approve

invoices from RKK for processing. Arlington will coordinate comments pertaining to review of RKK work through NVRC.

3. Financial Management and Invoicing

NVRC shall be responsible for proper management of the Engineering Support funds allocated to the NVRC, including:

- Maintaining required documentation of expenses;
- Making timely payment of expenses;
- Adhering to applicable federal, state and local laws and regulations;
- Including this element of the Four Mile Run demonstration project in NVRC's annual A-133 audit;
- Retaining financial records as required for audit by the jurisdictions, VADEQ or USEPA.

C. Effective Date and Duration

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BY:

DATE:

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Commission

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- L. VADEQ: The Virginia Department of Environmental Quality (VADEQ) holds the STAG monies that will be used in conjunction with other monies to design and construct the demonstration project.

Attachment C



NATIONAL  
ENDOWMENT  
FOR THE ARTS

MAR 18 2010

The Nancy Hanks Center  
1100 Pennsylvania Avenue NW  
Washington, DC 20506-0001  
202/682-5400  
www.arts.gov

MAR 18 2010

Mr. G. M. Gibb  
Authorizing Official  
Northern Virginia Regional Commission  
3060 Williams Drive, Ste 510  
Fairfax, VA 22031-4648

Dear Mr. Gibb:

On behalf of the National Endowment for the Arts, it is a pleasure to inform you that your organization has been awarded a grant.

<u>Grantee:</u>	Northern Virginia Regional Commission	
<u>Grant #:</u>	10-4200-7019	<u>CFDA #:</u> 45.024
<u>Grant Amount:</u>	\$20,000	
<u>Period of Support:</u>	January 1, 2010 to January 31, 2011	
<u>Discipline/Program:</u>	Design	
<u>Grant Project:</u>	To support design plans for the Four Mile Run Tidal Restoration Demonstration Project, as described in your application (A09-902904) and the enclosed project budget.	

Award materials are available online at [www.arts.gov/manageaward](http://www.arts.gov/manageaward). The *General Terms & Conditions* provide detailed information concerning the Endowment's regulations and procedures, the administrative requirements that apply to your grant, and your responsibilities as a grantee. Instructions for requesting grant funds and reporting on your project are also online. General information about this award can be found at [www.arts.gov/mygrant](http://www.arts.gov/mygrant).

If you have any questions regarding the administrative requirements of this grant, our Grants & Contracts Office staff will be happy to assist you. They may be reached at (202) 682-5403.

Congratulations on your grant award!

Sincerely,

A handwritten signature in cursive script that reads "Rocco Landesman".

Rocco Landesman  
Chairman

Enclosures

# Revised Project Budget

OMB No. 3135-0112  
Expires 11/30/10

Application number (pre-award changes): \_\_\_\_\_ or Grant number (post-award changes): \_\_\_\_\_

1. Applicant (official IRS name/mailling address): Northern Virginia Regional Commission	2. Period of Support Requested (Use 2-digit numerals, e.g., 01/01/06 for Jan. 1, 2006):		
	Starting		
	01	/	01 / 10
	Ending		
	01	/	01 / 11

3. Revised Project Description. If it is necessary to revise your project, clearly describe how the recommended grant and matching funds would be spent. Give a justification for the change (e.g., reduced amount of funding recommended as conveyed by the Endowment).

Project description remains the same, with emphasis on specific areas as outlined in the original grant application. Scope of services will be reduced due to the reduction of funding available but goals and objectives will remain the same.

4. Project Budget Summary: Amount Recommended (see accompanying memo)	Plus "Total match for this project"	Must equal "Total project costs"
\$ 20,000	+ \$ 20,000	= \$ 40,000

5. Authorizing Official (Last, first): Gibb, Mark (Check one)  Mr.  Ms.

Title: Executive Director, NVRC

Telephone: (703) 642-4646 ext. Fax: (703) 642-5077 E-Mail: gmg@novaregion.org

Signature of Authorizing Official: X Date: / /

6. Project Director (Last, first): Vosper, Aimee (Check one)  Mr.  Ms.

Title: Director, Planning and Environmental Services, NVRC

Telephone: (703) 642-46231 ext. Fax: (703) 642-5077 E-Mail: avosper@novaregion.org

## Project Budget

Income

7. Total match for this project. Be as specific as possible. Asterisk (\*) those funds that are committed or secured.  
Cash (refers to the cash donations, grants, and revenues that are expected or received for this project.) Amount  
Arlington County Trust and Agencies, Public Art (Confirmed)

Total cash a. \$ 20,000

In-kind (these same items also must be listed as direct costs under "Expenses" below.)

Total in-kind b. \$ 0

Total match for this project (a. + b.) \$ 20,000

**Agreement between  
Northern Virginia Regional Commission (NVRC)  
And  
D.I.R.T. Studio (Contractor)  
June 25, 2010**

**1. Purpose of Agreement:**

The purpose of this Agreement is to set forth the terms for provision of services by Contractor for NVRC to provide a sustainable Design Strategy, Principles and Design Enhancements for the Four Mile Run Tidal Corridor Restoration Project ("4MR TCRP"). Contractor's work will be funded from NEA grant 10-4200-7019 along with funds from Arlington County to NVRC. A detailed description of services to be provided, along with the dollar amount to be paid for satisfactory completion of each deliverable, is included as part of this Agreement and is identified as Attachment 1.

**2. Duration**

The term of this Agreement shall commence June 25, 2010, and continue through January 31, 2011, unless extended by mutual agreement and approved by NEA if using grant funds. All activities to be performed by Contractor as detailed in Section 1 and Attachment 1, with the exception of final invoicing are to be concluded by the agreement end date.

**3. Professional Relationship**

Contractor is an independent contractor. Contractor shall not act as an agent or representative of NVRC, unless agreed by the parties in writing. NVRC shall not withhold any taxes or in any manner treat Contractor as an employee in provision of payment or fringe benefits. Contractor is retained for the purpose of work described in Section 1 and Attachment 1. The work performed by Contractor shall not create any obligations or liability between Contractor and NVRC, nor result in a conflict with the interest of NVRC. Contractor shall abide by professional and ethical considerations characterizing the field of professional service in which the work is performed.

**4. Responsibilities of NVRC**

In addition to responsibilities as may be specified elsewhere in this agreement, NVRC shall:

- a. Designate Contractor's authorized point of contact regarding work under this agreement.
- b. Provide sufficient notice and timely responses in communicating with Contractor on any aspect of this agreement including the work performed by Contractor in accordance with this agreement.

**5. Responsibilities of Contractor**

In addition to performing the services described in Section 1 and Attachment 1, Contractor shall:

- a. Provide all work and supply deliverables as described in Section 1 and attachment 1.

- b. Provide its tax identification number to NVRC within seven (7) days of engagement and other information required for preparing and filing Internal Revenue Service (IRS) Form 1099, which serves as an information return to the IRS for nonemployee compensation paid to Contractor during each calendar year when payments equal \$600.00 or more.
- c. Notify Contractor's authorized point of contact immediately of any matters that reasonably can be expected to alter Contractor's ability to perform the work or complete the deliverables in accordance with the schedule detailed in Section 1 and Attachment 1.
- d. Provide supporting documentation to NVRC so that it can meet federal reimbursement and auditing requests. The contractor will maintain financial records, supporting documents (such as cancelled checks, invoices, contracts, travel reports, donor letters, in-kind contribution reports, and personnel activity reports), statistical records, and all other records pertinent to an award according to the provisions outlined in OMB Circular A-110, Section 53, or the "Common Rule," Section 1157.42, as applicable. The retention period is three years from the date the final Federal Financial Report is filed. During the project period and the subsequent three-year retention period, NVRC, Arlington County, the Arts Endowment, the Endowment's Inspector General, the Comptroller General of the United States, or any of our duly authorized representatives has the right to request additional information and/or to timely and unrestricted access to project records in order to audit, examine, excerpt, transcribe or copy them. This includes timely and reasonable access to the recipients' personnel for the purpose of interview and discussion related to the records.

## **6. Payment**

- a. Total aggregate payment to Contractor under this Agreement shall not exceed \$37,188.
- b. Payment will require Contractor submit an invoice to NVRC within 15 days after completing each deliverable set forth in Section 1 and Attachment 1. Prior to submission to NVRC, each invoice must be approved by Contractor's authorized point of contact designated by NVRC's Executive Director. Approval by the authorized point of contact will certify that Contractor's deliverable has been completed satisfactorily, and that Contractor is entitled to payment by NVRC. Should the authorized point of contact determine that the deliverable is not acceptable, Contractor shall cure the deficiency within a reasonable time period, which shall be acceptable to the authorized point of contact. In no case will the need to cure a deficiency alter the schedule of other deliverables, except as allowed by Section 12 of this Agreement.
- c. NVRC shall make payments to Contractor for approved invoices within 30 days of receiving an approved invoice.
- d. No additional compensation or reimbursement of expenses will be provided to Contractor by NVRC.

## **7. Compliance**

Contractor agrees to comply with all federal, state and local laws applicable to this Agreement and NVRC's grant agreement with NEA, Attachment 2. Compliance includes record retention, maintaining accounting records, procurement standards.

## **8. Intellectual Property**

- a. Contractor shall have the right to use the project for marketing purposes. This includes, but is not limited to, publication in mass media and trade publications, submissions to award programs, and inclusion in Contractor's marketing materials.
- b. Arlington County, City of Alexandria, NVRC, A/E and Contractor agree to share professional credit for the Contractor's elements of the Project in full. All parties therefore shall be designated in all references to authorship. Any submittal of Contractor's Project work for publication must be and reviewed and approved by all parties prior to submittal. Project location and Client identity will be withheld upon Client's request.
- c. Because a part of project funding comes from a NEA grant, acknowledgement of the National Endowment of the Arts must be made in all materials and publications pertaining to this work, as follows:
  1. Acknowledgment of Arts Endowment Support and Disclaimer Acknowledgment of the National Endowment for the Arts must be prominently displayed in all materials and announcements for your funded project. For print materials, a phrase acknowledging support from the "National Endowment for the Arts" is a basic requirement. In addition, NEA encourages you to use the agency's logo whenever possible. For radio or television broadcast, NEA requires the following language: "This project is supported in part by an award from the National Endowment for the Arts." For television broadcast, display of the Arts Endowment logo is required.
  2. The NEA logo is available at [www.nea.gov/manageaward/logos/index.html](http://www.nea.gov/manageaward/logos/index.html). NEA reserves the right to change the language of the required acknowledgement of Arts Endowment support, as well as the right to disallow the use of NEA's logo and acknowledgment of support.

## **9. Use of Program Income**

Income earned by a recipient during the period of support that results from activities supported through an Arts Endowment award is considered to be program income. These earnings can include, but are not limited to, income from fees for services, admission fees, the use or rental of real or personal property, etc. Program income may be used as part of the match for an award, for additional costs of the Arts Endowment-supported project, or for use in other projects in the arts provided that it will be used for activities similar to those approved by the Arts Endowment.

## **10. Indemnity**

- a. This Agreement does not constitute, create, or give effect to a partnership, joint venture, or any other type of formal business entity. Neither the NVRC nor Contractor is the agent of the other nor may neither bind the other.
- b. Contractor shall indemnify, defend, and hold harmless the NVRC, and its officers, directors, agents, and employees (hereafter "the Indemnitees"), from and against any and all claims, demands, suits, actions, causes of action, liens, awards, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses including attorney's fees, and liabilities of any

kind and nature whatsoever for property damage, personal injury, or death (including without limitation injury or death of employees of Contractor), and expenses, costs of litigation and counsel fees related thereto, or incident to establishing the right of indemnification, arising out of or in any way related to this Agreement, the performance thereof by Contractor or other third parties hired by Contractor, or any activities of the Indemnitees, including without limitation the provision of services, personnel, facilities, equipment, support, supervision or review. This indemnity shall apply only to the extent of the negligence or intentional acts of Contractor, its employees, or any third party hired or used by Contractor for the purpose of performing this Agreement. In no event shall Contractor's obligations hereunder be limited to the extent of any insurance available to, or provided by, Contractor. If Contractor hires or uses any third party for the performance of this Agreement, Contractor shall require the third party to provide an indemnity enforceable by, and for the benefit of, the Indemnitees to the same extent required of Contractor under this Agreement.

- c. With respect to any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees), and liabilities which arise from the joint or concurrent negligence of Contractor and NVRC, each party shall assume responsibility in proportion to the degree of its respective fault.
- d. Contractor agrees not to file any lien nor to permit the filing of any liens on any NVRC holdings in connection with the activities detailed in Section 1 and Attachment 1.
- e. Contractor will be responsible for the acts and work product of its principals and employees. Contractor will not be responsible for any acts, errors, or omissions of any architect, contractor, subcontractor, consultant, or other third party performing services on the project. All documents provided by Contractor are for design purposes only and are not for construction. Comments by Contractor on work by others will be for design purposes only and will not carry any responsibilities associated with construction documents by others. NVRC agrees to indemnify and hold Contractor harmless from all claims, damages, losses and expenses (including attorney's fees) arising out of or resulting any such acts, errors, or omissions of the above mentioned third parties, unless any of those above mentioned third parties are engaged by DIRT as subcontractors in this project.

## **11. General Provisions**

- a. This Agreement, including attachments, constitutes the entire, complete and final understanding and agreement between the parties and supersedes any prior oral or written agreements.
- b. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
- c. In the event that any portion of this Agreement is held to be invalid, this shall not affect the validity of any other clause of the Agreement, which shall remain binding between the parties to this Agreement.
- d. The section headings used in the Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.
- e. The NVRC's acceptance of the services performed shall not constitute a waiver of any claim based upon improper or delayed services or rights and remedies conferred by this Agreement. Any and all rights and remedies conferred upon the NVRC under this

Agreement shall be cumulative and in addition to, and not in lieu of, rights and remedies granted by law for Contractor's breach of this Agreement.

- f. Contractor shall not assign or transfer its rights or delegate any of its duties under or in connection with this Agreement without the prior written consent of the NVRC.

## **12. Amendments**

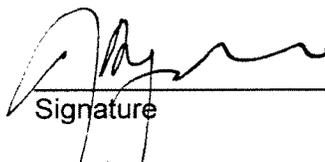
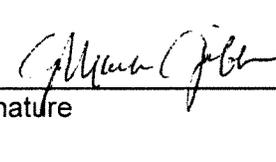
This agreement may be modified by terms set forth in writing and signed by both parties. This Agreement may be terminated at any time, by either party, for any reason. Should the Agreement be terminated, Contractor shall be paid for that portion of the work completed in accordance with the compensation section of the Agreement. All finished or unfinished documents, photographs, reports or other material prepared by Contractor shall become the property of NVRC or the property of the funding agencies.

## **13. Contractual Disputes and Claims**

- a. In accordance with Virginia Code Annotated § 2.2-4363, this provision shall be followed for consideration and handling of all claims by Contractor under this Agreement, whether for money or other relief. Virginia Code Annotated § 2.2-4365, is not applicable to this Agreement, and under no circumstances should this section be construed as an administrative appeals procedure governed by Virginia Code Annotated § 2.2-4365.
- b. No claims will be examined concerning the NVRC's decision to suspend or terminate the Agreement.
- c. Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing to the NVRC Executive Director within ten (10) business days after the occurrence of the event giving rise to the claim, or within ten (10) business days of discovering the condition giving rise to the claim, whichever is later. In no event shall any claim arising out of this Agreement be filed after the submission of the final request for payment by Contractor.
- d. Contractor's claim shall first be submitted in writing to the NVRC Executive Director. The NVRC Executive Director shall provide a written decision within forty-five (45) business days from the date the claim was received.
- e. If Contractor is not satisfied with the NVRC Executive Director's decision or resolution, Contractor may file a formal dispute of the claim with the NVRC's Operations Committee within thirty (30) business days from the date of the NVRC Executive Director's written decision. Contractor may submit the claim to the NVRC's Operations Committee by mailing the NVRC a copy of the claim and a request for the Operations Committee's determination. The Operations Committee shall issue a decision on the claim in writing within forty-five (45) days of the NVRC's receipt of the request from Contractor, and shall be final and binding on behalf of the NVRC and may not be set aside by a Court unless found to be fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith.
- f. In accordance with the provisions of Virginia Code Annotated § 2.2-4363, full compliance with the procedure set forth in the provision shall be a precondition to the filing of any lawsuit by Contractor against the NVRC arising out of this Agreement.

- g. Should any decision-maker designated under this procedure fail to make a decision within the time-period specified, the claim is deemed to have been denied by the decision-maker.
- h. Pending the final determination of a claim, Contractor shall proceed diligently with performance under the Agreement.

**Signatures:**

	<u>28 June 2010</u>		<u>7/6/2010</u>
Signature	Date	Signature	Date

**D.J.R.T. Studio  
Contractor**

**G. Mark Gibb  
Executive Director, NVRC**

Northern Virginia Regional Commission  
3060 Williams Drive, Suite 510  
Fairfax, VA 22031

Phone:  
Fax:  
Email:

Phone: 703/642-0700  
Fax: 703/642-5077  
Email: info @novaregion.org

**Attachments:**

**Section 1 and Attachment 1: D.I.R.T. Studio Scope of Work for Design Strategy for Four Mile Run Tidal Restoration Project**

**Attachment 2: NEA Award to Support design plans for the Four Mile Run Tidal Restoration Demonstration Project, with General Terms and Conditions**

**Attachment 3: NEA Reporting requirements for grants awarded to organizations**

**Attachment 1**  
**D.I.R.T. Studio Scope of Work for Design Strategy**  
**for Four Mile Run Tidal Restoration Project**  
**June 21, 2010**

### **Overview**

As per the project narrative for the National Endowment for the Arts (NEA) Access to Artistic Excellence - Design grant awarded to this project, D.I.R.T. studio will provide a sustainable Design Enhancements for the Four Mile Run Tidal Corridor Restoration Project ("4MR TCRP"). The Design Enhancements (public art iterations) will complement, not compromise, the technical requirements of the engineering goals of the project. This Design Enhancements will be developed while considering the project's adjacencies to several other future project sites, thereby providing a larger design context for the work of the Restoration project. These future project sites might include but are not limited to: the Water Pollution Control Plant perimeter (fence enhancement, landscaping and outfall); the proposed Pedestrian-Cyclist Bridge site; the Dominion Virginia transmission poles and substation perimeter; and the ART Transit Station on Eads Street and Route 1. In providing an overall aesthetic philosophy for the 4MR TCRP, the Design Enhancements will be mindful of the general assumptions for the near-stream area articulated in the 4MR Restoration Master Plan and the TCRP, but avoid making specific recommendations. The intention of the Design Enhancements is not to unnecessarily constrain future park master planning.

This Design Enhancements, drawing on the foundation set forth in the Four Mile Run Tidal Corridor Restoration Master Plan and Design Guidelines, is intended to be incorporated into the Architecture/Engineering ("A/E") of the 4MR TCRP. Design submissions by the A/E for the 4MR TCRP will refer to grading plans, utility relocation, erosion and sedimentation control plans, habitat and grade control details, planting summary and planting plan, geometric layout, flood control elements, channel specifications, and general river access plans.

The five General Design Principles – as defined in the National Endowment for the Arts Access to Artistic Excellence – Design grant awarded to this project – on which D.I.R.T studio will base its review and recommendations are listed below:

1) **aesthetics** – articulation of a design vocabulary specific to site and context along with the creation of legible form and the visibility of engineered solutions within Four Mile Run, both in and near stream, in order to demystify the hydrological and hydraulic functions of the restoration effort and help to build a sense of stewardship for the watershed;

- 2) **innovation** – exploration and experimentation with emerging principals of urban ecology and practices of sustainable technologies, including material selections and construction techniques that will constitute the underlying framework of the design language for Four Mile Run;
- 3) **context** – expression of natural and social histories as primary design informants regenerating Four Mile Run within larger ecosystems of the Potomac River watershed and respecting the diversity of local communities;
- 4) **performance** – anticipation of transformation of the current stream bed over time to address both maintenance regimes as well as fluctuations and adaptation of the stream and its evolving relationship to the natural and built environment;
- 5) **education** – identification of opportunities to engage local communities through learning about the transformation of the Tidal Corridor, inspiring stewardship for the ecological health and cultural significance of Four Mile Run.

## **Working Process**

### **I. Scope of Work**

The Contractor, D.I.R.T. Studio agrees to provide the following services:

- A. The D.I.R.T. Studio agrees to work in coordination with Project Stakeholders (identified below) to create no fewer than two Design Enhancements will be developed, for the 4MR TCRP, located in both Arlington County and the City of Alexandria, in conjunction with the engineering work as put forward by the A/E (RK&K and sub consultants).
- B. D.I.R.T. Studio agrees to prepare Conceptual Design Enhancements building upon the General Design Principles – for the 4MR TCRP, based on the engineering designs and feedback received during the A/E review meeting with RKK and EDAW.
- C. D.I.R.T. Studio will identify no fewer than two Design Enhancements for incorporation into 4MR TCRP. Proposed Design Enhancements will relate directly to the proposed engineering solutions for the in-stream and near stream nature of the 4MR TCRP. D.I.R.T. Studio agrees to review proposed engineering designs for the 4MR TCRP at the 60%, 90% and 100% design stages. Review will be based upon the approved and incorporated Design Enhancements.
- D. The Design Enhancements will consist of visual (e.g., drawings, models, renderings) presentation materials to support and communicate clearly the conceptual and material aspects of how the

Conceptual Design Enhancements will be carried out in the 4MR TCRP.

- E. D.I.R.T. Studio agrees to work in coordination with Project Stakeholders (identified below) to accomplish the task of developing integrated Design Enhancements within the Four Mile Run Tidal Corridor Restoration Project.

## **II. Timely Performance of Scope of Work**

D.I.R.T. Studio shall coordinate and develop the Design Strategy for the Four Mile Run Tidal Corridor Restoration Project in accordance with the general design and construction schedule as noted in this document, as determined by NVRC or their designees, and per the NEA Access to Artistic Excellence – Design grant. Work shall commence once this Agreement has been approved and signed by both parties (D.I.R.T. Studio and NVRC); D.I.R.T. Studio and Arlington County shall ensure that the schedule as set forth in the contract is strictly adhered to. If the schedule is not kept as provided within this document by no fault of DIRT studio , DIRT studio reserves the right to discontinue the project as agreed upon. If this occurs, payment for each task up to termination of project will be provided.

## **III. Design Approach**

The Design Strategy shall complement and/or enhance the proposed design and engineering initiatives.

## **IV. Site**

The location for the Design Enhancements is the 4MR TCRP area. The 4MR TCRP area is located along the boundary between Arlington County and the City of Alexandria. Exact parameters are not yet defined but the general area under design for the 4MR TCRP shall not extend beyond the tidal portion of Four Mile Run, located between the Mount Vernon Avenue Bridge and the Route 1 crossing, with design iterations possible for both in- and near-stream locations.

## **V. Project Stakeholders**

D.I.R.T. Studio will work in collaboration with the following groups and individuals to ensure feasibility of design and integration with the proposed architectural and engineering elements. Arlington County Public Art Staff

will jointly coordinate all aspects of Design Studio's work in coordination with NVRC on behalf of the ACG:

A. Project Team Members including:

1. The Agency Coordination Group (ACG) – this group consists of staff from Arlington County, the City of Alexandria, the US Army Corps of Engineers, citizen representation from the 4MR TCRP Joint Task Force and NVRC; and
2. A/E team, led by RK&K

Communication between the Design Studio and the Project Stakeholders shall be the primary responsibility of Arlington County Public Art Staff and D.I.R.T. Studio. All administrative organization of meetings with all project-related parties, including arrangements and orchestration of the meetings, will be the primary responsibility of NVRC. Arlington will coordinate and shepherd all materials from D.I.R.T. through the ACG and the Near Stream subcommittees for the duration of the project. This coordination includes securing approval of the deliverables by the ACG and/or its designated subcommittee. A separate MOA between Arlington and NVRC identifies the roles and responsibilities of Arlington County staff and NVRC for the administration of the NEA Grant.

## **VI. Conceptual/Schematic Process for Design**

- A. D.I.R.T. Studio shall be provided, by NVRC or the A/E, with copies of all design documents and design materials necessary for the Design Studio to perform the tasks as defined in the Scope of Work in a timely manner according to the schedule set forth.
- B. Data, policies, standards and criteria, and studies germane to the project will be made available to the Design Studio upon request to NVRC.

## **VII. Design Development Tasks**

A pre-contract coordination meeting took place at the D.I.R.T. Studio office in Charlottesville, VA on June 11, 2010. The meeting was attended by Tom Heil (RK&K), Julie Bergmann (D.I.R.T. Studio), Rush Bailey (D.I.R.T. Studio) and Sayedul Choudhury (NVRC) to discuss the design strategy and design enhancements tasks listed below.

**A. Task 1; First Review and Design Session with A/E based on 30% and 60 % submittals (mtg 1) to take place no later than July 14, 2010**

NVRC will host a two hour visioning session with D.I.R.T. Studio and the A/E team of RKK and EDAW and the near stream ACG subcommittee to review and discuss the 30%/60 % engineering drawings. At this meeting, **DIRT will provide Conceptual Design Enhancements based on pre-selected sites for discussion/review.** All A/E drawings that have been developed prior to this meeting will be sent to D.I.R.T. Studio ahead of time in order to prepare.

Following this session, D.I.R.T. Studio will research and develop the Conceptual Design Enhancements for the 4MR TCRP based on the 30%/ 60 % submittals and feedback received during the A/E visioning session with RKK and EDAW. The Conceptual Design Enhancements will consider the Project's adjacencies to future projects sites, thereby providing a larger design context for the 4MR TCRP, consistent with the Four Mile Run Restoration Master Plan and Design Guidelines and setting the tone for design enhancements/public art associated with future opportunities in the area.

**Task 1; Deliverables:**

1. Conceptual Design Enhancements to be presented under Task 2. The deliverables will be provided at the presentation given by D.I.R.T. Studio under Task 2 as a "leave behind" set of documents. They will be presented as graphic depictions with accompanying narrative, as appropriate to convey proposed ideas to NVRC for the review and approval of the ACG. The Design Strategy and Conceptual Designs will include reference to built precedents and D.I.R.T. Studio's demonstrated commensurate experience and communicate clearly the conceptual and material aspects of how the Conceptual Design Enhancements will be carried out in the 4MR TCRP.
2. Submission will consist of one electronic version (in CD format) and 1 paper copy sent to NVRC, 1 day before the scheduled presentation. Arlington County will be responsible for making additional copies and disseminating the copies to other project stakeholders.

**B. Task 2 a+b – First DIRT Presentation to ACG of Conceptual Design Enhancements (mtg 2) as related to the Design Strategy and second review/ design session with A/E (mtg 3)**

On the same day, following the presentation of D.I.R.T's Schematic Design Enhancements as related to the Design Strategy, at the **Wednesday July 28, ACG meeting**, D.I.R.T. Studio will participate in a two-hour working design session with A/E (the engineering firm RK&K and their sub consultant (EDAW) to review the proposed Design Enhancements .

The purpose of this second design session is to further develop drawings that represent Design Development of recommended Design Enhancements and changes as part of the development or review of submittals. Design sessions will be attended by a small group of representatives from NVRC and the ACG, as well as the A/E, as necessary. It is understood that any involvement between the D.I.R.T. Studio and the A/E will be an open process that is fully accessible from inception throughout the process. Communication prior to or following the in person design sessions can take place between the D.I.R.T. Studio, A/E and ACG representatives in person, by phone or via snail or e-mail. As is possible, D.I.R.T. Studio will receive advance copies of draft submittals prior to design sessions. Coordination of communication will be the responsibility of Arlington County Public Art Staff.

**Task 2 a+b; Deliverables:**

1. A refinement of Design Enhancements that will represent Design Development to be presented under Task 3. This will be provided at the presentation given by D.I.R.T. Studio under Task 3 as a "leave behind" set of documents. This will be presented as graphic depictions with accompanying narrative as appropriate to convey proposed ideas to NVRC for the review and approval of the ACG.
2. NVRC and stakeholders will review Conceptual Design Enhancements and comments will be due no later than two weeks after the presentation to the ACG. (by August 11th).
3. Submission will consist of one electronic version (in CD format) and 1 paper copy sent to NVRC. Arlington County will be responsible for making additional copies and disseminating the copies to other project stakeholders.

**C. Task 3- Second D.I.R.T Presentation to A.C.G of Design Development of Final Design Enhancements(mtg 4)**

At an already scheduled ACG meeting, **on Wednesday September 1**, D.I.R.T Studio, upon timely receipt of comments, will present the Design Development of the Design Enhancements. After the presentation by D.I.R.T. Studio, NVRC will collect comments and remarks from stakeholders and make those available to D.I.R.T Studio, again, within two weeks of this meeting (by September 15<sup>th</sup>)

*Simultaneously to comments being collected (two weeks after presentation) A/E to review designs for feasibility and cost estimation purposes. Review to be completed and comments provided to DIRT within two week period (by September 15<sup>th</sup>)*

**Task 3; Deliverables:**

1. A refinement of two Final Conceptual Design Enhancements to be presented under Task 4. This will be provided at the presentation given by DIRT under Task 4 as a “leave behind” set of documents. This will be presented as graphic depictions with accompanying narrative, as appropriate to convey proposed ideas to NVRC for the review and approval of the ACG.
2. NVRC and stakeholders will review Final Design Enhancements. Review and comments will be due no later than two weeks after the presentation.
3. Submission will consist of one electronic version (in CD format) and 1 paper copy sent to NVRC. Arlington County will be responsible for making additional copies and disseminating the copies to other project stakeholders.
4. Upon approval, D.I.R.T Studio will correspond via email and phone with A/E to formalize proposed Design Enhancements so Design Enhancements can be incorporated into the A/E documents.

**D. Task 4 – Final D.I.R.T Presentation to ACG of Final Design Enhancements (mtg 5)**

At an already scheduled ACG meeting, on **Wednesday October 6, 2010** where RK & K, EDAW will present the 90 % designs and drawings for review of the ACG, DIRT will present the two final Design Enhancements.

**Task 4; Deliverables:**

1. One final “leave behind” set of drawings only that will have incorporated comments already provided by ACG by September 15th as relating to the final Design Enhancements.

**E. Task 5 – Final Conference Call to Review of Construction BID Documents for the Four Mile Run Tidal Corridor Restoration Project -100% design. (cc-2)**

The Design Studio will work with the A/E and NVRC to help facilitate the final approved design enhancements to be incorporated into the bid ready documents for the 4MR TCRP, having appropriately reviewed design enhancements identified at both the 60% and 90% stages. If needed, the Design Studio will participate via phone, snail or email in order to assist with fulfilling requests for information submitted by potential bidders, and possibly evaluating construction bids. The Design Studio will participate in one (1) pre-construction meeting via conference call to guide and facilitate integrating the final Design Enhancements, as reviewed and endorsed by the ACG

**Task 5; Deliverables:**

1. An annotated list of changes/comments/perceived problems with the final design drawings as they relate to approved design enhancements.

**F. Additional Services**

In order to more effectively carry out the Design Strategy for the Four Mile Run Restoration area, the Design Studio may be contracted to develop additional Design Enhancements for future projects in the areas adjacent to the 4MR TCRP This would help to continue to articulate a coordinated design philosophy for the 4MR TCRP area. These future project sites might include but are not limited to: the Water Pollution Control Plant perimeter (fence enhancement, landscaping and outfall); the proposed Pedestrian Bridge site; the

Dominion Virginia transmission poles and substation perimeter; and the ART Transit Station on Eads Street and Route 1.

Refer to Additional Services in Terms and Conditions.

### **VIII. Marketing and Authorship**

Design Studio shall reserve rights for use of the project for marketing purposes. This includes, but is not limited to, publication in mass media and trade publications, submissions to award programs, and inclusion in Design Studio's marketing materials.

Arlington County, City of Alexandria, NVRC, A/E and Design Studio agree to share professional credit for the Design Studio elements of the Project in full. All parties to the contract will be designated in all references to authorship. Any submittal of the Studio's Project work for publication must be and reviewed and approved by all parties prior to submittal. Project location and Client identity will be withheld upon Client's request. Also, as this project funding comes from a NEA grant, acknowledgement of the National Endowment of the Arts must be made in all materials and publications pertaining to this work.

### **IX. Project Budget, Payment, Schedule, and Milestones**

The total project cost for the Design Strategy is **\$37,188** and is all-inclusive, covering all aspects of this agreement, including meeting/work time, project-related travel expenses materials, and coordination. The Design Studio will not be paid at an hourly rate or be reimbursed for individual expenses. Lump sum payments will be made upon reaching the milestones described below.

### **X. Calendar / Payment schedule**

<b>June 21, 2010</b>	Contract signed
<b>Milestone 1- July 2010</b>	<b>CC-1 and Task 1-</b> Meeting 1-Review/ design session with A/E of 30 % and 60% submittal , review of conceptual enhancements

	1- payment upon completion: \$7500.00
Milestone 2- <b>July 28, 2010</b>	<b>Task 2 a + b</b> -Meeting 2 -Presentation of Design Strategy and Conceptual Design Enhancements and Meeting 3- Design Session with A/E for Design Development of Design Enhancements  2- payment upon completion: \$10,000.00
Milestone 3- <b>September 1, 2010</b>	<b>Task 3</b> - Meeting 4. - Presentation to Review Design Enhancements and Task 2 deliverables.  3- payment upon completion: \$7500.00
Milestone 4- <b>October 6, 2010</b>	<b>Task 4</b> - Meeting 5. Presentation to review Final Design Enhancements and Task 3 deliverables.  4- payment upon completion: \$10,000.00
Milestone 6- <b>Date TBD, 2010</b>	<b>Task 5</b> - Final Conference Call and Review of Construction BID Documents for the Four Mile Run Tidal Corridor Restoration Project -100% design including deliverables. CC-2  5- payment upon completion: \$2,188.00

### Timely Performance

The Design Studio shall work in accordance with the design schedule of the A/E firms and subcontractors, as determined by NVRC and the ACG, provided that unless otherwise agreed by the parties to this Agreement, the schedule set forth in this Agreement shall prevail in the case of any conflict.

### Failure to Meet Milestone Deadlines

If the Design Studio without reasonable cause fails to meet milestones by the established deadlines, as the same may be extended from time to time by agreement of the parties, then NVRC may retain/and or modify remuneration related to professional service fees. The milestones may, under reasonable circumstances and with the agreement of the Design Studio and NVRC, be extended.

If the schedule is not kept as provided within this document by no fault of D.I.R.T. Studio, DIRT studio reserves the right to discontinue the project as agreed upon. If this occurs, payment for each task up to termination of project will be provided.

*Attachment E*

***DRAFT***

**A**

**CONTRACT**

**BY AND BETWEEN**

**THE NORTHERN VIRGINIA REGIONAL COMMISSION**

**AND**

**RUMMEL, KLEPPER & KAHL, LLP**

**FOR**

**IMPLEMENTATION OF D.I.R.T STUDIO, INC. CONCEPTS**

July 26, 2010

## **PART I**

**THIS AGREEMENT**, consisting of Part I, Attachment "A", Scope of Work, and Attachment "B", Fee Proposal; (hereinafter referred to as the "CONTRACT") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010 by and between Northern Virginia Regional Commission (hereinafter referred to as NVRC) and Rummel, Klepper & Kahl, LLP (hereinafter referred to as the "CONTRACTOR").

### **WITNESSETH:**

**WHEREAS**, to complete the scope of work for which funds were solicited from the County of Arlington; and

**WHEREAS**, in the Project Administration Agreement between the County and NVRC, the parties agreed that the CONTRACTOR will perform work on this County-funded project;

**NOW, THEREFORE**, the NVRC and the CONTRACTOR do mutually agree as follows:

#### **Section 1.            STATEMENT OF SERVICES**

The CONTRACTOR shall perform services in accordance with the Scope of Work and Fee Proposal documents as detailed in Attachments A and B.

#### **Section 2.            COMPENSATION AND METHOD OF PAYMENT**

- a. Total compensation to the CONTRACTOR under this agreement shall not exceed \$9,934 dollars, including direct and indirect costs, unless this Agreement is modified in accordance with Section 7 below.
- b. Payment shall be made by NVRC to the CONTRACTOR on a time and material basis in accordance with CONTRACTOR's invoices, which shall be submitted to NVRC upon completion of deliverables in accordance with Attachments A & B.
- c. The CONTRACTOR'S invoices shall be processed for payment by NVRC within 45 days of an acceptable submission by the CONTRACTOR.
- d. Funding for this project will come from Arlington County through a separate MOA.

**Section 3. PERIOD OF PERFORMANCE**

The Period for Performance shall commence on July 01, 2010, and shall continue in accordance with the Project Timeline set forth in Attachment A.

**Section 4. RESPONSIBILITIES OF THE CONTRACTOR**

- a. The CONTRACTOR shall be responsible for completing the Scope of Work and Fee Proposal in accordance with Attachments A and B unless this CONTRACT is modified in accordance with Section 7.
- b. The CONTRACTOR shall maintain and complete records of the project's development and documentation of all expenditures for no less than three (3) years following final payment by NVRC.
- c. THE CONTRACTOR shall adhere to all applicable federal, state, or local laws and regulations, including NEPA requirements.
- d. All personnel employed by the CONTRACTOR shall be adequately qualified to perform services under this CONTRACT. NVRC shall be notified in writing of any change in personnel during the contract period.

**Section 5. RESPONSIBILITIES OF NVRC**

- a. NVRC shall maintain responsibility for the overall coordination and completion of the project.
- b. NVRC shall work with the CONTRACTOR to complete all necessary paper work as it pertains to the environmental reviews as listed in the "Scope of Work", Attachment A, and clarified in "Fee Proposal", Attachment B.
- c. NVRC shall serve as the fiscal agent to the project, submitting invoices for reimbursement to CONTRACTOR, and disbursing and managing all funds for the project.

**Section 6. ADMINISTRATION OF THE CONTRACT**

- a. For the purpose of this CONTRACT, NVRC's Executive Director, or his designee, is the Contracting Officer, and is the only party authorized to make changes or amendments on behalf of the CONTRACTOR in this CONTRACT.

- b. The CONTRACTOR shall designate Thomas Heil as Project Manager, who shall supervise all work and services to be performed herein. If the Project Manager is subsequently replaced, the CONTRACTOR shall notify the NVRC in advance, in writing within 7 days.

**Section 7. CHANGES**

The parties hereto agree that any modification or change in any aspect of this CONTRACT must be accomplished in writing by both parties before it is considered a part of the CONTRACT.

**Section 8. TERMINATION**

NVRC reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. In the event of termination under this clause, all finished or unfinished documents, photographs, reports or other material prepared by the CONTRACTOR shall become the property of Arlington County. Should the contract be cancelled, the Contractor shall be paid for satisfactory work completed as of the effective date of termination. In case of termination by NVRC for cause, default or negligence on the part of the Contractor, the 30 days advance notice requirement shall not apply.

**Section 9. SUBCONTRACTS:**

1. No portion of the work shall be subcontracted without prior written consent of the NVRC. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish NVRC the names, qualifications and experience of their proposed subcontractors.
2. In selecting subcontractors, the Contractor shall comply with 40 CFR 31.36, and shall place qualified small and minority businesses, and women's business enterprises on its solicitation lists. Any agreement between the Contractor and subcontractor(s) shall incorporate the applicable terms and conditions specified in this solicitation, and in 40 CFR 31.36.
3. The Contractor shall remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

**Section 10.           SUBSTITUTIONS:**

No substitutions, including key personnel or subcontractors, will be permitted after award without written approval by NVRC.

**Section 11.           RIGHTS IN WORK PRODUCT**

The CONTRACTOR shall be responsible for preparing, producing and delivering all material and work items produced under this CONTRACT including, but not limited to, all materials, work products, reports, textual materials, maps, graphs, diagrams, charts or other illustrative material and textual material prepared by any consultant retained under this CONTRACT. None of such materials and work items shall be the subject of a copyright by the CONTRACTOR. All work products shall be owned by City of Alexandria and Arlington County, unless otherwise agreed in writing by Arlington County and NVRC.

**Section 12.           SEPARABILITY OF PROVISIONS**

In the event that any portion of this Agreement is held to be invalid, this shall not affect the validity of any other clause of the CONTRACT, which shall remain binding between the parties to this CONTRACT.

THE PARTIES hereto have executed this CONTRACT of the day, month and year first above written.

NORTHERN VIRGINIA REGIONAL COMMISSION

Approved By:

\_\_\_\_\_  
G. MARK GIBB  
Executive Director

\_\_\_\_\_  
Date

RUMMEL, KLEPPER & KAHL, LLP

Approved By:

\_\_\_\_\_  
Thomas Heil, P.E.  
Associate

\_\_\_\_\_  
Date

**Contract Between NVRC and RK&K  
July 26, 2010**

**Attachment A: Scope of Work**

**IMPLEMENTATION OF D.I.R.T STUDIO, INC. CONCEPTS  
FOUR MILE RUN STREAM RESTORATION DEMONSTRATION PROJECT**

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**Scope of Work**

**Four Mile Run Restoration Demonstration Project  
Implementation of D.I.R.T Studio, Inc. Concepts**

**Contract Scope of Work**

**Task 1 – Develop Engineering Documents to Support Conceptual (30%) Plans**

The CONTRACTOR will provide necessary services to translate conceptual sketches prepared by DIRT Studio, Inc. (DIRT) into engineering documents (30% complete). DIRT will develop innovative approaches to several potential elements within the Four Mile Run Tidal Restoration project and prepare conceptual sketches under a contract with NVRC funded from NEA grant 10-4200-7019 and Arlington County. After assessment of DIRT's concepts, NVRC, in consultation with Arlington County and the City of Alexandria ACG members, will advise the CONTRACTOR on which specific elements to begin translating into preliminary engineering drawings to support the restoration project. The CONTRACTOR will translate conceptual sketches prepared by DIRT into engineering

documents (30% complete) that will accompany the semi-final (90% complete) design plan

submission in the Four Mile Run Tidal Restoration project.

Deliverables:

- Engineering documents of conceptual sketches (30% complete)

**Task 2 – Coordination with DIRT, NVRC and Arlington County**

The CONTRACTOR will work in collaboration with the Arlington County Public Art staff, NVRC and DIRT to ensure that DIRT receives necessary and timely support to develop design enhancements.

A pre-contract coordination meeting took place at the D.I.R.T. Studio office in

Charlottesville, VA on June 11, 2010. The meeting was attended by Tom Heil (CONTRACTOR), Julie Bergmann (DIRT), Rush Bailey (DIRT) and Sayedul Choudhury (NVRC) to discuss the design strategy and design enhancements tasks listed below.

The CONTRACTOR will attend/has attended the following Four Mile Run Agency Coordination Group (ACG)/Near-Stream Subcommittee meetings and working sessions with DIRT.

- July 14, 2010 – Near-Stream Subcommittee Meeting (2 hours)
- July 14, 2010 – Visioning Session with DIRT (2 hours)
- July 28, 2010 – 4MR ACG Meeting (2 hours)
- July 28, 2010 – Working Session with DIRT (2 hours)
- October 6, 2010 – 4MR ACG Meeting (2 hours)

### **Task 3 - Project Management and Quality Assurance / Control**

The Project Manager (CONTRACTOR) will also ensure the following:

- The project elements are fulfilled;
- Timely delivery of the FMR Tidal Restoration Project data and additional support to DIRT
- Coordination with Arlington Arts, NVRC and DIRT
- Coordinating the completion of any amendments to this Agreement, should any be proposed in accordance with Section 7
- Providing information and documentation to NVRC's administrative offices for timely payment of expenses and preparation of invoices associated with the demonstration project.

**Contract Between NVRC and RK&K  
July 26, 2010**

**Attachment B: Fee Proposal (Continued)**

**IMPLEMENTATION OF D.I.R.T STUDIO, INC. CONCEPTS  
FOUR MILE RUN STREAM RESTORATION DEMONSTRATION PROJECT**

THE CONTRACT BUDGET & TASK BREAKDOWN

Four Mile Run Restoration Demonstration Project					
Design Services to Implement D.I.R.T Concept Plans					
	<b>Payroll Classification</b>	<b>Hours</b>	<b>Percent of Hours</b>	<b>Loaded Wage Rate</b>	<b>Fee Per Payroll Classification</b>
<b>CONTRACTOR</b>	Project Manager	8	8.3%	\$ 175.00	\$1,400
	Senior Engineer	20	20.8%	\$ 125.00	\$2,500
	Engineer Sr. Env. Scientist / Planner	32	33.3%	\$ 95.00	\$3,040
	Sr. Env. Scientist / Planner	4	4.2%	\$ 115.00	\$460
	Env. Scientist / Planner	8	8.3%	\$ 85.00	\$680
	Technician / CADD	24	25.0%	\$ 70.00	\$1,680
	<b>Total Labor</b>	<b>96</b>	<b>100%</b>		<b>\$9,760</b>
	Mailings	At Cost	0	\$20/Mailing	\$0
	Mileage	1 trip	300 Miles/Trip	\$0.50 / Mile	\$150
	Printing	5 sheets	20 sets	\$0.24 / Sheet	\$24
	<b>Subtotal Direct Costs</b>				<b>\$174</b>
	<b>Total Estimated Fee</b>				<b>\$9,934</b>

**Contract Between NVRC and RK&K  
July 26, 2010**

**Attachment B: Fee Proposal**

**IMPLEMENTATION OF D.I.R.T STUDIO, INC. CONCEPTS  
FOUR MILE RUN STREAM RESTORATION DEMONSTRATION PROJECT**

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THE CONTRACT BUDGET & TASK BREAKDOWN

Four Mile Run Restoration Demonstration Project Design Services to Implement D.I.R.T Concept Plans	Project Manager	Senior Engineer	Engineer Sr. Env. Scientist /Planner	Sr. Env. Scientist / Planner	Env. Scientist / Planner	Technician / CADD	Total Hours Per Task
Task 1. Develop Engineering Documents to Support Conceptual (30%) Plan Development		12	24	4	8	24	72
Task 2. Coordination with DIRT, NVRC and Arlington County		8	8				16
Task 3. Project Management	8						8
<b>Total</b>	<b>8</b>	<b>20</b>	<b>32</b>	<b>4</b>	<b>8</b>	<b>24</b>	<b>96</b>