

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201**

AGREEMENT NO. 17-304-RFP

THIS AGREEMENT (“Agreement”) is made, on the date of execution by the County, between Coakley & Williams Construction, Inc., 7475 Wisconsin Avenue, Suite 900, Bethesda, MD 20814 (“Contractor”) a Maryland Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

- Agreement No. 17-304-RFP, and all modifications properly incorporated into the Agreement
- Attachment A – Scope of Work
- Attachment B – Long Bridge Park and Aquatics & Fitness Center Design Criteria Documents, as amended, if applicable
- Attachment C – Guaranteed Maximum Price
- Attachment D – Drawings, Specifications and Construction Notes (initially the Concept Design and subsequently the Issued for Construction Documents)
- Attachment E – Negotiated Project Schedule
- Attachment F – Insurance Requirements

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the order of precedence of the Contract Documents shall be as follows:

Attachments A, B, D, E and F are considered complementary documents, what is in one shall be considered as in all; where the terms of these Contract Documents vary the most stringent shall apply; and Attachments A, B, D, E and F shall prevail over Attachment C.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer who will be appointed by the Director of the Arlington County department or agency requesting the Work under the Contract.

3. SCOPE OF WORK

The Project shall proceed in two phases: the Design Confirmation Phase and the Construction Implementation Phase, all as more specifically set forth in the Scope of Work.

During the Design Confirmation Phase, the Contractor will meet with County representatives and other stakeholders to discuss the Concept Design and incorporate any revisions to the Concept Design that may be requested by the County. At the conclusion of the Design Confirmation Phase, the County and the Contractor will have agreed on a Basis of Design, which will form the basis for the iterative design process that will follow during the Implementation Phase.

The Implementation Phase will have two stages: the Design Implementation Stage and the Construction Implementation Stage (the "Implementation Stages"). During the Design Implementation Stage the Contractor will: (i) advance the design and budget for the Project in iterative steps, each involving the review and input of the Project Officer, such that at the end of this stage the Contractor will have produced, and the Project Officer will have approved, a full set of plans and specifications necessary to construct the Project in accordance with the requirements of the Contract (such approved documents will be the "IFC Set"); and (ii) submit for and receive all necessary permits and approvals from local, state and federal authorities, including the Federal Aviation Administration (FAA) (the "Code Officials"). During the Construction Implementation Stage, the Contractor shall construct the Project in accordance with the IFC Set and the Contract Documents.

The Work shall be performed according to the standards established by the Contract Documents, all of which are incorporated by reference and are to be read together as a single specification. If there is any discrepancy between the terms of a Contract Document and the terms set forth in this Agreement, the terms set forth in this Agreement shall control. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

4. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR.

- A. The Contractor is fully qualified to act as the Design-Builder and perform the Work for the Project and has, and shall maintain, any and all licenses, permits, or other authorizations necessary to act as the Design-Builder for construction of the Work.
- B. The Contractor has thoroughly examined the terms of the Contract Documents and has found them in all respects to be complete, accurate, and sufficient for design and construction of the Project for an amount that does not exceed the GMP. The Contractor will not be compensated for the performance of any additional or change order Work or for any delays arising from any errors, omissions or conflicts or other issues in the Contract Documents that the Contractor should reasonably have discovered as a result of such review.
- C. The Contractor has been provided with an opportunity to visit the Project site and is familiar with local conditions under which the Work is to be performed. By entering into the Agreement, the Contractor assumes the following risks: (1) the nature of the land and subsoil unless such conditions constitute a Differing Site Condition; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk

contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work.

5. CODE AND REGULATORY COMPLIANCE

The Contractor is responsible for completing the design work and administering the Construction Implementation Phase of the Project in accordance with all applicable federal, state, and/or local regulatory requirements.

6. STANDARD OF CARE

The County is entering into this Contract in reliance on the Contractor's experience and abilities with respect to performing the services hereunder. In performing the Work hereunder, the Contractor will ensure that it and all its agents and employees exercise the degree of skill and care that is normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Contractor will re-perform without additional compensation, any services not meeting this Customary Standard of Care.

The Contractor will be responsible for the professional quality, completeness, technical accuracy and coordination of all designs, drawings, specifications, costs estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's sub-consultants. The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, plans, drawings, specifications and other documents will be structurally sound, and a complete and properly functioning facility that is suitable for the purposes for which it is intended.

The County's review, approval or acceptance of or payment for any services required under this Contract does not release the Contractor from any liability or operate as a waiver by the County of any rights or of any cause of action arising out of the Contract.

The Contractor shall be strictly liable for the performance of the building in compliance with the Design Criteria.

7. TIME FOR COMPLETION

The Design Confirmation Phase has an expected duration of _____ (____) calendar days. At no additional cost to the County, the County may, in its sole discretion, increase the duration of the Design Confirmation Phase by up to _____ (____) days by giving written notice to the Contractor of such election.

All Work required during the Implementation Phase shall achieve Substantial Completion no later than _____ (____) calendar days after the Notice to Proceed for the Implementation Phase is issued by the County, subject to any modifications made as provided for in the Contract Documents. Such period shall be the Period of Performance for Substantial Completion. No Work shall be deemed Substantially Complete until it meets the requirements of Substantial Completion set forth in the Design Criteria Documents. Final Completion of the Work shall be achieved by the Contractor no later than _____ (____) calendar days after the date of acceptance of Substantial Completion by the County Project Officer. Work will not reach Final Completion until it meets the requirements set forth in the Contract Documents.

Unless otherwise provided, no claims for early completion are allowed.

8. CONTRACT AMOUNT

The Contract Amount is a Guaranteed Maximum Price comprised of a Design/Build Fee, a General Conditions Fee, and the Cost of the Work to include the Design Fee, for a total Guaranteed Maximum Price of \$54,700,000.00, as set forth in Attachment C.

The Guaranteed Maximum Price for the Project shall be the maximum amount payable to the Contractor to achieve Final Completion of the Work as required by the Contract Documents.

The County will pay the Contractor for its services under this Agreement in accordance with the terms of the Progress Payments and Retainage and Payment Terms sections below.

9. PROGRESS PAYMENTS AND RETAINAGE

The County will make progress or partial payments to the Contractor in accordance with the Contract Documents. However, 5% of each progress payment made during the Construction Implementation Stage will be retained by the County until Final Acceptance of all the Work covered by the Agreement.

All material and work covered by partial payments will become the property solely of the County at the time the partial payment is made. However, the Contractor will have the sole responsibility, care and custody for all materials and work upon which payments have been made until Substantial Completion.

10. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections within 10 business days. The County will pay the Contractor within 30 days after approval of an invoice for completed work which is reasonable and allocable to the Contract. The number of the County Purchase Order pursuant to work has been performed must appear on all invoices.

11. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

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

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

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

12. RELEASE AND REQUEST FOR FINAL PAYMENT

In order to receive final payment upon Final Completion of the Project and before Final Acceptance, the Contractor must submit to the Project Officer a signed original notarized copy of the Arlington County Release and Request for Final Payment form per the Design Criteria Documents.

13. LIQUIDATED DAMAGES

Time is of the essence under this Contract. The Contractor acknowledges that the County is engaging the Contractor to serve as a Design-Builder so as to minimize the potential for cost overruns, schedule delays or the need for extensive value engineering/re-design late in the Project and that the deliverables required during Design Implementation Stage of this Agreement are key to realizing the value of such services. If the Contractor fails to deliver any of the deliverables required, the Contractor shall be subject to liquidated damages in an amount of \$4,386.00 per day after receiving written notice from the Project Officer of failure to submit such deliverable. A list of such deliverables is included in Attachment B to the Agreement.

The Project must achieve Substantial Completion within the Time for Completion. The County and the Contractor agree that damages for failure to achieve Substantial Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that \$11,575.00 per calendar day is in proportion to the actual loss that the County would suffer from such delay. Therefore, the Contractor will pay the County as liquidated damages \$11,575.00 per day for each and every day beyond the time for Substantial Completion that the County determines Substantial Completion has not been achieved. The County and the Contractor also agree that damages for failure to achieve Final Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that \$2,452.00 per calendar day is in proportion to the actual loss the County would suffer from such delay. Therefore, the Contractor will pay the County as liquidated damages \$2,452.00 per day for each and every day beyond the time for Final Completion until Final Completion is achieved.

The County will be entitled to deduct liquidated damages against any sums owed by the County to the Contractor under this Contract. The Contractor hereby waives any defense as to the validity of any liquidated damages on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

14. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

15. LIEN

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

performance of the Contract. Upon County's request, the Contractor shall provide a bill of sale stating that the County is the owner of the materials and equipment purchased by the Contractor under this Contract.

16. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

17. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

18. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

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

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

19. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right to reasonably reject staff or subcontractors whom the Contractor assigns to the Project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County

in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

20. FAILURE TO DELIVER

If the Contractor fails to deliver the Work in accordance with the Contract terms and conditions, the County, after notice to the Contractor and an opportunity to cure as specified in the County's cure notice, may procure the Work from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor. However, if public necessity requires the use of nonconforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

21. UNSATISFACTORY WORK

If any of the work done, or material, goods, or equipment provided by the Contractor does not fully comply with the requirements of the Issued for Construction set the Contractor must, upon notice from the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. If the Contractor fails to commence and work diligently within fifteen (15) days the County shall have the right to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor and offset the expense and administrative costs against any sums owed to the Contractor. This provision applies during the Contract term and during any warranty or guarantee period. At the Project Officer's discretion, rather than correction or replacement of the work, an appropriate adjustment to the Contract Amount may be made.

22. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other longer period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for

termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

23. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's negligent acts or omissions, including the acts or omissions of its employees, vendors, delivery drivers and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all

resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to contractor's operations herein.

24. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

25. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

26. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

27. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

28. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its bid was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

29. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

30. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

31. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

32. RELATION TO THE COUNTY

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

33. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

34. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

35. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

36. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

37. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

38. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

39. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

40. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

41. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

42. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County or Contractor under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

43. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

44. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

45. ATTORNEY'S FEES

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

46. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

47. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

48. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

49. NOTICES

Unless otherwise provided in writing, all legal notices and other formal communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Terrence Caulfield
Coakley & Williams Construction, Inc.
7475 Wisconsin Avenue, Suite 900
Bethesda, MD 20814

TO THE COUNTY:

Erik Beach, Project Officer
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 414
Arlington, Virginia 22201

AND

Michael E. Bevis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

Day-to-day communications between the Project Officer and the Contractor may be by e-mail.

50. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

51. INSURANCE, PAYMENT AND PERFORMANCE BONDS

As a condition of executing the Agreement, the Contractor will be required to furnish payment and performance bonds in the amount of the GMP. The Contractor shall maintain the insurance coverage required in Attachment F to the Agreement, as well as and payment and performance bonds, through completion of the Contract, including all warranty and guarantee periods.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

COAKLEY & WILLIAMS CONSTRUCTION, INC.

AUTHORIZED
SIGNATURE: _____



AUTHORIZED
SIGNATURE: _____



NAME AND TITLE: MICHAEL BEVIS
PURCHASING AGENT

NAME AND TITLE: Terrence Caulfield
Senior Vice President

DATE: _____

1/16/18

DATE: _____

02/21/17

ATTACHMENT A

SCOPE OF WORK

The Contractor has developed a Concept Design for the Long Bridge Park and Aquatics & Fitness Center as part of the Request for Proposals No. 17-304-RFP and has been engaged by the County to act as the design builder for the Project. The Concept Design is included in this Agreement as Attachment E. The Guaranteed Maximum Price for this project shall be \$54,700,000.00.

A1. GENERAL INTENT

A1.1 Contractor's Duties. The Contractor's work shall be divided into two phases: (i) the Design Confirmation Phase and (ii) the Implementation Phase.

Phase 1: Design Confirmation Phase. During the Design Confirmation Phase, the Contractor will meet with County representatives and other stakeholders to discuss the Concept Design and incorporate any revisions to the Concept Design that may be requested by the County. At the conclusion of the Design Confirmation Phase, the County and the Contractor will have agreed on a Basis of Design, which will form the basis for the iterative design process that will follow during the Implementation Phase.

Phase 2: Implementation Phase. The Implementation Phase will have two stages: the Design Implementation Stage and the Construction Implementation Stage (the "Implementation Stages"). During the Design Implementation Stage the Contractor will: (i) advance the design and budget for the Project in iterative steps, each involving the review and input of the Project Officer, such that at the end of this stage the Contractor will have produced, and the Project Officer will have approved, a full set of plans and specifications necessary to construct the Project in accordance with the requirements of the Contract (such approved documents will be the "IFC Set"); and (ii) submit for and receive all necessary permits and approvals from local, state and federal authorities, including the Federal Aviation Administration (FAA) (the "Code Officials"). During the Construction Implementation Stage, the Contractor shall construct the Project in accordance with the IFC Set and the Contract Documents.

A.1.2 Design Team. The Contractor shall, in a manner consistent with applicable state licensing laws, provide the necessary design services, including architectural, engineering and other design professional services, required during the Design Confirmation Phase and the Design Implementation Stage, through its use of qualified, licensed design professionals employed or subcontracted by Contractor (Design Professionals) (such employees of Contractor and the design professionals are referred to as the "Design Team").

A1.3 Fast Track Project. The Contractor has been selected, in part, based on its experience with managing design/build projects and managing the design process and constructing in a fast track environment. It is understood that with respect to any specific element of Work, such element of Work shall proceed sequentially through the Implementation Stages in the order described herein (i.e. each such element of Work shall first proceed through the Design Implementation Stage, then the Construction Implementation Stage). It is understood, however, that different elements of Work may be in different Implementation Stages at the same time, and in this sense, the Work which the Contractor performs may overlap the Implementation Stages.

A1.4 Guaranteed Maximum Price; Cost Plus Fixed Fee with Incentive Type Contract. This Agreement is a contract commonly known as a “cost plus fixed fee with guaranteed maximum price (GMP) contract” and contains certain incentives for the Contractor. Adjustments to the GMP can only be made in accordance with the terms of this Agreement.

A1.5 Compliance with Design Criteria Documents. The Contractor must design and construct the Project in accordance with the Long Bridge Park and Aquatics & Fitness Center Design Criteria Documents (“Design Criteria”) (Attachment B) and the Concept Design (Attachment E). Accordingly, all of the documents required to be produced during the Design Confirmation Phase and Design Implementation Stage must conform to the Design Criteria.

A1.6 Incorporation of Public Art. Public artist Douglas Hollis has been commissioned by the County to create an integrated public art work for the Long Bridge Park and Aquatics & Fitness Center. The Contractor shall work collaboratively as specified in the Design Criteria with County staff and the artist through the design, fabrication and installation of the public art work as a fully integrated component of the planned facility and new park elements. An allowance for this work will be noted in the Schedule of Values.

A2. DESIGN CONFIRMATION PHASE

A2.1 General Understandings and Selection Process. The Concept Design was produced in accordance with the Design Criteria and represents a level of design that is generally consistent with the level of design contemplated in a Design Concept design as that term is used in the design and construction industry. The Concept Design was prepared under the direction and supervision of the Contractor and its Design Team. The Contractor hereby represents that: (i) it selected the Design Team and assessed whether the Design Team had the necessary experience, qualifications, and resources to implement the Project; (ii) it managed the design process during the Concept Design; and (iii) it had the opportunity to take such measures as the Contractor deemed necessary or advisable (including, but not limited to, the opportunity to consult with trade subcontractors) to assure itself that the Project could be completed for an amount that does not exceed the GMP. The County has relied upon representations set forth in the preceding sentence in awarding and entering into this Contract.

A2.2 Concept Design Review. Promptly after a Notice to Proceed is issued for the Design Confirmation Phase (the “Initial NTP”), the Contractor shall meet with the Project Officer and other stakeholders to discuss the Concept Design. The purpose of this meeting shall be to review the Design Criteria set out in Attachment B and discuss any adjustments or refinements to the Concept Design that the County may recommend. The Contractor and its Design Team shall evaluate any such proposed adjustments to the Concept Design and shall provide the Project Officer with a written assessment of whether such adjustments are technically feasible and, if so, the impact such adjustments would have on the GMP and the Project schedule. The assessment shall be delivered as soon as practically possible, but in no event more than 21 days after the initial meeting. The assessment shall include a line item break-out of the potential cost impact, if any, as well as a schedule analysis that highlights the impact of the adjustments on the Project schedule. The Contractor and the Project Officer will meet as often as necessary in order to discuss and agree upon what adjustments, if any, will be incorporated in the Concept Design. The Contractor shall revise the Concept Design to reflect any such approved design adjustments and submit such revisions the Project Officer for approval, which approval may be

withheld in the Project Officer's sole and absolute discretion. The revised Concept Design, with adjustments approved by the Project Officer, shall become the "Basis of Design".

A2.3 Baseline Milestone Schedule. Within 30 days after the Initial NTP is issued, the Contractor shall prepare and submit a detailed baseline milestone schedule for all significant milestones to take place during the Implementation Phase (the "Baseline Milestone Schedule") that is consistent with the Negotiated Project Schedule included in this Agreement as Attachment F and the requirements of the Design Criteria.

A2.4 Control Budget. Within 30 days after the Initial NTP is issued, the Contractor shall prepare and submit for the Project Officer's review and approval a detailed line item budget for the Project based on the Basis of Design (the "Control Budget") that is consistent with the GMP and the requirements of the Design Criteria.

A2.5 Project Initiation Deliverables. The Design Confirmation Phase shall not be complete until Project Initiation Deliverables specified in the Design Criteria have been prepared by Contractor and approved by the Project Officer.

A2.6 End of Design Confirmation Phase. The Design Confirmation Phase shall conclude when the parties (i) agree upon the Basis of Design (which shall replace the Concept Design as the basis from which further design documents shall be produced); (ii) establish, in the Baseline Milestone Schedule, the revised Substantial and Final Completion Dates for the Project, if needed; and (iii) execute a Contract amendment, if necessary.

A3. IMPLEMENTATION PHASE

The Implementation Phase shall consist of the Design Implementation Stage and the Construction Implementation Stage. The Implementation Phase shall commence when the County issues a Notice to Proceed for the Design Implementation Stage (the "Implementation NTP").

A3.1. DESIGN IMPLEMENTATION STAGE

A3.1.1 Logical Development of Basis of Design. The IFC Set will be developed by the Contractor in an iterative and collaborative process that involves the County and the Project Officer. The Contractor shall develop the IFC Set so that it reflects the design intent embodied in the Basis of Design. If there is more than one option that is a logical inference of such design intent, the Contractor shall use all good faith efforts to implement the desires of the County; however, if such desires cannot be accommodated within the GMP, the Contractor shall have the right to select a design alternative that is a logical inference of the Basis of Design documents, with costs that do not exceed the GMP; provided, however, that the County may direct the Contractor to proceed with another option, but in such event the Contractor shall be entitled to an equitable adjustment to the GMP resulting from such directive.

A3.1.2 Schematic Design (15% Design Document). The Contractor shall develop a set of Schematic Design Documents that is consistent with and a logical development of the Basis of Design and in accordance with the Design Criteria Documents, and submit it to the Project Officer for review and approval.

A3.1.3 Review and Revisions to Schematic Design Submission. Within twenty-eight (28) days after the Project Officer receives the Schematic Design submission, the Project Officer will meet with the Contractor and provide comments on the submission. The Contractor shall make such revisions to the Schematic Design submission as necessary to incorporate comments, feedback and other direction provided by the Project Officer. The Project Officer shall have the right to disapprove the Schematic Design submission if the submission is inconsistent with the Basis of Design. The Schematic Design submission, as approved by the Project Officer, shall be referred to as the "Approved Schematic Design".

A3.1.4 Design Development (35% Design Document). The Contractor shall develop a set of Design Development Documents that is consistent with and a logical development of the Approved Schematic Design and in accordance with the Design Criteria Documents, and submit it to the Project Officer for review and approval.

A3.1.5 Review and Revisions to Design Development Submission. Within twenty-eight (28) days after the Design Development submission, the Project Officer will meet with the Contractor and provide comments on the submission. The Contractor shall make such revisions to the Design Development submission as necessary to incorporate comments, feedback and other direction provided by the Project Officer. The Project Officer shall have the right to disapprove the Design Development submission if the submission is inconsistent with the Approved Schematic Design. The Design Development submission, as approved by the Project Officer, shall be referred to as the "Approved Design Development".

A3.1.6 Construction Document 1 (65% Design Documents). The Contractor shall develop a set of 65% Design Documents that is consistent with and a logical development of the Approved Design Development and in accordance with the Design Criteria Documents, and submit it to the Project Officer for review and approval.

A3.1.7 Review and Revisions to 65% Design Documents. Within twenty-eight (28) days after the 65% Design Documents submission, the Project Officer will meet with the Contractor and provide comments on the submission. The Contractor shall make such revisions to the 65% Design Documents submission as necessary to incorporate comments, feedback and other direction provided by the Project Officer. The Project Officer shall have the right to disapprove the submission if the submission is inconsistent with the Approved Design Development. The 65% Design Documents submission, as approved by the Project Officer, shall be referred to as the "Approved 65% Design Documents".

A3.1.8 Permit Set Submission to Code Official. The Contractor shall submit the Permit Set of documents to the Code Official in order to obtain the necessary building permits to construct the Project. The Contractor shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official, with no change to the GMP. The Contractor shall also meet with the Project Officer to discuss any such changes for which it seeks approval. The Contractor shall highlight (or bubble) any aspect of the design that represents a material deviation from the Permit Set documents and shall address in a narrative format the impact, if any, such deviation shall have on the Project's aesthetics, functionality or performance.

A3.1.9 Construction Document 2 (90% Design Documents). The Contractor shall develop a set of 90% Design Documents that is consistent with and a logical development of the Approved 65% Construction Documents and in accordance with the Design Criteria Documents, and submit it to the Project Officer for review and approval.

A3.1.10 Review and Revisions to 90% Construction Documents Submission. Within twenty-eight (28) days after the 90% Construction Documents submission, the Project Officer will meet with the Contractor and provide comments on the submission. The Contractor shall make such revisions to the 90% Design Documents submission as necessary to incorporate comments, feedback and other direction provided by the Project Officer. The Project Officer shall have the right to disapprove the 90% Construction Documents if the submission is inconsistent with the Approved 65% Construction Documents. As approved by the Project Officer, the 90% Construction Document submission shall be referred to as the "Approved 90% Construction Documents".

A3.1.11 Issued for Construction (IFC) (100% Design Documents). Based on the Approved 90% Construction Documents, the Contractor shall submit for the Project Officer's approval an IFC Set submission, which shall be based on the Approved 90% Construction Documents and the Design Criteria Documents. Within seven (7) days after the IFC Set submission, the Project Officer will meet with the Contractor and provide comments on the IFC Set submission. The Contractor shall make such revisions as necessary to incorporate comments, feedback and other direction provided by the Project Officer. The Project Officer shall have the right to disapprove the IFC Set submission if the submission is inconsistent with the approved 90% Construction Documents. As approved by the Project Officer, the IFC Set submission shall be referred to as the IFC Set. Notwithstanding the design/build nature of this Contract, the Contractor shall be required to fully and faithfully implement the IFC Set unless the IFC Set is amended and such amendment to the IFC Set is approved by the Project Officer.

A3.1.12 Design Changes. If unforeseen circumstances beyond the control of the Contractor or changes required by the County make it necessary to amend any of the approved IFC Set documents, the Contractor shall prepare an amendment to the IFC Set and shall submit such amendment to the Project Officer for review and approval. In this submittal, the Contractor shall highlight (or bubble) any aspect of the design in the IFC Set that represents a material deviation from the IFC Set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance.

A3.2. CONSTRUCTION IMPLEMENTATION STAGE

The Construction Implementation Stage begins when the IFC Set documents are approved by the Project Officer and after the County issues the Notice to Proceed for the Construction Implementation Stage (the "Construction NTP").

A3.2.1 Drawings & Specifications. All of the Work shall be constructed in strict accordance with the final IFC Set and all Contract Documents.

A3.2.2 On-Site Management. The Contractor shall provide on-site management and superintendence during all working hours.

A3.2.2.1 Site Office. Throughout the Project, the Contractor shall provide and maintain a fully-equipped construction office on the Project site.

A3.2.2.2 Supervision. Throughout the Project, the construction office shall be manned by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

A3.2.3 Weekly Progress Meetings. Throughout the Project, the Contractor shall conduct weekly progress meetings with the County and key trade subcontractors following a Contractor-generated agenda. The Contractor shall draft and circulate meeting minutes within five (5) business days of such meetings.

A3.2.4 Hazardous Materials. The Project site contains residual petroleum contamination and other hazardous materials and the scope of work includes their remediation and abatement as outlined in the Design Criteria. In performing any and all hazardous materials abatement, the Contractor shall comply with the Contract Documents and all local, state, and federal laws. The Contractor shall not commence any abatement work without an authorization from the Project Officer. Further, the Contractor shall seek and obtain authorization for any abatement or remediation work in a timely manner so as not to delay the Work. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times.

A3.2.5 Site Safety Generally. The Contractor shall provide a safe and efficient site, with controlled access. As part of this obligation, the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project.

A3.2.5.1 Safety Barriers/Fences. As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary to separate the construction areas of the site from adjacent areas.

A3.2.5.2 Site Security. The Contractor shall be responsible for site security and shall be required to provide such watchmen as are necessary to protect the site from unwanted intrusion.

A3.2.5.3 Exculpation. The right of the County to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Contractor from the obligation to maintain a safe site.

A3.2.6 Workhours; Coordination with DPR and Community.

A3.2.6.1 Workhours. The Contractor shall comply with all applicable requirements regarding workhours generally, noise, and other requirements that may impose limitations regarding working hours, and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound level permitted by applicable requirements.

A3.2.6.2 Parking. The Contractor shall organize its Work in such a manner so as to minimize the impact of its operations on the surrounding community. To the extent that the number of workers on the site is likely to have an adverse impact on neighborhood parking as determined

by the County, the Contractor shall develop a parking plan for those individuals working on the site that is reasonably acceptable to the County.

A3.2.6.3 Wheel Washing Stations. The Contractor shall provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

A3.2.6.4 Outreach Plan. The Contractor shall keep the County informed of the construction activities and their potential impact on the community. The Contractor shall submit a plan of outreach activities informing the community of any impacts to the Project Officer for review and approval prior to its implementation.

A3.2.7 Quality Control Generally. The Contractor shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with the Contract Documents. The Contractor's responsibility includes ensuring adequate quality control services are provided by the Contractor's employees and its subcontractors at all levels. The work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality of construction.

A3.2.7.1 Quality Control Plan. Within 45 days after the Design Development Documents are approved, the Contractor shall develop a quality control plan for the Project (the "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Project Officer for review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated in the Design Development Documents, and, in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

A3.2.7.2 Inspections. During the Construction Implementation Stage, the Contractor shall perform regular quality control inspections and create reports based on such inspections. These quality control reports shall be provided to the Project Officer in E-builder on a monthly basis. The quality control reports shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship, specifically address issues raised during the month and outline the steps that are being used to address such issues. The Contractor shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming Work.

A3.2.7.3 Corrective Action Plan. The County shall have the right to direct the Contractor to revise the provisions of its Quality Control Plan if, in the reasonable judgment of the County, the craftsmanship of the Work being installed fails to comply with generally applicable industry standards, requirements of the specifications prepared by the Contractor that are reasonably related to the quality of craftsmanship, or any provisions set forth in the Contract Documents. In such event, the County will provide the Contractor with written notice of its finding and the Contractor shall be required to provide the County with a Corrective Action Plan that is reasonably designed to address the concerns raised in such notice within three (3) days after its receipt. If the County and the Contractor are unable to agree on the terms of such Corrective Action Plan within five (5) days after the issuance of the notice (i.e. within 48 hours after the

receipt of the proposed Corrective Action Plan), the County shall have the right to direct such corrective action measures as the County, in its reasonable judgment, deems necessary. Such directive may include adjustments to the procedural provisions set forth in the Quality Control Plan and/or imposing additional requirements on the manner in which Work is being installed. Provided the notice provisions of this Section are complied with, the cost of any such corrective action directed under this Section shall not justify an adjustment to the GMP or the Period of Performance for Substantial Completion.

A3.2.8 Final Completion and Project Closeout.

In addition to the Final Completion and Project Closeout requirements contained elsewhere in the Contract Documents, the Contractor shall be responsible for:

A3.2.8.1 Eleven Month Walk. The Contractor must schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Contractor and a representative of the County will walk the Project to identify any necessary warranty work.

A3.2.8.2 Commissioning and Warranty Support for the Heating and Cooling Season. The Contractor and its subcontractors shall provide commissioning support to the County for one year throughout the commissioning process in accordance with the commissioning requirements of this Agreement. The commissioning requires training and documentation as well as seasonal performance testing. In addition to commissioning support, the Contractor and its subcontractors shall perform warranty calls throughout the duration of the warranty period, which shall include quarterly inspections with the Project Officer present for the major systems and equipment. This shall include making adjustments to the control systems to optimize the County's use and understanding of the facility.

A3.2.9 Monthly Reports. The Contractor shall provide written reports to the Project Officer, on the progress of the entire Work at least monthly from Construction NTP until Final Completion of the Project. The monthly reports shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient Work or recover delays; (ii) an updated cost analysis; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

A3.2.10 Use of E-builder. The Contractor shall utilize E-builder, the County's web-based Project Management System (PMS) throughout the duration of the Project as required by the Contract Documents. Use of the E-builder PMS will not replace or change any contractual responsibilities of the Contractor. The system has been implemented to enhance and expedite team communication.

All Contractor Project correspondence shall be either created electronically or digitized so that it can be stored and tracked by the E-builder PMS. This includes, but is not limited to:

1. Requests for Interpretations (RFIs) and attachments;
2. Submittals;
3. Change Orders;
4. Payment Applications;
5. Meeting Minutes;
6. Daily Construction Reports;

7. Action Items;
8. Project Schedules (Design, Construction, etc.);
9. Punch Lists;
10. Incident Reports;
11. Agendas; and
12. Construction Photographs.

Responses and directions from the County will be transmitted to the Contractor through E-builder.

The County will provide E-builder licenses the Contractor. The County will also provide 8 hours of E-builder training specific to the role of the Contractor. The training will be held at a time and location in Arlington County to be determined by the County.

The Contractor shall provide, at the Contractor's temporary site office, and home office if required, the computer hardware and software necessary to provide access to the E-builder PMS.

A4. COMPENSATION

A4.1 The Contractor's sole compensation for the Work shall be the Design/Build Fee, the General Conditions Fee and reimbursement for the Cost of the Work.

A4.1.1 **Cost of the Work.** The Cost of the Work shall include the following costs, which shall be reimbursable at cost and without mark-up of any kind:

1. Payments made by the Contractor to subcontractors and suppliers, but only in accordance with the subcontracts and supply agreements;
2. Design Fee;
3. All amounts due to the Contractor for self-performed Work. If the Contractor self-performs work, the Contractor must submit three quotes by potential subcontractors validating price competitiveness of Contractor's decision to self-perform. The Project Officer may, in their sole discretion, approve self-performed work without competitive pricing submission; in such situation the Contractor must submit the following documentation with applications for payment:
 - A. **Labor.** Properly documented wages actually paid to Project foremen, construction workers, and other personnel in the direct employ of the Contractor while engaged in approved self-performed work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements.
 - B. **Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the self-performed work, including, without limitation, costs of transportation and handling.

- C. **Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the self-performed work, but required to provide a reasonable allowance for waste or spoilage, subject to the Contractor's agreement to turn unused excess materials over to the County at the completion of the Project or, at the County's option, to sell the material and pay the proceeds to the County or give the County a credit in the amount of the proceeds against the Cost of the Work.
- 4. Royalty and license fees paid for use of a design, process or product, if its use is required by this Agreement or has been approved in advance by the County;
- 5. Fees for obtaining all required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation, as well as all trade permit fees and the building permit fee;
- 6. All fees and other costs necessarily incurred to carry out testing and inspections required by the Agreement or applicable laws, or otherwise to maintain proper quality assurance. The costs the Contractor incurs to schedule and coordinate any additional testing and inspections the County may decide to conduct itself shall be reimbursable unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy contract requirements, in which case the Contractor shall pay the costs, without reimbursement;
- 7. All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading);
- 8. All performance and payment bonds and insurance attributable to the Project; and
- 9. Lump Sum Allowance of \$20,000.00 for artist coordination.

A4.1.2 General Conditions Fee. The General Conditions costs, which are reimbursable, shall include, but not be limited to, the following:

- 1. The cost of Preconstruction and Construction Staff. The term Preconstruction and Construction Staff shall mean the Project Executive, Design Manager, Project Managers and superintendents assigned to the Project, administrative staff assigned on a full-time basis to the Project site, and professional staff performing scheduling, cost estimating and accounting services;
- 2. Fringe Benefits associated with Preconstruction and Construction Staff;
- 3. Payroll taxes and payroll insurance associated with Preconstruction and Construction Staff;
- 4. Staff costs associated with obtaining permits and approvals;
- 5. Out-of-house consultants;

6. The field office for the Contractor including, but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Implementation Stage; (iv) furniture; and (v) office supplies;
7. Office equipment including, but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; and (v) job radios;
8. Local delivery and overnight delivery costs;
9. The cost of temporary power and water necessary for construction operations and to condition the building during construction. Such costs include the cost of any temporary construction necessary to provide such power and water during the Construction Implementation Stage; and
10. First aid facility.

A4.1.3 Non-Reimbursable Costs. The following costs are not reimbursable:

1. Fees for any permits or licenses the Contractor requires to conduct its general business operations;
2. Capital expenses and interest on capital employed for the Work;
3. The cost of home or regional offices, it being understood that compensation for such costs is included in the Design-Build Fee;
4. Sales or use taxes, unless the Contractor establishes that applicable law required payment of such taxes; and
5. Any costs incurred in performing work of any kind before the Notice to Proceed is issued, unless specifically authorized by the County in writing.

A4.1.4 Design/Build Fee. The Contractor's Design/Build Fee shall be as set forth in Attachment C (Guaranteed Maximum Price).

A4.1.4.1 At Risk Portion of Design/Build Fee. Forty percent (40%) of the Design/Build Fee is at risk (the "At Risk Portion"), and the Contractor shall only be entitled to the At Risk Portion as set forth below. The Contractor shall be eligible to earn the At Risk Portion of the Design/Build Fee based on its performance pursuant to the factors outlined below:

A4.1.4.1.1 Evaluation Factors

D. Factor 1: Design Management

1. Adherence to Schedule
2. Quality Performance: effectiveness of Contractor and subcontractor Quality Control programs, responsiveness to County concerns regarding quality issues

3. Technical Expertise and Experience: commitment to energy sustainable design, early identification and resolution of design and/or construction problems
- E. Factor 2: Construction Management
1. Adherence to Schedule and regular schedule updates
 2. Quality Performance: effectiveness of Contractor and subcontractor Quality Control programs, responsiveness to County concerns regarding quality issues
 3. Technical Expertise and Experience: early identification and resolution of design and/or construction problems
- F. Factor 3: Safety Performance
1. Jobsite Cleanliness
 2. Injury Record
 3. Adherence to Safety Plan: safety performance and management commitment to safety requirements
- G. Factor 4: Project Management
1. Coordination with the County:
 - a) proactive coordination with the County on responding to information requests and Requests for Interpretations
 - b) assisting the County in responding to community requests and concerns in managing the high profile project
 - c) minimization and timely submission and resolution of claims or requests for equitable adjustment
 2. Program Planning/Organization/Management:
 - a) assignment and utilization of personnel; recognition of critical problem areas
 - b) cooperation and effective working relationships with other contractors and County personnel
 - c) technology utilization
 - d) effective use of Contractor's resources
 - e) planning, organizing and managing all program elements; management actions to achieve and sustain a high level of productivity
 - f) response to emergencies and other unexpected situations
 - g) effectiveness in management of the Request for Interpretations process – minimization of frivolous submissions
 - h) adequacy of contract document review prior to submission of clarification requests
 - i) clarity and quality of recommended solutions
 - j) subcontract direction and coordination
 - k) early identification and resolution of design and/or construction problems
 - l) timely submission and equitable pricing of requested proposals for changed work, when necessary
 - m) efforts and success in mitigating costs for changed conditions
 - n) effectiveness in management of subcontractor proposals
 3. Timely and accurate information management and reporting
 4. System Commissioning:

- a) effectiveness in coordination and execution of, and adherence to, commissioning plan through all phases of the Project
 - b) timeliness, quality and thoroughness of operation and maintenance manuals and training
 - c) timeliness and quality (includes accuracy and format) of monthly as-built drawings updates and other submittals required by the commissioning process
- H. **Factor 5: Project Closeout and Post Construction**
- a) effective scheduling and management of turnover actions
 - b) minimization and timely resolution of punch list items
 - c) timely response to warranty calls
 - d) quality of repairs
 - e) effectiveness of communication with County representatives
 - f) cooperation and proactive involvement in problem mitigation and resolution
 - g) effectiveness in coordination and execution of seasonal and other deferred functional performance testing
 - h) effectiveness of the issue resolution measurement and verification and timeliness and accuracy of reports
- A4.1.4.1.2 Performance Monitoring**
1. Project Officer will plan and carry out on-site assessment visits, as necessary.
 2. Project Officer will conduct all assessments in an open, objective and cooperative spirit so that a fair and accurate evaluation is obtained. This will ensure that the Contractor receives accurate and complete information from which to plan improvements in performance. Positive performance accomplishments will be emphasized as readily as negative ones.
 3. Project Officer will discuss the assessment with Contractor personnel as appropriate, noting any observed accomplishments and/or deficiencies. This affords the Contractor an opportunity to clarify possible misunderstandings regarding areas of poor performance and to correct or resolve deficiencies.
- A4.1.4.1.3 Evaluation/Assessment Reports**
1. Project Officer will submit the At-Risk Fee Evaluation Report to the Procurement Officer monthly. In addition, Project Officer may be requested to make verbal reports to the Procurement Officer.
- A4.1.4.1.4 Evaluation Periods**
1. At-Risk Fee Award meetings will be held quarterly to discuss Contractor's performance and will include the Procurement Officer, the Contractor and the Project Officer. The Contractor will be provided an opportunity to submit information on its behalf, including an assessment of its performance during the evaluation period. After the meeting, the Procurement Officer will consider matters presented by the Contractor and finalize its findings.
 2. The Procurement Officer will determine the At-Risk Fee Award percentage earned by the Contractor, determine whether any unearned Fee may be earned back in the following evaluation period if Contractor addresses the issues, and generate a decision letter to the Contractor. The Contractor will submit an invoice for the earned At-Risk Fee upon receipt of the decision letter.

3. If the Project Officer and the Contractor disagree on an item of contention, the Procurement Officer, at their sole discretion, will determine the appropriate At-Risk Fee Award percentage that will be earned by the Contractor.
4. The County may elect to distribute any unearned Fee to the subsequent period, or to apply any unearned Fee to specific future evaluation period(s) if the County determines that certain period(s) require increased performance incentive(s).
5. The amount available to earn in each evaluation period will be a proportionate percentage of the Cost of Work earned in that period, but the cumulative amount of the At Risk Portion of the Design/Build Fee paid shall at no time constitute more than 40% of the Design/Build Fee paid to date.

A4.1.4.2 Not At Risk Portion of the Design/Build Fee. The Not At Risk portion of the Design/Build Fee is the 60% of the Design/Build Fee remaining after deduction of the At Risk portion of the Design/Build Fee. The Not At Risk portion of Design/Build Fee will be paid proportionately to the percentage of Cost of Work earned in that period.

A4.1.4.3 Savings. Upon completion of the Work, the Contractor shall provide to the Project Officer a detailed and complete accounting of the Cost of the Work and the General Conditions Fee for the Project. Should the actual final Cost of Work and General Conditions Fee be less than those amounts listed in Attachment C as adjusted pursuant to the Agreement, the savings shall accrue seventy-five percent (75%) to the County and twenty-five percent (25%) to the Contractor. Should, however, the actual final Cost of Work and the General Conditions Fee exceed the Cost of Work and the General Conditions Fee listed in Attachment C as adjusted pursuant to the Agreement, then the excess amount shall be borne solely by the Contractor.

A4.1.5 Progress Payments. The Contractor shall be paid its compensation in a series of progress payments and a final payment for Work completed in accordance with the Contract Documents, and for which proper applications for payment have been submitted and approved. In the event the Project schedule has been extended, the monthly portion of the General Conditions Fee will be recalculated so the then remaining unpaid portion of the General Conditions Fee is spread evenly over the then-remaining duration of the Implementation Phase.

A5. DIVERSION OF KEY PERSONNEL AND SUBCONTRACTORS

A5.1 Identification of Key Personnel and Subcontractors. The following individuals and organizations shall be considered Key Personnel (whether employed by the Contractor or one of its subcontractors) and Subcontractors:

- A. Project Executive – Bill Simons
- B. Design Manager – EJ Sandoval
- C. Lead Superintendent – James Gallagher
- D. Project Manager – Jon Fox
- E. Quality Control Manager – Matthew Thomas
- F. Design Principal – Viktors Jaunkalns
- G. Designer’s Project Manager – Robert Perry
- H. Project Architect – Robert Allen/Jameson Terry
- I. Lead Structural Engineer – Steven G. Ahart

- J. Lead MEP Engineer – Scott Haythorn
- K. Landscape Architect – Kurt Parker
- L. Soil/Remediation Designer – Gina Galimberti
- M. Aquatic Design Firm – Water Technology, Inc.
- N. Aquatic Installer Firm – Mainline Commercial Pools, Inc.
- O. Soil/Remediation Contractor – Soil Safe, Inc.

The Contractor will not be permitted to reassign any of the Key Personnel and Subcontractors unless the Project Officer approves the proposed reassignment and the proposed replacement.

If any of the Key Personnel must be absent for an extended period, the Contractor must provide an interim Key Personnel, subject to the County's written approval.

A5.2 Liquidated Damages. If the Contractor removes or reassigns one of the Key Personnel or Subcontractors (excluding, however, instances where such personnel become unavailable due to death, disability, or employee's voluntary separation from the employment of the Contractor or any affiliate or subcontractor of the Contractor), the Contractor shall pay to the County the sum of \$25,000 as liquidated damages, to include instances when the County requests that a Key Personnel or Subcontractor be removed for unsatisfactory performance. In addition, the County shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Contractor in the event that a Key Personnel or Subcontractor has been removed or replaced by the Contractor.

The Contractor must submit any request to remove or replace Key Personnel and/or Subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and their qualifications.

If any of the approved Key Personnel or Subcontractors resign or is terminated, the Contractor will replace those Key Personnel or Subcontractor with an individual with similar qualifications and experience, subject to the County's written approval.

ATTACHMENT C

GUARANTEED MAXIMUM PRICE

1. GUARANTEED MAXIMUM PRICE

Subject to additions and deductions which may be made only in accordance with the Agreement, the Contractor represents, warrants and guarantees to the County that the total maximum cost to be paid by the County for Contractor's complete performance under the Agreement, including, but not limited to, Final Completion of all Work, and all fees, compensation and reimbursements to Contractor, shall not exceed the total amount of fifty four million seven hundred thousand dollars (\$54,700,000.00) ("Guaranteed Maximum Price" or "GMP"). Costs which would cause the Guaranteed Maximum Price (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Contractor without reimbursement by the County.

2. GUARANTEED MAXIMUM PRICE COMPONENTS

The Guaranteed Maximum Price is comprised of the maximum amount payable by the County for:

- A. the Cost of the Work, as defined in the Contract Documents, for full and complete performance of the Work in strict accordance with the Contract Documents, in the amount of _____ dollars (\$_____);
- B. a Design/Build Fee for the Contractor, as defined in the Contract Documents, in the amount of _____ dollars (\$_____); and
- C. the General Conditions Fee, as defined in the Contract Documents, in the amount of _____ dollars (\$_____).

The Contractor may reallocate funds between the Cost of Work and General Conditions Fee categories in order to complete construction of the Project within the GMP.

3. BASIS FOR THE GMP

The GMP is based on the Concept Design documents developed as part of solicitation No. 17-304-RFP, and the Contractor covenants and agrees that, except for such increases to the GMP as expressly authorized in this Contract, it will deliver a fully complete Project that is a logical development of the Concept Design and constructed in strict accordance with the IFC Set for an amount that does not exceed the GMP.

4. ALLOWANCE

The Cost of the Work includes a Lump Sum Allowance of \$20,000.00 for artist coordination ("Allowance Item"). The Allowance Amount represents all Costs of the Work of the Allowance Item, including, without limitation, costs of coordinating the design and installation of all ancillary supporting infrastructure necessary for the installation of the artwork, including, but not limited to, power, water structural foundations and circulation. The Contractor will bill the County for the Allowance Item up to the Lump Sum amount; any additional expenses for artist coordination exceeding the amount of the Allowance Item will be billed by the Contractor and paid by the County in excess of the GMP.

5. CONTRACTOR'S CONTINGENCY

The Guaranteed Maximum Price includes Contractor's Contingency. The Contractor's Contingency is a sum of money unassociated with any specific work to allow the Contractor to accommodate market changes and/or estimating errors in order to complete the Project within the Guaranteed Maximum Price.

Costs due to the errors or omissions of the Contractor or its subcontractors or suppliers at all tiers, negligent or otherwise can be allocated from Contractor's contingency with Project Officer's approval, but shall not be a basis for an increase in the GMP.

Costs dues to breach of Contract by the Contractor or its subcontractors or material suppliers at all tiers, including, without limitation, costs arising from defective or damaged Work or its correction, disposal of materials or equipment erroneously supplied, and repairs to property damaged by the Contractor or its subcontractors or material suppliers at all tiers can be allocated from Contractor's contingency with Project Officer's approval, but shall not be a basis for an increase in the GMP.

ATTACHMENT F

INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See the Insurance Checklist (part of the Bid or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the County and the Contractor.

1. General

- 1.1 The Contractor shall provide insurance as specified in the Insurance Checklist found on the last page of the bid or proposal form.
- 1.2 The Contract with the Contractor will not be executed by the County until the Contractor has obtained, at its own expense, all of the insurance called for hereunder and such insurance has been approved by the County; additionally, the Contractor shall not allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. The Contractor shall submit to the County Purchasing Agent copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the County's request, certified copies of the required insurance policies in compliance with the insurance requirements. All endorsements and documentation shall state this Contract's number and title.
- 1.3 The Contractor shall require all subcontractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation, Employers' Liability insurance, or any other insurance required by the Contract in the same manner and form as specified for the Contractor. The Contractor shall furnish subcontractors' evidence of insurance and copies of endorsements to the County Purchasing Agent immediately upon request by the County and/or prior to the subcontractor's performance of work related to this Contract.
- 1.4 If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the County immediately notified of the replacement. Not having the required insurance throughout the Contract is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the County thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium. A copy of that endorsement shall be provided to the County Purchasing Agent prior to the execution of this Contract or any Contract extension thereafter.

- 1.5 No acceptance and/or approval of any insurance by the County shall be construed as relieving or excusing the Contractor, any surety, or any bond, from any liability or obligation imposed under this Agreement.
- 1.6 Arlington County, and its officers, elected and appointed officials, employees, and agents are to be named as additional insureds under all coverages except Workers' Compensation, Professional Liability, and Automobile Liability, and the endorsement must clearly identify the County as an additional insured permitted to enjoy all the benefits under the applicable policy of insurance. The certified policy, if requested, must so state coverage afforded under this paragraph shall be primary as respects the County, its officers, elected and appointed officials, agents and employees. The following definition of the term "County" applies to all policies issued under the Contract and to all applicable endorsements:
- "The County Board of Arlington County and any affiliated or subsidiary Board, Authority, Committee, Commission, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, Commission, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County; and Arlington County Constitutional Officers."
- 1.7 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.
- 1.8 The insurance coverage required shall remain in force throughout the Contract or as otherwise stated in the Contract Documents or these Insurance Requirements. If the Contractor fails to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract, the County shall have the absolute right to terminate the Contract without any further obligation to the Contractor.
- 1.9 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising or inspecting the work as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor and/or carriers delivering and receiving materials from the Project.
- 1.10 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work, such policy shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.
- 1.11 All policies shall include the following language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy."

- 1.12 All policy forms must "Pay on behalf of" rather than "Indemnify" the insured.
- 1.13 Nothing contained in these Insurance Requirements or the Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 1.14 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its work under the Contract whether identified on the Contract Documents or not.
- 1.15 For any claims related to this work, the Contractor's insurance shall be deemed primary and non-contributory to all other applicable coverage and in particular with respect to Arlington County, its representatives, officials, employees, and agents. Any insurance or self-insurance maintained by Arlington County shall be excess and non-contributory of the Contractor's insurance. The Contractor shall waive its right of subrogation for all insurance claims.
- 1.16 If the Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the Purchasing Agent, may be considered. Written requests for consideration of alternate coverages including the Contractor's most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the County Purchasing Agent at least ten (10) working days prior to the date set for receipt of bids or proposals. If the County denies the request for alternate coverages, the specified coverages will be required to be submitted. If the County permits alternate coverage, an Addendum to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.
- 1.17 All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The insurers must also have a policyholders' with a rating of "A-VII" in the latest edition of the A.M. Best Co.'s Insurance Reports, unless the County grants specific approval for an exception, in the same manner as described in 1.16 above.
- 1.18 The Contractor shall be responsible for payment of any deductibles applicable to the coverages.
- 1.19 The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure additional protection for the County.

2. Contractor's Insurance:

2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Insurance Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
- v. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract;
- vi. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Business Automobile Liability, including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by Virginia law or the U.S. Longshoremen's and Harbor Workers' Compensation Act, or other laws as required by labor union agreements, including standard Other States coverage; Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or employees of the general contractor to which the insured is subcontracted; or employees of the insured's subcontractor.

2.1.4 The Contractor shall maintain Professional Liability Insurance that covers all Work under this Contract, to include the work of the subcontractors, with per claim and aggregate limits of no less than \$5,000,000, with such insurance to stay in place for a period of three years after completion of the Project.

2.1.5 General Environmental Remediation Projects

In addition to the Insurance Requirements specified in the general provision or elsewhere in the Contract Documents, the Contractor shall not commence work under this Contract until all insurance as required hereafter has been obtained, and certified

copies, naming the County as an additional insured, of such insurance have been submitted and accepted by the Purchasing Agent.

- i. An environmental remediation contractor or subcontractor shall be responsible for purchasing and maintaining Business Automobile Liability insurance and Workers' Compensation insurance as described in 2.1.2 and 2.1.3.
- ii. Acceptance by Arlington County of insurance submitted by the Contractor does not relieve or decrease in any manner the liability of the Contractor for performance of environmental remediation Work under the Contract.
- iii. The Contractor is responsible for any losses, claims, and costs of any kind, which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies. The requirements outlined shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of work under the Contract.

2.1.6 Contractors Pollution Liability (CPL) Policy

- i. Minimum liability limits required shall be \$1,000,000 Per Loss and \$2,000,000 Total All Losses, including, but not limited to, property damage, bodily injury, loss of use, and clean up costs.
- ii. Limits must be dedicated to work performed under this Contract only, unless prior approval by the Arlington County Risk Manager has been obtained. The policy of insurance shall contain or be endorsed to include the following:
 - a. Pollution coverage as respects asbestos, lead, VOC and PCB's.
 - b. "Covered Operations" designated by the CPL policy must specifically include all work performed under this contract. (This would include and not be limited to excavation, off-site incineration of soils, demolition, asbestos abatement, drum removal and disposal, in-situ vapor extraction, etc.) and exclusions or limitations affecting work performed under this contract must be deleted. (i.e., lead, asbestos, pollution, testing, underground storage tanks, radioactive matter, etc.)
 - c. Contractor must comply with all applicable DOT and EPA requirements.
 - d. Premises/Operations.
 - e. Broad form property damage.
 - f. Products/Completed Operations coverage for a minimum of five (5) years after Final Payment.

- g. Contractual liability coverage in accordance with ISO policy form CG 00 01 11 85. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
- h. Cross liability/severability of interest.
- i. The scope of work and all related activities under this Contract shall be scheduled as "Covered Operations" under this policy.
- j. Coverage is included on behalf of the insured for covered claims arising out of the actions of independent contractors. If insured is utilizing subcontractors, the CPL policy must use "By or On behalf of" language with regards to coverage.
- k. Loading and unloading exclusions must be amended so as to include coverage for mobile equipment and automobiles.

2.1.7 Environmental Impairment Liability, including coverage of insureds' on-site clean up, with the following minimum limits of liability:

Bodily Injury and Property	2,000,000 each occurrence
Damage Liability	4,000,000 annual aggregate

The County Board of Arlington County, Virginia, is to be named in Additional Name Insured or a Broad Form Contractual Endorsement may be added to the policy as respects any liability that may arise out of or result from the handling of Work on this Project including specifically but without limitation thereto, the indemnity provisions in the Agreement. Such policies will be endorsed to provide that they are primary to an insurance carried by the County Board of Arlington County, Virginia.

2.1.8 Should any of the Work hereunder involve the cleanup, remediation and/or removal of bio-solids, bio-hazards waste, or any hazardous or toxic materials, trash, debris, refuse, or waste, the Contractor shall provide, or shall require its subcontractor performing the work to provide, the following coverage in addition to the above requirements:

- a) Environmental Liability and Cleanup Coverage – with limits of not less than \$2,000,000 per occurrence.
- b) Business Automobile Liability – for transportation or regulated and/or hazardous waste, products, or materials with limits of not less than \$1,000,000, per occurrence. Said coverage shall include County as an additional insured and shall include both the MCS-90 and CA 9948 (or equivalent) endorsements, which shall be specifically referenced on the certificate of insurance.

2.2 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, its employees on the job, and others. The Contractor shall comply with all applicable provisions of federal, state and municipal safety laws, insurance requirement's, standard industry practices, the requirements of the operations and this contract, the Contractor, directly through its subcontractors, shall effect and properly maintain at all times, as required by the conditions and progress of the work, necessary safeguards for safety and protection of the public, including securing areas, posting danger signs, placarding, labeling or posting other forms of warning against hazards.

3. Commercial General or other Liability Insurance - Claims-made Basis:

- 3.1 If Commercial General or other liability insurance purchased by the Contractor has been issued on a claims-made basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described in the Insurance Checklist remain the same. The Contractor must either:
- i. Agree to provide insurance, copies of the endorsement and certified documentation evidencing the above coverages and naming the County as an additional insured for a period of five (5) years after final payment under the Contract. Such documentation shall evidence a retroactive date, no later than the beginning of the Contractors or subcontractors' work under this Contract, or
 - ii. Purchase an extended (minimum five [5] years) reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a copy of the endorsement itself. The extended reporting period will begin upon final payment under the Contract.

4. Builder's Risk Insurance

- 4.1 The Contractor shall purchase and maintain builder's risk insurance with a limit equal to the initial Contract Amount and any amendments to the Contract which affect the project cost on a replacement cost basis. Builder's risk insurance shall be maintained until Final Acceptance under the Contract has been made or until no person or entity other than the County has an insurable interest in the covered property, whichever is earlier. The builder's risk insurance shall include the County as defined in Section 1.6, Contractor, subcontractors and sub-subcontractors as named insureds.
- 4.2 Insurance shall be on an all-risks policy form including the perils of fire, theft, vandalism, malicious mischief, lightning, wind, force majeure, collapse, and earthquake. Coverage is to apply for demolition occasioned by enforcement of any applicable legal requirements, and Architect's fees. Coverage for the peril of flood shall not be required unless otherwise required in the Contract Documents.
- 4.3 Unless otherwise provided in the Contract Documents, the builder's risk insurance shall also cover materials to be incorporated into the project which are stored off the site.
- 4.4 The Contractor shall purchase and maintain Boiler and Machinery insurance, if required by the contract documents or by law, with a limit satisfactory to the County. The Boiler and Machinery insurance shall cover objects during installation and until Final Acceptance by the County. The County shall be included as a named insured.
- 4.5 Any loss under builder's risk insurance shall be payable to the County as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by

appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner. The County, as fiduciary, shall have the right to adjust and settle a loss with insurers.

- 4.6 The insurance company providing the builder's risk coverage shall grant permission for the County to partially occupy or use the premises under construction prior to final acceptance without removing or affecting the coverage.

B.3A Design Build General Conditions

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A. INTRODUCTION TO TERMS

- 1) The term "Agreement" means the completed and signed Form of Contract Agreement.
- 2) The term "Award Date" means the date of execution of the Agreement by the Purchasing Agent.
- 3) The term "Business Day" shall refer to any day that the County is open for general business.
- 4) The term "Calendar Day" means any day of twenty-four hours measured from midnight to the next midnight. Included are weekends and holidays. When the term "Day" is used it shall be assumed to refer to a Calendar Day unless otherwise specified.
- 5) The term "Change Order" means a written order to the Contractor, signed by the Project Officer and the Contractor, which authorizes a change in the Work, and/or adjustment to the Contract Amount and/or an adjustment to the Time for Completion during the Implementation Phase. A Change Order once signed by all the parties is incorporated into and becomes part of the Contract.
- 6) The term "Construction Change Directive" means a written order issued by the County directing a change in the Work prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both.
- 7) The term "Contract Documents" means the Agreement and all the documents and Attachments identified therein which shall include the Drawings and the Specifications, and all modifications including amendments and subsequent Change Orders thereto properly incorporated in the Contract.
- 8) The terms "County" and "Contractor" shall mean the respective parties to the Contract. They shall be treated throughout the Contract Documents as though each were of the singular number and masculine gender. Only one Contractor is recognized as a party to this Contract.
- 9) The term "Critical Path Method or CPM" means a step-by-step project management technique for process planning that defines critical and non-critical tasks with the goal of preventing time-frame problems and process bottlenecks.
- 10) The term "Delay" means an event or condition that results in a work activity starting or being completed later than originally planned.
- 11) The term "Differing Site Condition" means (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown

physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.

- 12) The term "Drawings" means the Issued for Construction set of drawings prepared by the Contractor and approved by the County in accordance with the terms of Attachment A. In general, the Drawings show and describe the locations, character, dimensions, and details of the Work to be performed under the contract.
- 13) The term "Final Acceptance" shall mean the date on which the County issues the final payment for the Work.
- 14) The term "Final Completion" shall mean the condition when the County agrees that all the Work has been fully completed in accordance with the Contract Documents and is acceptable. The date of the Final Completion of the Work under the Contract is the date on which Final Completion is accomplished, including but not limited to the satisfactory completion of all items on the Punchlist.
- 15) The term "Notice to Proceed" as used in this section shall mean the Construction NTP as defined in the Scope of Work of the Agreement.
- 16) The term "Project" means the entire proposed construction to be executed as stipulated in the Contract Documents
- 17) The term "Project Officer" means the County Project Officer assigned by the Director of the County Department of Parks and Recreation, or the Project Officer's designee. When a designee to act on behalf of the Project Officer is used by the County, the name of the designee and the duties and authority of such designee will be identified in a written notice to the Contractor from the Project Officer responsible for the Project. The designee may be a professional architect or engineer or other person employed by the County to perform construction services administration, or project oversight.
- 18) The term "Punchlist" means unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect use of the Project, and which are capable of being completed within the time specified for Final Completion after Substantial Completion has been achieved.
- 19) The term "Request for Interpretations" (RFI) means a request originated by either the Design/Builder or one of its trade subcontractors requesting clarification or additional information either 1) from the Architect where the Contractor believes

there is insufficient information or a conflict in the documents, or 2) from the County in regards to the design intent.

- 20) The term "Schedule of Values" means a listing of the Contractor's total contract value by Construction Specifications Institute (CSI) divisions.
- 21) The term "Site" refers to that portion of the property on which the Work is to be performed or which has otherwise been set aside for use by the Contractor.
- 22) The terms "Special Conditions" mean the written statements modifying or supplementing the Technical Specifications or General Conditions for requirements or conditions peculiar to the Contract.
- 23) The term "Specifications" means that part of the Contract Documents prepared by the Contractor acceptable to the County which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the County to determine code compliance and for the Contractor to perform the Work.
- 24) The term "Subcontractor", shall include only those having a direct contract with the Contractor, and it shall include those who furnish material worked to a special design according to the plans and specifications for this Work but shall not include those who merely furnish material not so worked.
- 25) The term "Substantial Completion" shall mean the condition when the County agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that that a Certificate of Occupancy may be issued and the Project can be utilized by the County for the intended purposes. The date of Substantial Completion of the Work under the Contract is the milestone date on which Substantial Completion condition is accomplished.
- 26) The term "Technical Specifications" means that part of the Contract Documents that describe the quality of materials, method of installation, standard of workmanship, and the administrative and procedural requirements for the performance of the Work under the contract.
- 27) The term "Time for Completion" shall mean the time period set forth in the Agreement.
- 28) The term "Work" shall mean the services performed under this Contract including, but not limited to, design, cost estimating, value engineering, scheduling, trade subcontractor bidding, preparing submittals and shop drawing, furnishing labor, and

furnishing and installing materials and equipment required to complete the Project specified in the Contract Documents.

B. DRAWINGS, SPECIFICATIONS, RELATED DATA AND RECORDS KEEPING

1. INTENT OF THE DRAWINGS AND SPECIFICATIONS DURING IMPLEMENTATION PHASE

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all professional services, materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract with all parts in working order, and all connections properly made.
- b. The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications prepared by the Contractor. The level of detail on the plans and stipulated in the Specifications shall be sufficient to clearly demonstrate that the design conforms to the requirements of the Contract Documents. Any additional drawings and or other instructions deemed necessary by the Project Officer will be furnished to the Contractor when required for the Work and shall be incorporated into the Contract Documents.

2. DIFFERING SITE CONDITIONS

The Contractor shall, within twenty-four hours after becoming aware of Differing Site Conditions, and before such Differing Site Condition is disturbed, give a written notice to the Project Officer.

The Project Officer will investigate the site conditions within twenty-four (24) hours after receiving the notice. If the Project Officer determines that the condition does constitute a Differing Site Condition, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.

No request by the Contractor for an adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any work that may be affected by such Differing Site Conditions before giving notice to the Project Officer as set forth herein, such work shall be at the Contractor's sole risk and expense.

No request by the Contractor for an adjustment to the contract for Differing Site Conditions shall be allowed if made after Final Payment under the Contract.

3. DOCUMENTS ON THE JOBSITE

The Contractor shall keep on the site of the Project a copy of the Drawings and Specifications updated to include all authorized revisions and RFI responses, and shall at all times give the County and its authorized representatives access thereto. The Contractor shall mark up the Drawings on a daily basis in red. The drawings shall be submitted to the County at Substantial Completion as the Record marked up set.

4. OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All Drawings and Specifications and copies thereof are the property of the County and shall not be used on other projects.

5. SUBMITTALS (refer to Design Criteria Section 13300 for further information)

a. The term "submittals", as used herein, shall include fabrications, erection and setting drawings, manufacturers' standard drawings, schedules, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, and other descriptive data pertaining to the materials and equipment as required to demonstrate compliance with the Contract requirements.

b. The Contractor shall be responsible for managing the submittal and RFI process between the subcontractors and the Contractor. The Contractor bears the risk of delays associated with the submittal process.

c. Submittals shall be submitted in E-builder, with the exception of samples. Each submission shall be accompanied by a letter of transmittal, listing the contents of the submission and identifying each item by reference to specification section or drawing. All submittals shall be clearly labeled with the name of the project and such information as may be necessary to enable their complete review by the Project Officer. Catalog plates and other similar material that cannot be so labeled conveniently shall be bound in suitable covers bearing the identifying data.

d. Submittals shall be accompanied by all required certifications and other such supporting material, and shall be submitted in sequence or groups that all related items can be checked together.

6. SAMPLES

The Contractor shall submit to the Project Officer, all samples required by the specifications or requested by the Project Officer. The Contractor shall submit 3 samples, which may be retained by the Project Officer after review and acceptance. Each sample shall bear a label indicating what the material represented, the name of the producer and the title of the Project. Acceptance of a sample shall be only for

conformance with the design concept of the Project and compliance with the information given in the Contract Documents, and only for the characteristics or use named in such acceptance. Such acceptance shall not be construed to change or modify any Contract requirements or the Contract Price. Materials and equipment incorporated in the Work shall match the accepted samples. The Contractor shall be responsible for researching the availability of the specified product in the dimensions and colors specified at no additional cost to the County. Failure of the Contractor to identify specified products that are not commercially produced within the sixty (60) day submittal time period shall not be grounds for additional time or compensation.

7. TESTS

Any specified laboratory tests of materials and finished articles shall be made by bureaus, laboratories or agencies approved by the Project Officer and the certified reports of such tests shall be submitted to the Project Officer. All costs in connection with the testing and test failures shall be borne by the Contractor. Failure of any material to pass the specified tests or any test performed by the Project Officer, will be sufficient cause for refusal to consider, under this Contract, any further materials of the same brand or make of that material. Samples of various materials delivered on the site or in place may be taken by the Project Officer for testing. Samples failing to meet the Contract requirements will automatically void previous acceptance of the items tested. The Contractor will not be compensated for additional time and/or cost incurred in finding an acceptable replacement or the removal and replacement of the defective item.

8. MATERIALS AND EQUIPMENT LIST

- a. Within thirty (30) days of the Notice to Proceed the Contractor shall submit to the Project Officer a complete list of materials and equipment proposed for use in connection with the project. Partial lists submitted from time to time will not be considered unless specifically approved by the Project Officer.
- b. After any material or piece of equipment has been approved through submittal process, no change in brand or make will be permitted unless satisfactory written evidence is presented to prove that the manufacturer cannot make scheduled delivery of the accepted material, or that material delivered has been rejected and the substitution of a suitable material is an urgent necessity, or that other conditions have become apparent which indicate that acceptance of such other material is in the best interest of the County. The Contractor is solely responsible for the cost and time required to obtain and install a suitable replacement.

9. STANDARDS, SUBSTITUTIONS

- a. Any material specified by reference to the number, symbol or title of a specific standard, such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision of the standards or specification and any amendment or supplement, except as limited to type, class or grade, or as modified in such reference. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.
- b. Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.
- c. Reference in the Specifications or on the Drawings to any article, device, product, material, fixture, form or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as eliminating from competition other products of equal or better quality by other approved manufacturers. Applications for acceptance of substitutions for the specified items will be considered only upon request of the Contractor, not of individuals, trades or suppliers, and only for a specific purpose; no blanket acceptance will be granted. No acceptance of a substitution shall be valid unless it is in written form and signed by the Project Officer.
- d. If any proposed substitution will affect a correlated function, adjacent construction or the work of other contractors, then the necessary changes and modifications to the affected work shall be considered as an essential part of the proposed substitution, to be accomplished by the Contractor without additional expense to the County or an extension of the contract time, if and when accepted. Detail drawings and other information necessary to show and explain the proposed modifications shall be submitted with the request for acceptance of the substitution.

10. SURVEYS AND CONTROLS

Unless otherwise specified, the Contractor shall establish all baselines for the location of the principal component parts of the Work, establish a suitable number of benchmarks adjacent to the Work, and develop all detail surveys necessary for construction. The Contractor shall carefully preserve benchmarks, reference points and stakes, and in the case of destruction thereof by the Contractor or due to the Contractor's negligence or the negligence of any subcontractor or supplier at any tier, the Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the loss or

disturbance of such benchmarks, reference points and stakes. The Contractor shall perform a full site survey to verify all control points shown on the drawings against existing conditions within the site limits. Such survey shall be scheduled and performed so as not to delay the commencement of the Work. Any discrepancies found during this effort shall be made known immediately to the Project Officer. Failure to perform this survey and provide proof and acceptance of Project datum, control points, and existing benchmarks will not give rise to any extensions to contract time or amount.

11. RECORD DRAWINGS

Record drawings shall be the responsibility of the Contractor. The Contractor shall maintain and mark up one set of prints of the IFC Set to portray record construction. The prints shall be neatly and clearly marked in red to show all variations between the Work actually provided and that indicated on the IFC Set, and all utilities encountered in the Work. All drafting shall conform to good drafting practice and shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the record construction. These drawings shall be marked promptly upon any approved change to the Work or discovery of any undocumented utility or obstruction and shall be submitted to the Project Officer in sufficient time to be approved no later than thirty (30) calendar days after the Substantial Completion Date. The final record drawings approved by the Project Officer shall be submitted in paper copy and .pdf format electronic files prior to Final Completion.

C. COUNTY, COUNTY PROJECT OFFICER, AND CONTRACTOR RELATIONS

1. STATUS OF COUNTY PROJECT OFFICER

The Project Officer shall be the County's representative. The Project Officer shall have authority to suspend the Work whenever such suspension may be necessary in the reasonable opinion of the Project Officer to ensure the proper execution of the Contract. The Project Officer shall also have authority to reject all work and materials that do not conform to the Contract and to decide questions that arise in the execution of the Work. The County Project Officer will, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

2. LIMITATION ON COUNTY'S RESPONSIBILITIES

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

3. DISPUTES

- a. All disputes or claims arising under this Contract or its interpretation, whether involving law or fact or both, or extra work, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer as set forth in these General Conditions. Such claims must set forth in detail the amount of the claim, and shall state the facts surrounding it in sufficient detail to identify it together with its character and scope.
- b. Claims denied by the Project Officer shall be processed in accordance with the procedures outlined in Sections 7-107, Contractual Disputes and 7-108, Legal Actions of the Arlington County Purchasing Resolution and the Dispute Resolution paragraph in the Agreement.
- c. The Contractor shall not cause a delay in the work pending a decision of the Project Officer, County Manager, County Board, or court, except by prior written approval of the Project Officer.

4. INSPECTION OF WORK

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

5. INSPECTION OF MATERIALS

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

6. EXAMINATION OF COMPLETED WORK

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

7. RIGHT TO SUSPEND WORK

The County shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the County may deem necessary or desirable. Any such suspension shall be in writing to the Contractor and the Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the County. No such suspension of the Work shall be the basis for a claim by the Contractor for any increase in the Contract Amount provided that the suspension is for a reasonable time under the circumstances then existing. If the suspension of Work is caused by the County's belief that non-conforming work is being installed, and subsequent investigation proves that the Work was non-conforming, the Contractor shall not be awarded additional time or costs. If the suspension is due to reasons other than Contractor's nonconforming work, the Contractor may request an adjustment to schedule or the GMP.

8. RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 10-day period after receipt of written notice from the County or such shorter time as may be reasonable under the circumstances, to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including the County's expenses, and any additional architect or engineering costs necessary by Contractor's default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County upon demand.

9. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the Work any person not reasonably proficient in the Work assigned. Persons permitted to perform Work under Contractor, or any subcontractor, or sub-subcontractor at any tier, shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by the County. Any person not complying with all such requirements shall be immediately removed from the Site.

10. DRUG-FREE POLICY

The Contractor is responsible for ensuring that the Site remains a drug-free site. Contractor will require that employees undergo random drug/alcohol screening on a quarterly interval. Any employee who fails the test must be removed from the Site immediately. Random screening shall be performed by a third party licensed to do so in the Commonwealth of Virginia. The Contractor must provide proof that the

quarterly drug testing is performed to the Project Officer on a quarterly basis. The Contractor shall provide its random testing schedule to the Project Officer within 30 days of NTP. The Contractor will include this provision in every subcontract relating to this Contract and require that all subcontractors include this provision in their subcontracts such that subcontractors at all tiers are contractually obligated to comply. Any infraction by an employee of the Drug-Free policy shall be reported to the Project Officer within 24 hours.

11. LANDS BY COUNTY

The County shall provide access to the lands upon which the Work under the Contract is to be performed and to be used for rights of way and for access. In case all the lands, rights-of-way or easements have not been obtained as herein contemplated before construction begins, then the Contractor shall begin its work on such lands and rights-of-way that the County has acquired access to. No additional time or compensation shall be awarded to the Contractor for modifying work location provided other locations are available for work.

12. LANDS BY CONTRACTOR

If the Contractor requires additional land or lands for temporary construction facilities and for storage of materials and equipment other than the areas available on the site or right-of-way, or as otherwise furnished by the County, then the Contractor shall provide such other lands and access thereto entirely at the Contractor's own expense and without liability to the County. The Contractor shall not enter upon private property for any purpose without prior written permission of all of the persons and entities who own the property. The Contractor shall provide copies of all agreements to the County and shall include language in the agreement indemnifying and holding the County harmless for any damages, repairs, restoration or fees associated with the use of the property. Upon termination of the agreement, the Contractor shall provide to the County a fully executed release from the property owner. The Contractor shall be responsible for obtaining permission from adjoining land owners (such as crane swing easements) should such access rights be required in order to prosecute the Work.

13. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall continuously maintain protection of all its work from damage and shall protect the County's property from damage or loss arising in connection with this Contract. The Contractor shall make good any such damage or loss, except such as may be caused by agents or employees of the County.
- b. The Contractor shall not place upon the Work, or any part thereof, any loads which are not consistent with the design strength of that portion of the Work.

- c. The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution to prevent damage to pipes, conduits and other underground structures, curbs, pavements, etc., except those to be removed or abandoned in place and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. Any damage which occurs by reason of the operations under this Contract, whether shown or not on the approved construction plans, shall be completely repaired by the Contractor at the Contractor's expense.
- d. The Contractor shall shore, brace, underpin, secure, and protect, as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site that may be affected in any way by excavations or other operations connected with the work required under this Contract. The Contractor shall be responsible for giving any and all required notices to owners or occupants of any adjoining or adjacent property or other relevant parties before commencement of any work. The Contractor shall provide engineering services (signed and sealed), supportive excavation and other matters as are customarily the responsibility of a contractor. The Contractor shall indemnify and hold the County harmless from any damages on account of settlements or loss of all damages for which the County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- e. In an emergency affecting the safety of life or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Project Officer, or the County, shall act so as to prevent and/or minimize such threatened loss or injury, and the Contractor shall so act without appeal, if so instructed or authorized.

14. SEPARATE CONTRACTS

- a. The County reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable access to the Project including storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the work of other such contractors.
- b. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Officer any defects in such work that renders it unsuitable for such proper execution and results. The Contractor's failure to

so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in other contractor's work after its execution.

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

15. SUBCONTRACTS

- a. The Contractor shall make no substitutions for any subcontractor previously selected/approved unless first submitted to the County for approval.
- b. The Contractor shall be as fully responsible to the County for the acts and omissions of the Contractor's subcontractors as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- c. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions of the Contract and other Contract Documents comprising the Contract insofar as such documents are applicable to the work of subcontractors.
- d. Nothing contained in the Contract shall be construed to create any contractual relation between any subcontractor and the County, nor shall it establish any obligation on the part of the County to pay to, or see to the payment of any sums to any subcontractor. The County will not discuss, negotiate or otherwise engage in any contractual disputes with any subcontractor.
- e. If requested by the County, the Contractor shall replace any subcontractor at no cost to the County within 30 days of the Project Officer's written notice or as otherwise specified. No additional time or compensation will be provided in the event a subcontractor is removed due to non-compliance with the requirements outlined within the Contract.

D. MATERIALS AND WORKMANSHIP

1. MATERIALS FURNISHED BY THE CONTRACTOR

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

2. IBC AND VUSBC REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all current International Building Code (IBC) requirements and the requirements of the Virginia Uniform Statewide Building Code (VUSBC); and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or national code requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor under this Contract.

3. ADA COMPLIANCE

- a. The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- The Contractor must design the project to meet all ADA requirements.
- The Contractor must monitor construction Work and inform the County immediately of any Work that does not conform with the ADA.

Neither the Arlington County Inspection Services Division, nor any County staff and/or third-party inspection service, is responsible for verifying that the Project's design complies with the ADA.

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

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to

permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

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

4. MANUFACTURER'S DIRECTIONS

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

5. WARRANTY

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

All Work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials. The Contractor warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects or inferior or faulty workmanship, or work not in accordance with the Contract Documents for one (1) year from the date of Substantial Completion or as set forth in the Specifications of the work by the County in addition to and irrespective of any manufacturer's or supplier's warranty, except the warranty term of the following elements of the Work are as stated herein.

- a. Roof and all elements of waterproof membrane: The warranty period shall be a minimum of twenty (20) years at a wind speed of 74 mph, including labor and materials.
- b. Glazing, including all elements of windows, curtain walls and other fenestration shown in the Contract Documents, including the joining between the glazing assemblies and the building shell: The warranty period shall be a minimum of three (3) years, including labor and materials.

No date other than Substantial Completion shall govern the effective date of the Warranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

The Contractor shall promptly correct any defective work or materials after receipt of a written notice from the County to do so. If the Contractor fails to proceed promptly

or use its best efforts and due diligence to complete such compliance as quickly as possible, the County may have the materials or work corrected and the Contractor and its Sureties shall be liable for all expenses and costs incurred by the County.

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

6. INSPECTION, ACCEPTANCE AND TITLE OF MATERIALS

Inspection and acceptance by the County will be at the work site in Arlington County, Virginia and within ten (10) calendar days of delivery unless otherwise provided for in the Contract Documents. The County will not inspect, accept, or pay for any materials stored or delivered off-site by the Contractor. Title of materials and work covered by partial payments shall pass to the County; however, risk of loss or damage to all items and the sole responsibility, care, and custody shall be the responsibility of the Contractor until Final Acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance. The Contractor shall be responsible for maintaining all materials and supplies in the condition in which they were accepted until they are used in the work.

The Contractor is to coordinate its work and request inspections in such a manner as to minimize the cost to the County without impacting the overall schedule of the Project within reason. All costs associated with re-inspection shall be borne by the Contractor.

7. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or any subcontractor at any tier subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors, regardless of tier, to warrant that they have good title to, all materials and supplies for which the Contractor invoices for payment. The County may request proof of title or payment prior to acceptance of the Contractors invoice.

8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS

All material and work covered by partial payments made by the County will become the property solely of the County at the time the partial payment is made. However, risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the County. This provision will not be construed as relieving the Contractor from having sole responsibility for all materials and work upon which payments have been made and for the restoration of any damaged work or

replacement or repair at the County's option of any damaged materials. This provision will not be construed as a waiver of the County's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the Warranty provisions of the Agreement, nor shall payment indicate acceptance of the materials or work.

9. MAINTENANCE OF NEWLY CONSTRUCTED WORK

Prior to Substantial Completion, the Contractor is solely responsible for protecting and maintaining all the Work and materials installed on the Work. Failure to adequately protect the Work and materials shall not be grounds for additional compensation for any maintenance and/or repairs to such Work or materials.

10. CUTTING, PATCHING, AND DIGGING

The Contractor shall do all cutting, patching, or digging of the Contractor's work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed project and shall make good after them as the Project Officer may direct. This work will be performed in a workmanlike manner utilizing proper care and equipment to achieve proper line and grade. The Contractor shall not endanger any work by cutting, patching, or digging, or otherwise, and shall not cut or alter the work of any other contract except with the prior written consent of the Project Officer. The Contractor shall ensure that seamless physical appearance of the newly constructed and existing areas is maintained.

11. REJECTED WORK AND MATERIALS

- a. Any of the Work or materials, goods, or equipment which do not conform to the requirements of the Contract Documents, or are not equal to samples accepted by the Project Officer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and replaced immediately so as not to cause delay to the project or work by others. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed and the work shall be re-executed by the Contractor. The fact that the Project Officer may have previously overlooked such defective work shall not constitute acceptance of any part of it.
- b. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship when notified to do so by the Project Officer, the County may, by contract or otherwise, replace such material or correct such workmanship and charge the cost to the Contractor. This clause applies during the Contract and during any warranty or guarantee period.

- c. The Contractor shall be responsible for managing, addressing within a timely manner, and formally closing out all non-compliances issued by the inspector of record, Arlington County Inspection Services, or the Design Team. The Contractor shall be solely liable for any costs or time associated with the corrective action to address any non-compliances. The Contractor must work directly with the entity issuing the non-compliance.
- d. If the Project Officer deems it expedient not to require correction of work which has been damaged or not done in accordance with the Contract, an appropriate adjustment to the Contract Price may be made.

12. OSHA REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration (OSHA) requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or federal occupational safety and health requirements, all costs necessary to bring the material or work into compliance with the requirements shall be borne by the Contractor.

13. HAZARDOUS MATERIALS

Arlington County is subject to the Hazard Communication Standard, 29 CFR §1910.1200 (Standard). The Contractor agrees that it will provide or cause to be provided Safety Data Sheets (SDS) required under the Standard for all hazardous materials supplied to the County or used in the performance of the work. Such SDS shall be delivered to the County no later than the time of actual delivery of any hazardous materials to the County or use of such material in the performance of work under the Contract by the Contractor or its subcontractors at all tiers, whichever occurs first. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The County reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when SDS have not been received prior to or at the time of receipt of the shipment for use by the County or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of SDS are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials. The Contractor shall maintain onsite an up to date SDS binder for all material used and delivered to the Project. The County Project Officer shall be allowed access to the SDS book at all times.

Contractor agrees that it shall dispose of all Hazardous Materials in strict compliance with local, County, state, and federal statutes, laws, ordinances, codes, rules, regulations, orders, or decrees, and shall provide evidence of such disposal

satisfactory to County on a weekly basis to the County's designated representative. In the event of Contractor's failure to comply, Contractor shall, at its sole cost and expense, promptly commence and diligently pursue any required investigation, assessment, cleanup, remediation, restoration, and monitoring of any waters and lands affected by Contractor's failure to comply, and to restore the damaged water and/or land to the condition existing immediately prior to the occurrence which caused the damage. Upon discovery of a failure or violation related to its disposal operations, Contractor shall immediately report such failure or violation to all applicable governmental agencies having jurisdiction, and to the County. The provisions of this paragraph shall survive the termination or expiration of this Contract.

14. HAZARDOUS WASTE

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

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

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

15. ASBESTOS

Whenever and wherever during the course of performing any work under this Contract the Contractor discovers the presence of asbestos or suspects that asbestos is present, the Contractor shall stop work immediately, secure the area, notify the

County Project Officer immediately and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. Work shall not proceed without an Asbestos-Related Work Authorization executed by the County Asbestos Program Manager.

16. PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos and replacement with County-approved alternate. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors, including any tier subcontractor, in connection with the work under this contract. The Contractor shall also reimburse to the County all costs of such goods, equipment, supplies or materials installed if not corrected by the Contractor.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the County, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the County.

The locations of existing utilities, including underground utilities, which may affect the Work, are indicated on the drawings or in the specifications insofar as their existence and location were known at the time of preparation of the drawings. However, nothing in these drawings or specifications shall be construed as a guarantee that such utilities are in the location indicated or that they actually exist, or that other utilities are not within the area of the operations. The Contractor shall make all necessary investigations to determine the existence and locations of such utilities. The Contractor will be held responsible for any damage to and maintenance and protection of existing utilities and structures, of both public and private ownership. However, if it is determined that such existing utility lines or structures require relocation or reconstruction or any other work beyond normal protection, then such additional work will be ordered under the terms of the clause entitled "Changes in Work".

The County assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the County. The County

assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

17. POLLUTION PREVENTION/UNAUTHORIZED DISCHARGES

Unauthorized discharges and pollution releases are prohibited from entering the County's Municipal Separate Storm Sewer System (MS4), which includes the curb and gutter as well as the underground pipe network. An unauthorized discharge is any discharge to the storm drain system or surface waters that is not composed entirely of uncontaminated stormwater or authorized under Arlington County's MS4 permit, or a separate Virginia Pollutant Discharge Elimination System permit. Unauthorized discharges include sediment, slurry runoff from saw cutoff, discharges associated with vehicle, equipment, and/or material washing, concrete water wash, process water, waste water, leaks from portable lavatories, equipment, vehicles and/or waste receptacles.

The Contractor must implement pollution prevention measures and controls to prevent unauthorized discharges to the County's storm drain system or surface waters. The Contractor shall ensure the pollution prevention practices outlined in the most recent Arlington County Construction Standards and Specifications Manual are implemented throughout the duration of the Project.

E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY

1. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and locations of the work of the Contract, and that it has investigated and satisfied itself as to the general and local conditions and factors which can affect the Work or its cost, including, but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads;
- c. uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. the information and conditions of the ground; and
- e. the character of equipment and facilities needed before and during work performance.

The Contractor, by executing the Contract, represents that it has reviewed and understands the Contract Documents and has notified the County of and obtained

clarification of any discrepancies which have become apparent during the bidding period.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the County. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the County.

The Contractor shall make all necessary investigations to determine the existence and locations of underground utilities. The Contractor will be held responsible for any damage to and maintenance of protection of existing utilities and structures, of both public and private ownership.

The County assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the County. The County assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

2. PUBLIC CONVENIENCE

The Contractor shall at all times so conduct its Work as to ensure the least possible obstruction to traffic (vehicular, bicycle and pedestrian) and inconvenience to the general public, County employees, and the residents in the vicinity of the Work. Traffic shall be maintained in accordance with the approved MOT plan. No road, street or sidewalk shall be closed to the public except with the permission of the Project Officer and proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks and the proper functioning of all gutters, drainage inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the Project Officer.

3. SAFETY AND ACCIDENT PREVENTION

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

Environmental Protection Agency Standards and the applicable standards of the Virginia Department of Environmental Quality.

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

The Contractor shall identify to the County Project Officer at least one on-site person who is the Contractor's competent, qualified, and authorized safety officer on the worksite and who is, by training or experience, familiar with and trained in policies, regulations and standards applicable to the work being performed. The competent, qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the work site.

Prior to the start of construction activities, the Contractor shall prepare a safety plan for the construction phase conforming to all applicable OSHA regulations (such plan, the "Safety Plan") and in accordance with the General Conditions. The Safety Plan shall be submitted to the Project Officer, and the Contractor shall incorporate such comments as the County may reasonably request. Once such plan has been approved, the Contractor shall comply with it at all times during construction.

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

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

4. CROSSING UTILITIES

When construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, County, City, or other public agency, public utility, or private entity, the Contractor shall secure written permission where necessary from the

proper authority before executing such new construction. A copy of such written permission must be filed with the County before any work is started. The Contractor shall be required to furnish a release from the proper authority before Final Acceptance of the Work.

5. OVERHEAD HIGH VOLTAGE LINES SAFETY ACT

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

6. SANITARY PROVISIONS

The Contractor shall provide and maintain such sanitary accommodations for the use of the Contractor's employees and those of its subcontractors at all tiers as may be necessary to comply with the requirements and regulations of OSHA and of the local and State departments of health.

7. WORK SITE DAMAGES

Any damage to finished surfaces resulting from work performed under this Contract shall be repaired to the County's satisfaction at the Contractor's expense unless caused in whole or in part by the County.

8. CLEANING UP

The Contractor shall remove and legally dispose of, as frequently as necessary, all refuse, rubbish, scrap materials and debris from the site to the extent they are the result of the Contractor's operations to the end that the site of the work shall present a neat, orderly, and workmanlike appearance at all times. The Contractor shall isolate the trash cans and recycling bins installed during construction related to the Project from public use until Final Acceptance. However, failure to adequately restrict public access shall not relieve the Contractor from maintenance of the cans and bins. At

completion of the Work, but before Final Acceptance, the Contractor shall remove and legally dispose of all surplus material, falsework, temporary structures including foundations thereof, and debris of every nature resulting from the Contractor's operations or resulting from any activity on the site related to the Contractor's operations and put the site in a neat, orderly condition; if the Contractor fails to do so, the County shall have the right to remove and legally dispose of the surplus material, falsework, temporary structures including foundations thereof, and debris, put the site in a neat, orderly condition, and charge the cost to the Contractor.

F. PROGRESS AND COMPLETION OF THE WORK

1. TIME FOR COMPLETION

It is hereby understood and mutually agreed by and between the Contractor and the County that the date of issuance of Notice to Proceed, the rate of progress, and the Time for Completion of the Work to be done hereunder are essential conditions of the Contract. The Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion of the project within the Time for Completion specified in the Contract Documents. The Contractor shall perform the Implementation Phase services in accordance with the timelines set forth in the Scope of Work and the Baseline Milestone Schedule approved by the Project Officer. The Contractor agrees that the Implementation Phase work shall be started promptly upon issuance of the Notice to Proceed by the County and shall be completed in accordance with the schedule set forth in the Contract Documents.

2. CONDITIONS FOR COMPLETION (refer to Design Criteria Sections 17700 and 17800 for further information)

- a. **SUBSTANTIAL COMPLETION:** The Work will be considered Substantially Complete when all of the following conditions have been met and accepted by the Project Officer:
1. The Project Officer has agreed that the condition of the Work warrants Substantial Completion;
 2. The Contractor has provided a Punchlist and that list has been reviewed and approved by the Project Officer. Failure to include an item on the Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents;
 3. Final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;

4. Fire Marshal's report, if applicable;
 5. Approval forms and transfer documents for all utilities;
 6. All life safety systems, including fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems are complete and working in an automatic mode, and the County has been adequately trained in the operation of the systems;
 7. The HVAC system Testing and Balancing Report and building air quality test results as required for LEED certification have been accepted by the Project Officer;
 8. Operation and Maintenance Manuals have been submitted for review;
 9. All documents and verification of training required in accordance with any Commissioning Plan;
 10. Mark-ups of construction drawings showing the record condition have been submitted for review and approval by the Project Officer;
 12. Entrances and egress pathways have been constructed and can remain clear of construction activities;
 13. A Certificate of Occupancy has been issued for the space by the County's Inspection Services Division;
 14. All Commissioning has performed and completed to the satisfaction of the Project Officer; and
 15. Schedule to complete the Punchlist and value of Work not yet complete.
- b. FINAL COMPLETION: The Work will be considered Finally Complete when all of the following conditions have been met and accepted by the Project Officer:
1. The Project Officer has agreed that the condition of the Work warrants Final Completion;
 2. All construction deficiencies and Punchlist items have been closed and all construction deficiencies corrected and accepted by the Project Officer;

3. All spare parts and attic stock have been delivered, stored in an orderly manner in a space designated by the Project Officer and a complete inventory list has been verified and accepted by the Project Officer;
4. All warranty certificates and contact information for parties providing warranties have been delivered and accepted by the Project Officer;
5. All final Operating and Maintenance manuals have been delivered and approved and accepted by the Project Officer;
6. All final Record Drawings in .pdf format on a CD or a flash drive delivered and accepted by the Project Officer;
7. All commissioning has been completed and any open construction items in the commissioning agent's report have be closed and accepted by the Project Officer; and
8. All LEED documents and submittals to be provided by the Contractor or sub-contractors have been submitted and accepted by the Project Officer.

3. CONSTRUCTION SCHEDULE AND CASH FLOW

a. CONSTRUCTION SCHEDULE

The Contractor shall submit as part of the Design Confirmation Phase a cost loaded schedule which shall show the sequence of events and activities in which the Contractor proposes to carry on the Work, with dates for starting and completing the various events and activities of the Work ("Construction Schedule or Baseline Milestone Schedule"). The Construction Schedule shall be logic based and show the Critical Path. Review and acceptance by the County of the Contractor's Construction Schedule and the critical path schedule of completion of work shall in no way relieve the Contractor of its responsibility to complete the Work within the contract time limit. The Contractor shall submit an updated progress schedule monthly with each monthly request for partial payment.

The schedule shall include, in addition to the elements set forth in this Section of the Contract, the following elements:

1. A listing of all long lead time items and a schedule for the Contractor acquisition and delivery of such long lead items;

2. A schedule for the processing of shop drawings and submittals, providing for appropriate periods of review, which periods shall not be more than 21 calendar days, or longer where appropriate or required by the Project Specifications;
3. Itemization of work provided by the County, or others, for the Contractor's incorporation into the Work; and
4. Preparation of a Punchlist, and completion of the Punchlist, delivery of record drawings, Operation and Maintenance Manuals, commissioning, and completion of all closeout requirements.

The Construction Schedule shall be in calendar days and shall include weekends and all federal and local holidays. The Construction Schedule shall be used by the Project Officer to monitor the progress of the Project. The Contractor shall update the schedule monthly for review and acceptance by the Project Officer, and without extending the construction period beyond the Time for Completion. The Contractor shall give specific notice of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. The review and acceptance by the Project Officer shall in no way relieve the Contractor of its responsibility to complete the Work within the Time for Completion. Time is of the essence. As necessary, adjustments to the sequence of work must be made due to availability of permits, easements, and other administrative items. These adjustments to the sequence of work shall not entitle the Contractor to additional compensation or time.

The schedule shall include anticipated time lost to adverse weather. The number of lost days anticipated shall be clearly shown on the Construction Schedule. The Contractor will use the number of weather days derived in accordance with the Time Extension for Weather paragraph of these General Conditions. The schedule updates shall include changes in events and activities that will show how the Contractor intends to recover from delays.

The Contractor shall provide the Project Officer with the electronic files for initial schedule, final schedule and all monthly schedule updates, in a format acceptable to the Project Officer. The electronic file shall include a PDF copy of the schedule and an accessible/working electronic file.

The preparation of the Construction Schedule in Primavera P6 utilizing the critical path method or other program accepted by the Project Officer shall be a subsidiary obligation of the Contractor and no additional payment shall be made to the Contractor for providing the schedule and monthly updates.

b. CASH FLOW FORECAST

Concurrent with the Construction Schedule, the Contractor shall provide a forecast of cash flow or expected progress payments, including the retention amount, to be paid within the 30-day period following each month's requested progress payment. The report shall be prepared in an Excel spreadsheet format and indicate both the current and cumulative payment amounts through the scheduled Final Payment date.

d. PROGRESS DELAY

When the Work is 30 calendar days or more behind the schedule, the County may require the Contractor to prepare and submit, at no extra cost to the County, a recovery schedule indicating by what means the Contractor intends to regain compliance with the schedule. The recovery schedule must be submitted to the County for review within seven (7) days of the County's notice of unsatisfactory progress. The schedule shall be reviewed and approved by the Project Officer. If the County and the Contractor are unable to agree on the terms of the recovery schedule and the plan upon which it is based, within ten (10) days after the issuance of the Contractor's submission of the recovery schedule, the Project Officer shall have the right to direct such acceleration as the Project Officer, in his/her reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the GMP or the Period of Performance.

4. USE OF COMPLETED PORTIONS

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

G. PAYMENT, CHANGES, CLAIMS, DELAYS

1. PAYMENTS TO CONTRACTOR

The County will make monthly partial payments, less retainage, to the Contractor on the basis of the Contractor's written estimate of the work performed during the preceding calendar month as reviewed and accepted by the Project Officer. The accepted Schedule of Values shall be used as the basis for preparing the estimates, and each partial payment shall represent the value, proportionate to the amount

stated in the approved schedule of values less the aggregate of previous payments. The Contractor shall submit payment applications using AIA Form G-702 "Application and Certification for Payment" or equivalent form acceptable to the Project Officer. The application for payment will not be reviewed or processed by the County unless an updated Construction Schedule, Cash Flow Forecast and a release of liens are also attached. The application shall also contain a certification by Contractor that due and payable amounts and bills have been paid by the Contractor, including payments to subcontractors and suppliers, for work for which previous payment was received by Contractor from the County. Partial waivers from subcontractors and suppliers shall also be provided if requested by the Project Officer.

When calculating payment for materials on-site, the County shall not pay for materials which are not scheduled for incorporation into the Work within sixty (60) days from the application for payment.

The Contractor shall provide photographs of materials stored offsite, certificates of insurance for the stored material shall be included with the application for payment.

2. PAYMENTS WITHHELD

The Project Officer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to the extent necessary to protect the County from loss on account of defective work not remedied, or withhold payment for violation of any contract term or condition not remedied after sufficient notice given to the Contractor.

Any such withholding shall not result in any liability to the Contractor for damages.

3. COUNTY ORDERED CHANGES IN WORK

The County, without invalidating the Contract, may order extra Work or make changes by addition, deletion or revision in the Work, with the total Contract Amount being adjusted accordingly if applicable. Any change that will increase the Contract Amount more than 10% will require notice to sureties and require that Performance and Payment Bonds be increased by the Contractor. The increased Performance and Payment Bonds must be sent to the County's Office of the Purchasing Agent within 15 calendar days of the County's approval of such change. All such work shall be executed under the conditions of the original Contract, except that modification of the Time for Completion caused thereby shall be made at the time of approving such change.

- a. The Project Officer shall have authority to make minor changes in the Work by verbal order when such changes do not involve extra cost and are not inconsistent with the purpose of the project. Otherwise, except in an emergency endangering life or property, no extra Work or change shall be made unless in pursuance of a written Construction Change Directive or

Change Order and no claim for an addition to the Contract Amount or Contract Time shall be valid unless so ordered.

- b. The Contractor shall review any County requested or directed change and shall respond in writing within 14 days after receipt of the proposed change stating the effect of the proposed change upon Contractor's work, including any increase or decrease in Contract time and price. The Contractor shall furnish the County an itemized breakdown of the quantities and prices used in computing the proposed change. The Contractor shall also furnish any sketches, drawings, and or pictures to properly explain the change or impact to the Project Officer. It is the sole responsibility of the Contractor to provide adequate change order backup to satisfy the Project Officer.
- c. The value of any such extra work or change shall be proposed by the Contractor in one or more of the following ways: (a) by estimate in a lump sum; (b) by cost and fixed fee; (c) by unit price additions or deletions of quantities stated in the unit price contract; or (d) by any other method permitted under the Arlington County Purchasing Resolution. The Project Officer will determine the method appropriate based on the nature of the changes.
- d. If none of the aforementioned methods is agreed upon, the Contractor shall proceed with the work without delay provided the Contractor receives a Construction Change Directive. In such case, the Contractor shall keep and present in such form as the Project Officer may direct, a correct account of the cost, together with vouchers. The Project Officer shall be permitted to verify such records on a daily basis and may require such additional records as are necessary to determine the cost of the change to the Work. The Project Officer shall certify to the amount due to the Contractor, including a reasonable lump sum allowance for overhead and profit. A complete accounting of the extra cost shall be made within 14 days after completion of the work involved in the claim.
- e. A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of labor, materials, and equipment (base cost) required in addition to any markup used. The allowable percentage markups for overhead and profit for a change to the Work performed by the Contractor's own forces or performed by the Subcontractor shall be negotiated based on the nature, size, and complexity of the Work involved but shall not exceed the percentages for each category listed below:

1. Subcontractor's markup for overhead and profit for the work it performs in a change to the Work shall be a maximum of fifteen percent (15%).
 2. Contractor's markup for overhead and profit on the Subcontractor's base cost in a change to the Work shall be a maximum of ten percent (10%).
 3. Contractor's markup for overhead and profit (including bonds and insurance) for work it performs in a change to the Work shall be a maximum of fifteen percent (15%).
 4. The markup for overhead and profit of a sub-subcontractor at any tier on a change to the Work it performs shall be a maximum of fifteen percent (15%). The Contractor and all intervening tiers of subcontractors' markup on such sub-subcontractor's base cost in the change to the Work shall not exceed a total of ten percent (10%).
- f. Base Cost is defined as the total of labor, material, and equipment costs, it does not include markup for overhead and profit. The labor costs include only the costs of employees directly constructing or installing the change in the Work and exclude the costs of employees coordinating or managing the work.
- g. The allowable percentage markups for overhead and profit stated above shall compensate the Contractor, subcontractor, and sub-subcontractor for all other costs associated with or relating to the change to the Work including by way of illustration and not limitation, general conditions, supervision, field engineering, coordination, insurance, bond(s), use of small tools, incidental job costs, and all other general and administrative home and field office expenses.
- h. Allowable costs for changes in the Work shall not include home office expenses including payroll costs for the Contractor's officers, executives, administrators, project managers, estimators, clerks, timekeepers, and other administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups in Subsection (e) above.
- i. If the change to the Work also changes the Time for Completion by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as

allowable costs for compensation in addition to the base cost indicated above:

1. the cost of on-site construction staff
2. temporary site office trailer expense
3. temporary site utilities including basic Telephone service, electricity, heat, water, and sanitary/toilet facilities.

All other direct and indirect overhead expenses are considered covered by and included in Subsection (e) markups above. In no case shall subcontractor extended overhead be submitted or considered. The County does not have a direct contractual relationship with any subcontractor or supplier and therefore will not direct, discuss or negotiate with subcontractors employed by the Contractor.

- j. If Contractor requests an extension to the Time for Completion due to changes in the Work it must provide to the Project Officer adequate documentation substantiating its entitlement for the time extension. The documentation must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior changes to the Work, not just an increase or decrease in the time needed to complete a portion of the total Work. In the event a Critical Path Method (CPM) schedule is required by the Contract, no extension to the Time for Completion shall be granted unless the additional or change to the Work increases the length of the critical path beyond the Time for Completion as demonstrated on the approved CPM schedule or bar chart schedule. A written statement in addition to a CPM analysis shall be prepared explaining how no other sequence of work activities could have been performed to decrease the impact or eliminate the impact altogether. If requested by the Project Officer the Contractor must provide alternate documentation detailing the claim to the County's satisfaction.

4. CLAIMS FOR EXTRA COST

If the Contractor claims that any event will give rise to a claim for an increase in the Contract Amount or that any instructions from the Project Officer, by drawings or otherwise, will incur him extra cost under the Contract, then, except in emergencies endangering life or property, it shall give the Project Officer written notice thereof no later than three (3) business days of the event or instruction. The Contractor thereafter must provide to the Project Officer a full cost proposal within 14 days detailing the amount of additional compensation claimed, together with the basis therefore and documentation supporting the claimed amount. No such claims shall be valid unless so made. If the Project Officer agrees that such event or instructions involve extra cost to the Contractor, any additional compensation will be determined by one of the methods provided in the Changes in Work paragraph of these General

Conditions as selected by the Project Officer. Except as otherwise specifically provided, no claims for extra cost shall be allowed unless timely notice, as required by this Section, is given by the Contractor.

5. DAMAGES FOR DELAY; EXTENSION OF TIME OTHER THAN FOR WEATHER

The Contractor's relief for any claim for delay which is unreasonable, or caused by the acts and omissions of the County, or due to causes within the County's control, shall be an extension of the Time for Completion and/or the Contractor's direct costs which result from the delay. The Contractor must give the Project Officer written notice of such delay and damages at the time they were incurred but in no event later than three (3) business days following the perceived onset of the delay. The Contractor's written notice shall specify the nature the delay claimed by the Contractor, the cause of the delay, and the anticipated impact of the delay on the Contractor's work schedule. The Contractor thereafter must provide to the Project Officer a full claim within 14 days, or such other time period as allowed by the Project Officer, detailing the amount of additional contract time or compensation claimed, together with the basis therefor and documentation supporting the claim.

If the Contractor is entitled to compensation for delay which is unreasonable, or caused by the acts and omissions of the County, or due to causes within the County's control, and where there is no change in the Work, an itemized accounting of the following direct site overhead expenses will be considered as allowable costs to be used in determining the compensation due the Contractor: site superintendent prorata salary, temporary site office expense, temporary site facilities, and temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate the Contractor for home office and other direct or indirect overhead expenses.

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

The Contractor's sole relief on any claims for delay which is reasonable, or not caused by the acts or omissions of the County, or due to causes not within the County's control, or Force Majeure, shall be an extension of the Time for Completion provided the Contractor gave the Project Officer timely written notice at the inception of such delay.

No extension of the Time for Completion or additional compensation, if applicable, will be granted for any delay unless the Contractor demonstrates the claimed delay

directly impacts the Critical Path of the accepted CPM schedule or bar chart schedule, whichever is applicable. Claims for compensation for direct costs which result from delay must be substantiated by adequate documentation clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar chart schedule, as modified, and that the additional costs incurred by the Contractor are directly attributable to the delay in the Work claimed.

No extension of the Time for Completion shall be granted for any delay if the Contractor failed to give timely written notice to the Project Officer at the inception of the delay and at the time the damages were incurred. The Contractor's complete submittal for a time extension shall be submitted no later than thirty (30) calendar days after cessation of the delay or within such longer period as the County may agree in writing to allow. The Contractor's notice to the County shall specify the nature of the delay claimed by the Contractor, the cause of the delay, and the impact of the delay on the Contractor's Work schedule.

6. TIME EXTENSIONS FOR WEATHER

The Time for Completion will not be extended due to inclement weather conditions that are normal to the general locality of the Work site.

The Contractor's sole relief on any claims for delay which is caused by abnormal weather shall be an extension of the Time for Completion provided the Contractor gave the Project Officer timely written notice at the inception of such delay and provided the weather affected the Critical Path. A fully-documented claim for a time extension under this Section must be submitted no later than thirty (30) calendar days after the cessation of the delay. It shall be the Contractor's responsibility to provide the necessary documentation to satisfy the Project Officer that the weather conditions claimed were encountered, which may include daily reports by the Contractor, copies of notification of weather days to the Project Officer, NOAA backup, and pictures from each day claimed.

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

- a. That one or more of the Weather Conditions listed below was encountered; and,
- b. The occurrence of the Weather Condition(s) resulted in an inability to prosecute work which would have otherwise been performed on the day(s) the Weather Condition(s) occurred; and,

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

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

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

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

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

FIGURE 1
Average days with precipitation of 0.1” or more

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	6	7	6	8	6	7	6	6	5	6	6

Weather days are not exclusive to the individual months that they represent in Figure 1. If weather days are not used in a previous month(s) they can be used to offset weather delays in subsequent months. This will be reviewed on a case by case basis and is subject to reconciliation at the end of the Project.

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

Weather Condition #1 above. This condition does not apply to vertical construction as defined by the Arlington County Vertical Construction Standards.

7. RELEASE OF LIENS

The County, before making any payment, shall require the Contractor to furnish a complete release of all liens arising out of this Contract. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the County, to indemnify him against any lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall refund to the County all money that the latter may be compelled to pay in discharging such lien. However, the County may make payments in part or in full to the Contractor without requiring the releases or receipts, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.

8. FINAL PAYMENT

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

RELEASE AND REQUEST FOR FINAL PAYMENT

CONTRACT NUMBER: _____ CONTRACTOR NAME: _____

FINAL PAYMENT AMOUNT: _____

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

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

AUTHORIZED SIGNATURE DATE: _____

The date of Final Acceptance is the date on which the County issues the final payment for the work performed.

COMMONWEALTH OF VIRGINIA

COUNTY OF ARLINGTON

On this the ____ day of _____, 20__, before me, personally appeared _____, who acknowledged himself/herself to be _____ in the above instrument, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name by himself/herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

