

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

**AGREEMENT NO. 20-123-9-6**

THIS AGREEMENT is made, on the date of execution by the County, between Procon Consulting ("Contractor") a Limited Liability Company, authorized to do business in the Commonwealth of Virginia, located at 1005 North Glebe Road, Suite 325, Arlington, Virginia 22201-0000, USA 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 this Agreement and the following exhibits:

Exhibit A – Scope of Services

Exhibit B – Pentagon City Elevator Station Project-100 % Final Drawings, dated June 4, 2020

Exhibit C – Technical Specifications, dated June 15, 2020

Exhibit D – Washington Metropolitan Area Transit Authority (WMATA) Design Criteria, Standards and Specifications

Exhibit E – WMATA Adjacent Construction Project Manual, Current Edition

Exhibit F – Federal Transit Administration (FTA) Clauses

Exhibit G – Disadvantaged Business Enterprises (DBE) Provisions and Form

Exhibit H – Procon Consulting, LLC-Price Schedule

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

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. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the Scope of Services, the primary purpose of the Work is to provide Construction Management Services for the Pentagon City Metrorail Station Second Elevator project. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

**3. 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 this Contract.

**4. CONTRACT TERM**

Time is of the essence. Work under this Agreement will commence upon issuance and receipt of a Notice to Proceed.

**5. CONTRACT AMOUNT**

The County will pay the Contractor in accordance with the terms of the Payment Section below and Exhibit I for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit I unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Exhibit I unless otherwise agreed by the parties in writing.

**6. CODE AND REGULATORY COMPLIANCE**

The Contractor is responsible for administering the construction phase of any project in accordance with the Department of Environmental Services (DES) Contractor Safety Standards, Virginia Uniform Statewide Building Code, the Arlington County DES Infrastructure Design Standards, the Arlington County DES Construction Standards and Specifications, the Arlington County Telecommunication Cabling Standards, the ANSI Commercial Building Telecommunication Standards and other applicable federal, state, and/or local regulatory requirements. If any Contractor violation of a Code, standard or regulation results in a construction change order, the Contractor will be liable for any additional costs to the County, including costs of re-design, any additional construction costs and costs of delay.

**7. 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, the Contractor will ensure that it and 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 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, cost estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's consultants.

The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, complete and appropriate for the purposes intended; and the project, if constructed in accordance with such plans, drawings, specifications, and other documents, will be structurally sound and complete and a properly functioning facility suitable for the purposes for which it is intended.

The Contractor is responsible for all costs and expenses incurred by the County, including increased construction costs, when such costs and expenses are the result of any violation of this Standard of Care section. 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 for breach of this Standard of Care.

**8. PAYMENT**

The County will pay the Contractor monthly according to the provisions of this Section. By the Tenth (10<sup>th</sup>) day of each month, the Contractor will submit to the Project Officer an invoice describing the total Work done during the preceding month, broken out by task.

Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and or goods/ services provided and must be signed and attested to the Contractor or authorized designee. The Project

Officer will either approve the invoice or require corrections. The County will pay the Contractor within Forty-Five (45) calendar days after receipt of an approved invoice.

The County will not pay more than amount allocated for any task, regardless of the number of hours spent or the amount of expenses incurred by the Contractor to complete the task. The number of the County Purchase Order by which shipments have been made or services have been performed must appear on all invoices.

**9. ADJUSTMENTS FOR CHANGE IN SCOPE**

The County may order additions, deletions and other revisions in the Work within the general scope of the project. If the Contractor believes that any change is not within the scope of the project or warrants additional compensation, the Contractor must notify the Project Officer as soon as the County requests the change; and the Contractor must then provide written notice of its position to the Project Officer within Ten (10) calendar days.

The Contractor's notice must detail and document the basis for the claimed amount of additional compensation. The Contractor will not receive any additional compensation pursuant to this paragraph unless the parties execute a written Contract amendment and the County issues a purchase order consistent with the amendment.

**10. REIMBURSABLE EXPENSES**

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit H includes all costs and expenses of providing the services described in this Contract.

**11. PAYMENT OF SUB-CONTRACTORS**

The Contractor is obligated to take one of the Two (2) following actions within Seven (7) calendar days after receipt of payment by the County for Work performed by any sub-contractor under this Contract:

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

The Contractor is obligated to pay interest to the sub-contractor on all amounts owed by the Contractor to the sub-contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for Work performed by the sub-contractor under this Contract, except for amounts withheld as allowed in Sub-Section (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 sub-contracts, if any are permitted, a provision requiring each sub-contractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier sub-contractor.

The Contractor's obligation to pay an interest charge to a sub-contractor 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. NON-APPROPRIATION**

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the

Contract, without termination charge or other liability to the County, on the last day of the Fiscal Year or when the previous appropriation has been spent, whichever event occurs first.

**13. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

**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. REPLACEMENT OF PERSONNEL AND SUB-CONTRACTORS**

The County has the right reasonably to reject staff or sub-contractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or sub-contractors 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 sub-contractor employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or sub-contractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or sub-contractors to the County Project Officer a minimum Fifteen (15) calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval. If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

**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 sub-contractor 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 provide the following:

- (i) 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 sub-contractor or vendor.

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

**19. SAFETY**

The Contractor must ensure that it and its employees and sub-contractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including 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 and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

**20. TERMINATION**

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 sub-contracts, 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 Fifteen (15) days or any other 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 Thirty (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 sub-contractors. 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 Fifteen (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 Fifteen (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.

**21. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)**

The Contractor covenants for itself, its employees and its sub-contractors 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 acts or omissions, including the acts or omissions of its employees and/or sub-contractors, 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.

**22. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any sub-contractor 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 sub-contractors 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 sub-contractors 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.

**23. 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 sub-contractors 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 sub-contractors or third parties related to this Contract.

**24. 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 or to his or her designee. 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 sub-contractors or other Third Parties.

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

**25. CONFIDENTIAL INFORMATION**

The Contractor and its employees, agents and sub-contractors 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 sub-contractors are informed of and abide by this requirement.

**26. 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 proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or sub-contractor; 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.

**27. 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.

**28. 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.

**29. 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.

**30. RELATION TO COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or sub-contractors 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.

**31. 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.

**32. 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)

**33. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years 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 Thirty (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, the Contractor must give the County at least Thirty (30) days' notice and must not dispose of the documents if the County objects.

**34. 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.

**35. AMENDMENTS**

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

**36. 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.

**37. 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.

**38. 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.

**39. ARBITRATION**

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

**40. NONEXCLUSIVITY OF REMEDIES**

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

**41. 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.

**42. 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.

**43. ATTORNEY'S FEES**

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

**44. 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 OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

**45. 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.

**46. 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.

**47. NOTICES**

Unless otherwise provided in writing, all written notices and other 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:**

Kyu Jung, President  
Procon Consulting, LLP  
1005 North Glebe Road  
Suite 325  
Arlington, Virginia 22201  
Telephone: 703-527-7059

**TO THE COUNTY:**

Azar Jaymand, Facilities Project Manager  
Department of Environmental Services  
Facilities Design and Construction  
1400 North Uhle  
Suite 403  
Arlington, Virginia 22201  
Telephone: 703-228-4951

**AND**

Shirley Diamond, Procurement Officer  
Department of Management and Finance  
Office of the Purchasing Agent  
2100 Clarendon Boulevard  
Suite 501  
Arlington, Virginia 22201  
Telephone: 703-228-3424

**48. ARLINGTON COUNTY BUSINESS LICENSES**

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

**49. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**50. LIMITED ENGLISH PROFICIENCY**

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

**51. ADA COMPLIANCE**

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 monitor Work performed by the construction contractor and inform the County and the construction contractor 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.

**52. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

This Contract is subject to certain provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1.F, which is attached as Exhibit C. All FTA-mandated terms control in the event of a conflict with any other provisions of this Agreement. The Contractor must not perform any act, fail to perform any act or refuse to comply with any County requests if doing so would cause the County to violate the FTA terms and conditions.

The Contractor must include this clause without modification in each subcontract that is financed in whole or in part by the FTA.

**53. INSURANCE REQUIREMENTS**

Before beginning Work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract

Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation – Virginia statutory Workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be provided with the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Professional Liability – The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except Workers compensation and automotive and professional liability; and the additional insured endorsement must be provided with the certificate.
- f. Cancellation – If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Claims-Made Coverage – Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- h. Contract Identification – All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for 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 Work. The Contractor's insurance shall be the primary non-contributory insurance for any Work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its sub-contractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

**54. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

**55. VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION PROVISIONS**

- A. The Contractor, their agents and employees shall comply with all covenants and provisions of the Virginia Department of Rail and Public Transportation (VDRPT) Master Agreement for the Use of Commonwealth Transportation Funds with the County Board of Arlington County, Virginia, dated May 30, 2012 and shall be made expressly a part of any sub-contracts executed by the Contractor and shall be binding on all sub-contractors, vendors, their agents and employees.
- B. Contractor shall name the Commonwealth of Virginia, DRPT, the Virginia Department of Transportation and their officers, employees and agents as additional insured on any insurance policy issued for the Work to be performed and present satisfactory evidence of insurance coverage before commencing with any Work so that they are protected for losses, to the extent caused by the negligence or willful misconduct of such entity or person, from Third Party claims that are directly related to or arise out of the following:
  - a. Any failure by the Contractor to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this Task or any breach by Contractor of its representations or warranties in this Task;
  - b. Any actual or willful misconduct or negligence of the Contractor, its employees or agents in direct connection with the Work;
  - c. Any actual or alleged patent or copyright infringement or other actual or alleged improper appropriate or use of trade secrets, patents, proprietary information, know-how, trademarked or service-marked materials, equipment devices or processes, copyright rights or inventions by the Contractor in direct connection with the Work;
  - d. Inverse condemnation, trespass, nuisance or similar taking of harm to real property committed or caused by the Contractor, its employees or agents in direct connection with the Work, or
  - e. Any assumed liabilities.

**56. CONTRACTOR PERFORMANCE EVALUATION**

Arlington County will perform written evaluations of the Contractor's performance at various intervals during the life of this Contract. At a minimum, evaluations will be completed at Fifty Percent (50%) completion of the Work or within Sixty (60) calendar days from Final Completion of the project and prior to Final Payment being made to the Contractor. The evaluations will address the Contractor's Work, quality, cost controls, schedule, timeliness and sub-contractor management. The Project Officer will be responsible for completing the evaluations and will provide a copy of the Contractor and the County Procurement Officer.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

AUTHORIZED  
SIGNATURE: 

NAME: Shirley Diamond  
TITLE: Procurement Officer

DATE: 8-18-20

CONTRACTOR

AUTHORIZED SIGNATURE: Kyu Jung 

NAME Kyu Jung  
TITLE: President

DATE: 8/17/2020

**EXHIBITS AND FORMS**



## EXHIBIT -A

### SCOPE OF SERVICES

This Scope of Work is to provide full Construction Management services to Arlington County for the Pentagon City Metrorail Station Second Elevator project. The Contractor, herein referred to as the Construction Manager (CM), shall provide full construction management services (General, Pre-Construction Phase, Construction Phase and Closeout Phase) to ensure the Work is performed in conformity to the Construction Contract Plans, specifications, all applicable codes, regulations, and standards.

The CM shall advise the County, as early as possible of potential disputes and promptly address the disputes issues. Construction management services shall include services necessary to oversee construction of the project, including consultation during all phases of construction.

#### GENERAL

The CM's responsibilities shall include but not be limited to:

- Ensure the safety of contractors, County employees, and the general traveling public. This includes access to essential areas including emergency vehicle access, ensuring compliance with Americans with Disabilities Act (ADA) access, barring entrance(s) to construction area, and cleanliness within the surrounding facilities and general neighborhood.
- Ensure WMATA operations are maintained at all times and there are no negative impacts to WMATA facilities, property or patrons.
- Ensure compliance with the approved maintenance of traffic plans including maintaining access to adjacent properties at all times.
- Ensure the project remains on schedule and within the budget.
- Ensure the highest quality of Workmanship is reflected in the construction.
- Ensure the County project staff is kept apprised of Work in progress, unusual disruptions, changes in schedules, etc.
- Take initiative and act to mitigate circumstances that could lead to claims, resolve conflicts promptly, and keep the County advised of any potential disputes.
- The County uses e-Builder as a project management software system and WMATA requires use of Procore software. The CM shall utilize the e-Builder system, which will be provided to the CM by the County at no cost to the CM. Tasks anticipated to be performed in the e-Builder software system include, but not limited to the following:
  - Processing submittals;

- Pay applications,
- Potential Change Orders,
- Change Orders;
- Requests for Information (RFI's);
- Submittals;
- Meeting minutes;
- Daily construction reports;
- Action items;
- Construction schedules,
- Punch lists, and incident reports.

The CM shall be responsible for submitting information to WMATA via Procore and receiving information via Procore.

**TASK 1 – PRE-CONSTRUCTION PHASE**

The CM shall perform the following activities during the Pre-Construction Phase:

- Review and provide comments and edits to the existing designs, site conditions, and other pertinent documents for impact on schedule, phasing, staging, and costs.
- Review current construction documents, bid documents, and site conditions for design integrity, constructability, dimensional accuracy, and coordination among disciplines. Consult with the County and make written recommendations whenever constructability, cost, or schedule is affected.
- Prepare a construction management plan, which shall include a safety and security management plan and a quality assurance/quality control plan.
- Review the County's Invitation to Bid (ITB) for construction services and provide comments to the County, including a review of alternates and allowances. Assure the ITB is complete and coordinated with all adjacent projects including County projects and adjacent private development.
- Prepare an independent construction cost estimate.
- Prepare a construction plan and project schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of the contractor(s), ordering and delivery of products requiring long lead times.
- Participate in the evaluation of construction costs and procurement related issues, including the review of Requests for Information and provide input on responses during the procurement process, to help finalize an award recommendation for Construction Contracting services.
- Attend any coordination meetings between the selected Construction Contractor, WMATA, Designer of Record, and the County.
- Review proposed substitutions in concert with the County.

**TASK 2 – CONSTRUCTION PHASE**

The CM shall perform the following activities during the Construction Phase:

- Act as an agent for the County in monitoring construction progress, contractor(s) performance, quality control, and other duties as assigned to assure project completion on time, within budget, and in compliance with contract documents.
- Organize, attend and document all project-related meetings with minutes, including but not limited to, bi-weekly construction progress meetings. The construction progress meetings will, at a minimum, cover the following topics: safety, errors and omissions, old business, Work performed this reporting period, schedule of upcoming Work to be performed, utility coordination issues, adjacent project coordination issues, new business, quality control/quality assurance, community outreach, submittal status, requests for information (RFI) status, PCO/CO status, and upcoming meetings.
- Maintain a daily log that tracks WMATA employees who Work on-site on the project, including WMATA project management staff, escorts, and inspectors who Work on-site during pre-construction, mobilization, construction, testing, inspection, and commissioning phases.
- Review Construction Contractor prepared construction schedules and provide schedule analysis of format, activity durations, sequence, and critical path to determine if forecast project completion times are realistic and consistent with scheduling specifications.
- Provide on-site construction inspection and management, involving one or more full time resident engineers and/or inspectors.
- Provide meeting minutes for all relevant construction meetings.
- Provide daily construction reports including weather, manpower, equipment, major issues, Work completed, etc.
- Produce a monthly project status report and submit it to the Arlington County Project Manager the first week of each month. Reports will be made part of the permanent project record. Reports are subject to review by the public.
- Receive from the Construction Contractor all submittals required by the contract documents. Ensure that all project submittals are in compliance with the project documents and the design intent. Review and approve or reject submittals in a timely manner, in conjunction with the County Project Officer, the Designer(s)-of-Record, and other applicable reviewers. Maintain a log of all submittals and their approval status.
- Take digital photographs on a weekly basis of all aspects of the Work specifically of non-complying Work and conditions under review. The CM shall submit the digital photographs, in JPEG format, to the Project Officer.
- Perform materials, equipment, and systems testing.
- Assist the Construction Contractor in coordinating inspection and testing of their Work.
- Observe and review performance tests as required by specifications.

- Assist in third-party coordination with adjacent Arlington County projects, private development projects, utility companies, and other stakeholders.
- Assist in short-term notification of affected property owners, and the necessary coordination for closures and direct property impacts.
- Maintain current project record set of documents, including posted drawings and specifications reflecting any modifications, as-built records and drawings, hard copies of all Requests for Information (RFIs) including responses, and any other correspondence related to the project for turnover to Arlington County upon Project completion.
- Review the Construction Contractor Record Set of drawings on a regular basis throughout the course of the Work to verify that all trades are properly recording field changes.
- Review RFIs and/or questions and provide responses to the County.
- Review all monthly payment applications from the Construction Contractor and submit a payment recommendation to the County Project Officer.
- Prepare an independent cost estimates for each potential change order (PCO) based on proposed scope changes. Review and evaluate PCOs for need, appropriateness, cost efficiency, manage change order negotiations, prepare written recommendations of disposition and maintain an electronic log of PCO status.
- Analyze Construction Contractor's claims for time extension by evaluating impacts of claimed delay to critical path schedule and recommend either amount of time extensions that are warranted or alternate means to reduce the length of the critical path for review by the County.
- Issue Work orders at the direction of the County ensuring Work orders are closely coordinated and that budget and schedule- impacts are minimal.
- Review monthly payment applications for progress relative to the approved construction schedule and expected draw rate approved at the initiation of the Project and as officially modified and recommend approval; Advise and recommend to the County final payment which may include deductions should they be warranted.
- Receive from the Construction Contractor all written Requests for Information (RFIs). The CM shall keep both an electronic and a paper file of all RFI forms submitted by the Construction Contractor. Maintain a log of all RFIs identifying the proper responder and forward the RFI to that entity expected to respond. Follow up with the assigned responder to ensure a timely response. If an RFI, in the opinion of the CM or the County Project Officer, has the potential to lead to a contract change order, the CM shall initiate the Potential Change Order evaluation process.
- Provide oversight in the preparation and completion of the Project construction "punch list".
- Ensure receipt of the complete as-built drawings, warranties, Operations & Maintenance (O&M) manuals, and other submittals required from the Construction Contractor.
- Ensure compliance and conduct regular unannounced field verifications for all Federal Transit Administration (FTA) contract clauses, including but not limited to Buy America, the Davis-Bacon Act (including review of

certified payroll documentation from the Construction Contractor and conducting interviews to ensure compliance with wage rates), Disadvantaged Business Enterprises (DBE)/Small Business Enterprises (SBE) participation and Civil Rights requirements.

#### QUALITY CONTROL AND QUALITY ASSURANCE

- Represent the County in monitoring construction progress, contractor(s) performance, and quality control to complete the project on time, within budget, and in compliance with contract documents.
- Reject and require re-work by the contractor for any Work not in conformance with the construction documents or acceptable industry standards of Workmanship and quality.
- Order the Construction Contractor to stop the Work in the event the Work jeopardizes life safety, represents a hazard to other Work, or if continuing Work would cover or conceal defective Work.
- Prepare and implement a Site/Project Specific Quality Management Plan (QMP) for the Project to define the methods to be implemented during the course of the project to enhance the control of quality, time and budget.

#### START-UP AND TESTING

- Provide oversight for the inspection of the elevator installation and all systems, including tie-ins;
- Review and verify that construction start-up and initial checkout of all commissioned systems and assemblies are successfully completed;
- At or near the substantial completion of the Project, schedule and assure the appropriate entities are notified and available for evaluation, testing, and inspection of the completed Work product; and,
- Provide oversight in the preparation and completion of Project construction "punch list" by collating all comments for transmittal to the Construction Contractor and monitoring completion of "punch list" items prior to close-out of the Project and transfer to the Designer of Record.

#### TASK 3 – COMMISSIONING AND PROJECT CLOSE-OUT PHASE

The CM shall also have the following responsibilities:

- Plan and conduct the commissioning process, including appropriate reports and documentation to support Project design intent.
- Review and verify start-up, initial checkout and operations of mechanical, HVAC, fare collection and electrical systems including monitoring commissioning activities that are the responsibility of the Construction Contractor, ensuring appropriate WMATA staff is present for each test or procedure, and documenting the results.
- Review the operations and maintenance (O&M) manuals for all commissioned systems and assemblies for completeness and applicability.
- Provide written verification that training was conducted for all commissioned features and systems.
- Assist the County in close-out of the Construction Contractor construction contract.

- Prepare and submit a commissioning report to the County Project Officer within 45 days after Project turnover.
- Ensure the punch list is completed by the Construction Contractor.
- Ensure the Red line on the permit drawings and shop drawings are updated and meet WMATA drawings requirements.
- Assist in close-out of the construction contract and claims. Ensure receipt and distribution of complete and correct O&M manuals, as-built drawings, certifications, warranties, training and other submittals required from the Construction Contractor.
- Submit electronic files of all documents and records to the County Project Officer.

#### **TASK 4 – OPTIONAL TASK FOR IMPROVEMENTS TO EXISTING ELEVATOR**

This optional task must be authorized in writing by the Contracting Officer prior to the Contractor proceeding with this Work. If authorized by the County, the Contractor shall provide CM Services to oversee the improvements to the appearance of the existing Pentagon City Metrorail elevator on the east side of South Hayes Street. The elevator headhouse may be updated and improved to match the exterior of the new elevator as closely as possible, if funds are available.

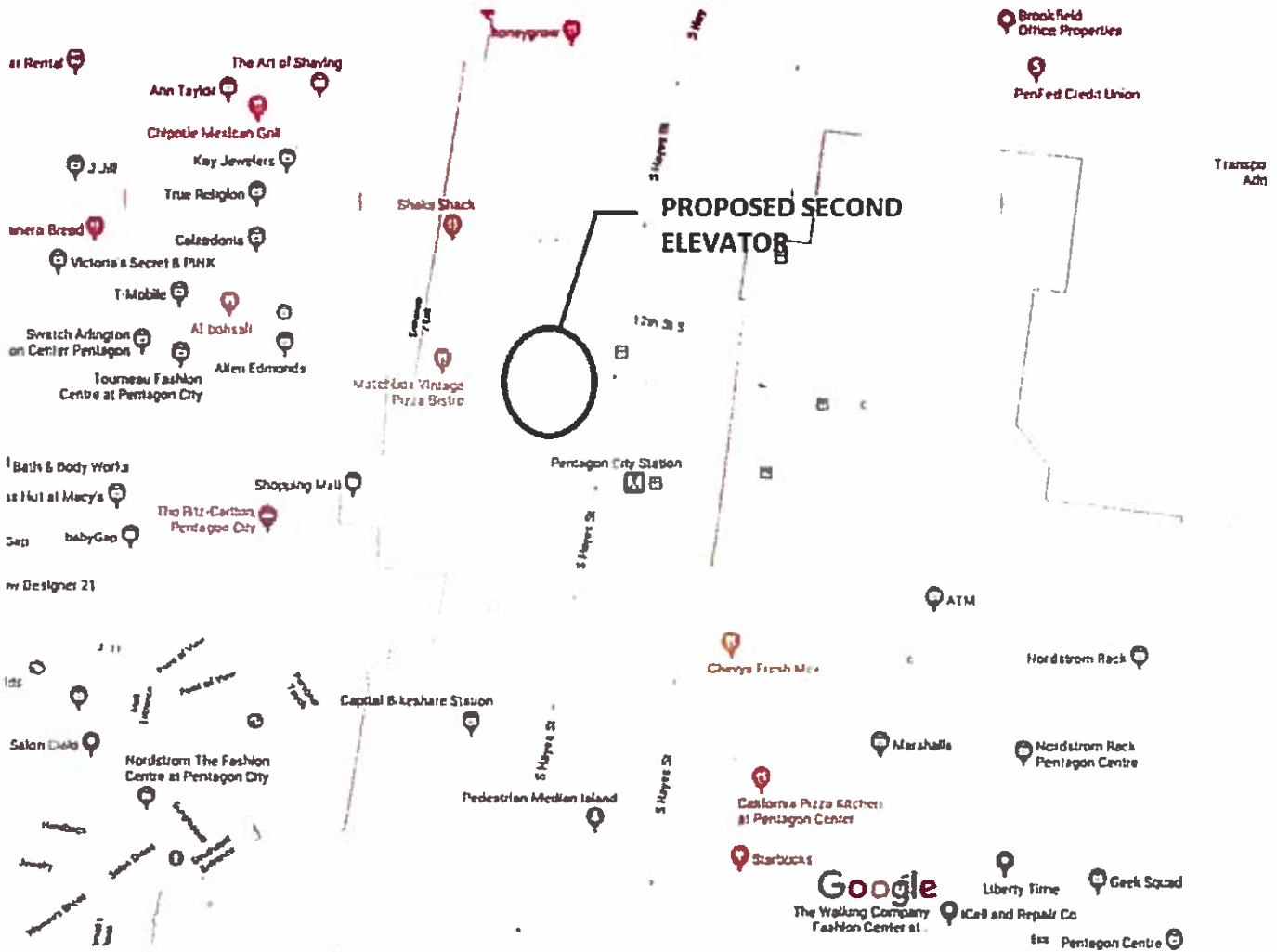
#### **EXHIBITS**

Additional information is shown in Exhibits 1 through 5 below.

- Exhibit 1 – Locations Map
- Exhibit 2 – Existing Condition Plan
- Exhibit 3 – Existing Conditions – Passage / Mezzanine Level
- Exhibit 4 – Proposed Elevator – Section
- Exhibit 5 – Proposed Pentagon City Station Elevator (Rendering)

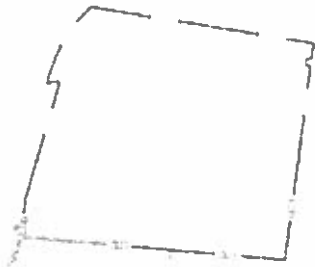
# EXHIBIT 1

## Location Map



**EXHIBIT 2**

**EXISTING CONDITIONS**



① **EXISTING CONDITIONS**  
2-133



### EXHIBIT 3

## EXISTING CONDITIONS – PASSAGE / MEZZANINE LEVEL

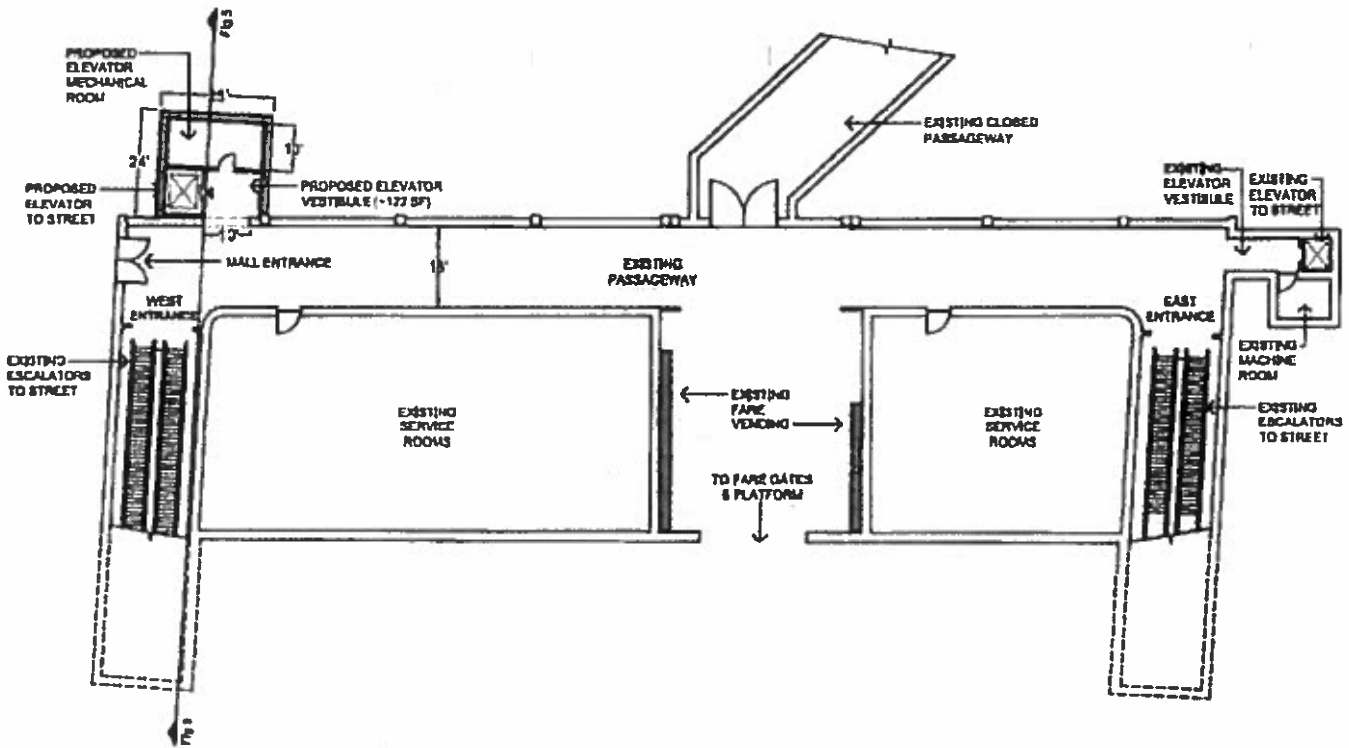


Figure 2. Existing Conditions - Passageway/Mezzanine Level



Scale: NTS

**EXHIBIT 4**

**PROPOSED ELEVATOR - SECTION**

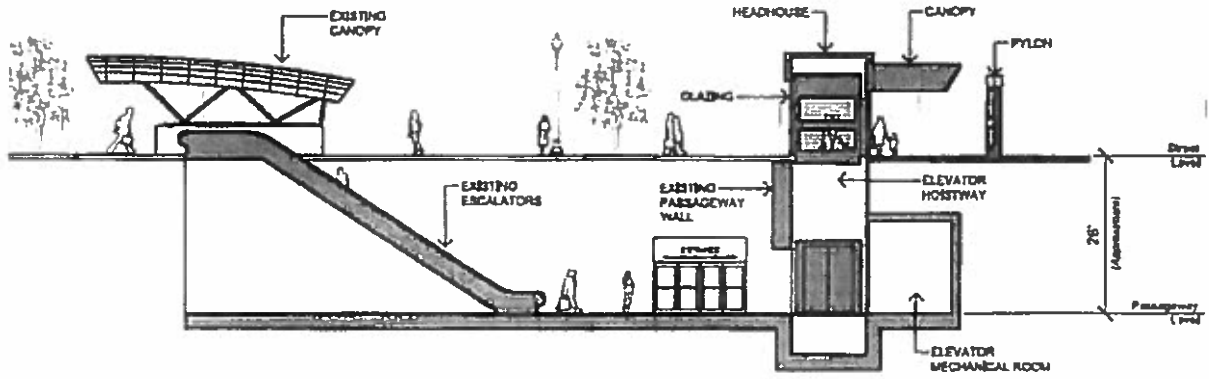


Figure 5 Proposed Elevator - Section



**EXHIBIT 5**

**Rendering of Planned New Elevator for Pentagon City Metro Station**

