

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

**AGREEMENT NO. 19-173-RFP-CMAR**

THIS AGREEMENT is made, on the date of execution by the County, between *MCN Build, Inc., 1214 28<sup>th</sup> Street NW, Washington, DC 20007* ("Contractor") a District of Columbia 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. 19-173-RFP-CMAR and all modifications properly incorporated into the Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contractor's Pricing for Preconstruction Services
- Exhibit C – Arlington County DPR CMAR General Construction Conditions
- Exhibit D –Guaranteed Maximum Price (GMP) Amendment, once executed, to include Drawings, Specifications and Construction Notes (initially the Permit/GMP Set and subsequently the final Construction Documents

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:

Exhibits A, C, and D 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 Exhibits A, C, and D, shall prevail over Attachment B.

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.

The County has authorized the consultant identified below to act as the County representative for specific purposes to perform specified duties and responsibilities, and to have the rights and authorities as assigned in connection with completion of the Work in accordance with the Contract Documents until such time as the County may notify the Contractor otherwise:

LSG Landscape Architecture (the "Architect").

The County will notify the Contractor after contract award of the specific roles and responsibilities of the Consultant(s).

**3. SCOPE OF WORK**

The Project shall proceed in two phases: The Preconstruction Phase and the Construction Phase.

During the Preconstruction Phase, the Contractor shall provide the preconstruction services that are necessary to properly advance the Project, including, but not limited to those preconstruction services outlined in Exhibit A (Scope of Services) with the goal of developing an acceptable Guaranteed Maximum Price Proposal for the Project.

During the Construction Phase, if awarded in the form of the GMP contract amendment, the Contractor will furnish all labor, materials, supervision, equipment and other services necessary for the construction of the Jennie Dean Park in Arlington, Virginia (the "Project") and all other work shown, described, and required by the Contract Documents (hereinafter "the Work").

The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. 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. STANDARD OF CARE**

The Contractor shall perform all services under this Agreement at a level, and as judged by a standard of care, that is consistent with the standards and quality prevailing among construction management and general contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. The Contractor shall carry out and complete the services in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and in the interests of the County.

**5. TIME FOR COMPLETION**

The PRE-CONSTRUCTION - PHASE 1 shall run concurrently with the design of the park and has an expected duration of one hundred and eighty (180) calendar days. At no additional cost to the County, the County may, in its sole discretion, increase the duration of the Preconstruction Phase by up to One Hundred Eighty (180) days by giving written notice to the Contractor of such election. The County may exercise such extension in one or more notices provided the total of all such extensions does not exceed 180 days.

Work under Construction Phase shall achieve Substantial Completion no later than three hundred sixty-five (365) calendar days from the date of completion of The PRE-CONSTRUCTION - PHASE 1 or acceptance of GMP Amendment 1, whichever is earlier. Final Completion of the Work shall be achieved by the Contractor no later than thirty (30) 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 General Conditions. Unless otherwise provided, no claims for early completion are allowed.

**6. CONTRACT AMOUNT**

The Construction Management Fee and a General Conditions Fee for Construction Services are set forth in Attachment B (Contractor's Pricing) and are premised on the Project Budget of \$13,842,000 million dollars, which budget is inclusive of Cost of the Work as well as the Contractor's Construction Management Fee and General Conditions Fee, and on the schedule set forth in paragraph 5. above.

The Contractor's compensation for the Preconstruction Phase services shall be 10% of the Construction

Management Fee, which is set forth in Attachment B. During the Preconstruction Phase the Contractor shall develop GMP Proposals for the Project as contemplated in Attachment A (Scope of Services). The County and the Contractor shall negotiate the terms of such GMP Proposals, and, upon approval by the County of the GMP, the parties will sign an amendment hereto in substantially the form of Attachment D (Form of GMP Amendment). 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 provided the Work is performed to the satisfaction of and is accepted by the Project Officer, and shall include the Construction Management Fee, the General Conditions Fee and the Cost of the Work, as defined in Attachment A (Scope of Services). The County is not obligated to accept the GMP. If the County does not accept the GMP, the Contract will be terminated at the end of Preconstruction Phase.

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.

**7. 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 will be retained by the County until Final Completion and acceptance of all Work covered by the Agreement. Other than the Construction Management Fee, retainage shall apply to all aspects of all requests for progress payments.

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 Final Acceptance.

**8. PAYMENT TERMS**

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) 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.

**9. REIMBURSABLE EXPENSES**

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

**10. 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.

**11. 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 General Conditions.

**12. SELF-PERFORMANCE BY THE CONTRACTOR**

The Contractor shall not perform work with its own forces unless the Project Officer provides written authorization for the Contractor to perform any portion of the Work as self-performed work; provided, however, that in no event shall the Contractor self-perform more than 10% of the construction work (measured by cost of the work). All work which the Contractor is not authorized to self-perform shall be performed by subcontractors of the Contractor which the Contractor shall procure by competitive sealed bidding or competitive negotiations as specified in the Contract Documents.

As used in this section, self-performed work shall mean trade work performed by employees of (1) the Contractor; (2) any entity comprising the Contractor; (3) any entity that controls, is controlled by or is under common control with the Contractor; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Contractor.

**13. LIQUIDATED DAMAGES**

Time is of the essence under this Contract. The Contractor acknowledges that the County is engaging the Contractor to provide an extensive level of preconstruction support services 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 reports required during Preconstruction under this Agreement are key to realizing the value of such services. If the Contractor fails to deliver any of the reports required, the Contractor shall be subject to liquidated damages in an amount of \$1,000.00 per day after receiving written notice from the Project Officer of failure to submit such report. A list of such deliverables is included in Attachment A to the Agreement.

If contracted, the Construction Services Work must be completed 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 \$1,000.00 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 \$1,000.00 per day for each 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 \$1,000.00 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 \$1,000.00 per day for each 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 reasonably to 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.

The Contractor may not replace key personnel or subcontractors identified in the Agreement without the County's written approval. The Contractor must submit any request to remove or replace key personnel 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 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.

**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, 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, is unsatisfactory to the County 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 do so after 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 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, as defined above, 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 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 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 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 provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within two months after the close of Contractor's fiscal year. If a management letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within 15 calendar days of the County's receipt of the findings. All accounts of the Contractor are subject to 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 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**

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.

**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 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:**

Joseph Khoury, LEED-AP, BD+C  
MCN Build, Inc.  
1214 28<sup>th</sup> Street NW  
Washington, DC 20007  
Email: [joseph@mcnbuild.com](mailto:joseph@mcnbuild.com)

**TO THE COUNTY:**

Jeremy Smith, Project Officer  
2100 Clarendon Boulevard, Suite 414  
Arlington, VA 22201  
Email: [jsmith@arlingtonva.us](mailto:jsmith@arlingtonva.us)

AND

Sharon T. Lewis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201  
Email: [SLewis1@arlingtonva.us](mailto:SLewis1@arlingtonva.us)

**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 GMP Amendment, the Contractor will be required to furnish payment and performance bonds for 100% of the amount of the GMP. The Contractor shall maintain the required insurance coverage and payment and performance bonds through completion of the Contract, including all warranty and guarantee periods.

**52. COUNTERPARTS**

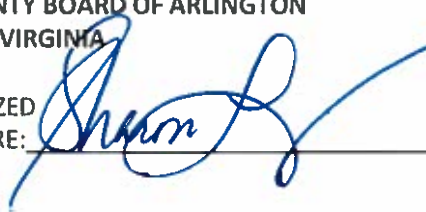
This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission (e.g., PDF or similar format) are true and valid signatures for all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

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

MCN BUILD, INC.

AUTHORIZED  
SIGNATURE: \_\_\_\_\_



AUTHORIZED  
SIGNATURE: \_\_\_\_\_



NAME AND TITLE: SHARON T. LEWIS  
PURCHASING AGENT

NAME AND TITLE: Joseph Khoury  
Executive VP of Preconstruction

DATE: 1-9-2020

DATE: 1/9/2020

**EXHIBIT A**  
**SCOPE OF SERVICES**

**A1. GENERAL INTENT**

The intent of this solicitation is to obtain preconstruction and construction management services from prequalified vendors in connection with the razing of the existing park amenities and construction of new park amenities at Jennie Dean Park located at 3630 27<sup>th</sup> Street South in Arlington, VA and several adjacent parcels (to be added).

Jennie Dean Park has a long and significant history and legacy which will be honored through design elements incorporated into the park or public art. The County's goal is a functional, attractive park that meets the Four Mile Run Valley Park Master Plan and Design Guidelines (i.e. conceptual master plan; please reference Attachment B) and that meets the Department of Parks and Recreation's program needs.

The County has engaged a Landscape Architect, Engineer and Architect (County's Design Team) to develop a design for the new Park. The County's Design Team has refined the conceptual master plan and prepared design development drawings (reference Attachment C). In general, the Construction Manager selected through this process will be required to work with the Department of Parks and Recreation ("DPR"), the Landscape Architect and the Architect to:

- a. Advance the design for the Project in a manner consistent with the Project Budget, the schedule, and the programmatic and other requirements for the Project;
- b. Develop a Guaranteed Maximum Price ("GMP") proposal based on the GMP/Permit Set prepared by the Landscape Architect and Architect; and
- c. Upon acceptance by the County of any GMP Proposal, the Contractor shall demolish the existing park amenities, remove the existing buildings, and construct the new park amenities based on the approved design, including performing all hazardous materials abatement.

**A1.1 Contractor's Duties.** The Contractor's work shall be divided into two phases: (i) the Preconstruction Phase; and (ii) the Construction Phase.

**Phase 1: Preconstruction Phase.** During the Preconstruction Phase, the Contractor will be required to work with the County and the County's Landscape Architect and Architect and Engineer (County's Design Team) (i) to advance the design for the Project in a manner consistent with the budget available for hard costs, construction management fees and general conditions (Design-to-Budget), and the schedule, programmatic and other requirements for the Project; and (ii) to develop a Guaranteed Maximum Price ("GMP") proposal based on the Permit/GMP Set.

**Phase 2: Construction Phase.** If the County accepts the GMP proposal in the form of an amendment to the Contract, the Contractor shall provide all of the labor, materials, supervision, equipment and other services necessary to demolish the existing park amenities, raze the existing buildings, and construct the new park amenities based on the approved design of the park, including performing all hazardous materials abatement, in accordance with the Contract Documents, no later the end of the period of performance for Substantial Completion.

**A1.2 Cost Plus Fixed Fee with Incentive Type Contract.** It is the intent of the parties to establish a Guaranteed Maximum Price contract with certain incentives. As such, only those costs outlined in Section A5.1.1 shall be reimbursable as a Cost of the Work. It is, understood that the cost of all items not included

in the Cost of the Work shall be included in the Construction Management Fee, and the General Conditions Fee. The GMP shall be developed as set forth in Article A3 herein.

## **A2. PRECONSTRUCTION PHASE SCOPE OF WORK**

**A2.1 Preconstruction Phase Scope of Work.** During the Preconstruction Phase, the Contractor shall work with the County's Landscape Architect, Architect, and Engineer (County's Design Team) to develop a design for the Project based upon the Design Development documents. The County's objective is to develop a design for the Project that meets its programmatic needs, that is consistent with the Design-to-Budget and other requirements for the Project, and that can be constructed prior to the end of the Time for Completion. During the course of the Preconstruction Phase, the Contractor shall meet regularly with the County and the County's Design Team. The County's Design Team will make interim submissions of the design in order for the County to review and provide input regarding the design. Such interim submissions shall also serve as the basis for periodic cost estimates and opportunities to review the design for constructability and schedule implications by the Contractor. In addition, the Contractor shall engage in value engineering as well as the other services detailed below.

**A2.2 Baseline Schedule.** Within 14 days after Preconstruction Notice to Proceed (NTP), the Contractor shall prepare and submit a baseline schedule for the Project (the "Baseline Schedule"). The Baseline Schedule shall be subject to review and approval by the Project Officer, and the Contractor shall incorporate any adjustments to the Baseline Schedule as may be reasonably requested by the Project Officer. The Baseline Schedule shall be prepared in a critical path method and be developed in a sufficient level of detail so as to permit the County, the Architect and the Contractor to properly plan the Project, and shall show: (i) key design milestones and bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) substantial and final completion dates.

**A2.3 Preliminary Budget Estimate.** The Contractor's initial task shall be to review the Design Development Documents and evaluate the same in relation to the programmatic, schedule and Design to Budget requirements of the Project. The Contractor shall prepare a detailed cost estimate of the Design Development Documents (the "Preliminary Budget Estimate"), and shall submit such estimate to the Project Officer no later than 21 days after receipt by the Contractor of the Design Development Documents. Such estimate shall be prepared on a "system" basis that identifies the key building systems or functions and allocates an estimated cost for each such system. The Construction Management Fee, General Conditions Fee, and contingencies shall each be broken out in separate line items. The primary purpose of the Preliminary Budget Estimate is to aid the County in understanding the costs associated with key elements of the Project so as to better prioritize and manage the use of the funding allocated to this Project. To the extent the County requests the County's Design Team to revise the selected Design Development Documents, the Contractor will be required to update the Preliminary Budget Estimate. The revised Preliminary Budget Estimate shall be submitted to the Project Officer no later than 14 calendar days after receipt by the Contractor of the revised Design Development Documents.

**A2.4 Value Engineering Memorandum –** To the extent that the Preliminary Budget Estimate exceeds the available funding, or the Contractor believes that there are value engineering ideas that could materially reduce the Project's overall cost without adversely impacting the Project's intended functionality, the Contractor shall prepare and submit a memorandum that outlines potential value engineering ideas. If the value engineering ideas are insufficient to return the Project to budget, the Contractor shall provide suggestions as to program scope that could be reduced, the nature of each such reduction, and the likely savings associated with each such program reduction. Such memorandum shall



be submitted to the Project Officer no later than 30 days after the Preconstruction Notice To Proceed. The Contractor shall meet with the County and the County's Design Team as necessary to reach agreement on which, if any, of the value engineering options should be pursued. To the extent the County directs the Contractor to proceed with one or more of the value engineering options, the Contractor shall revise its Preliminary Budget Estimate to reflect the inclusion of such items.

**A2.5 Constructability/Single Manufacturer/Long-Lead Time Memorandum.** Within 21 days after receipt by the Contractor of the Design Development Documents, using the Preliminary Budget Estimate, the Contractor will prepare a memorandum that identifies key construction concerns related to the Project, which memorandum shall include (i) an assessment of constructability and phasing issues; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) long-lead delivery items that could adversely affect the Baseline Schedule. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

**A2.6 Active Collaboration.** The Contractor shall meet with the County's Design Team at least once a month to review and discuss the design for the Project and the status of the design effort. Representatives from the County shall be invited to attend such meetings. The County's Design Team will distribute meeting minutes associated with such meetings no later than seven (7) calendar days after the conclusion of each such meeting.

**A2.7 GMP Basis Document and Construction Administration Memorandum.** During the Design Development Phase, the Contractor and the County's Design Team shall meet and confer with the Project Officer as necessary regarding the level of detail required by the Contractor in the Permit/GMP Set in order to provide a GMP to the County without excessive contingencies due to lack of information. The parties shall agree upon the number of trade subcontractor bid packages that will be required and the specific contents of each. This deliverable shall be coordinated with the Contractor's purchasing strategy for the trade subcontracts and shall be consistent with the then approved Project Baseline Schedule. In addition, the County, the County's Design Team and the Contractor shall discuss the manner in which construction administration services shall be handled (the "Construction Administration Plan"). The Construction Administration Plan shall specifically address: (i) whether the Architect will be required to assign staff on-site; (ii) turn-around time for submittals; and (iii) such other matters as the County's Design Team and the Contractor consider relevant to the orderly administration of the Project. The level of detail required in the Permit/GMP Set and the Construction Administration Plan shall be memorialized in a memorandum signed by the County's Design Team and the Contractor (the "GMP Basis Document & CA Memo") and must be submitted for approval by the Project Officer within 30 days from completion of the Design Development Documents.

**A2.8 Mid-Point Construction Document Review – Construction Documents.** The County's Design Team will prepare a set of construction documents based on the approved design development documents and any approved value engineering. The Contractor shall conduct a progress review with the County's Design Team when the construction documents are approximately 60% complete. Representatives from the County shall be invited to participate in the progress review. Within one (1) week after completing the review, the Contractor shall prepare and submit to the Project Officer a memorandum that outlines the results of the progress review. Such memorandum shall identify items of concern to the Contractor that represent departures from the approved scope of the design development documents or that could otherwise adversely impact the Project's budget or schedule. The Contractor shall also attempt to identify any conflicts or discrepancies between design packages being prepared by the County's Design Team that

are likely to have significant cost or schedule impact. Such progress reviews may need to be conducted more than once if multiple packages are required or if the design effort of the County's Design Team are advanced at different rates.

**A2.9 Permit/GMP Set.** The County's Design Team shall produce a progress set of Construction Documents to be used for permitting as well as the development of the GMP by the Contractor (such progress set, the "Permit/GMP Set") as outlined in Article A3 below. The Permit/GMP Set from the County's Design Team shall be code compliant and permit ready and contain the level of detail established in the GMP Basis Document and Construction Administration Memorandum.

**A2.10 Completion of Construction Documents.** Following the negotiation of the GMP for the Project and the receipt of comments from the permit review process, the County's Design Team shall complete the Construction Documents. The County's Design Team shall conduct an on-board design review meeting with the County and the Contractor two (2) weeks prior to submission of the final Construction Documents to the County. The Contractor shall review such set to ensure that any comments received from the permit review process as well as any value engineering strategies or other design changes that result from the GMP negotiations with the Contractor are incorporated into the construction documents.

### **A3. GMP FORMATION**

**A3.1 GMP Development.** The Contractor will provide the County with a GMP Proposal based on the Permit/GMP Set, as defined above, and that such GMP proposal shall be based on competitive trade subcontractor bids. The GMP Proposal shall be developed as outlined in this Article A3.

**A3.2 Guaranteed Maximum Price Components.** The GMP is comprised of the maximum amount payable by the County for:

- A. the Cost of the Work for full and complete performance of the Work in strict accordance with the Contract Documents;
- B. a Construction Management Fee for the Contractor; and
- C. a General Conditions Fee.

**A3.3 Bidders List Development.** Within 7 calendar days after submission of the Permit/GMP Set of Construction Documents, the Contractor shall submit to the Project Officer for its review and approval a written submission on the proposed subcontractor bidding procedures. These procedures shall include: (i) a list of proposed trade packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. The work shall be awarded to the lowest responsive and responsible bidder, unless agreed by the County otherwise in advance. At least three (3) potential subcontractors shall be identified for each trade package.

**A3.4 Management of the Bidding Process.** The Contractor shall manage the trade bidding process in accordance with the approved bidding procedures and shall use commercially reasonable best efforts to obtain at least three (3) qualified and bona fide bids for each trade package in excess of \$100,000. The Contractor shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Contractor's evaluations of all bids, and the basis for the Contractor's recommendation as to which bidders should be chosen. The County shall be afforded access

to all such records at all reasonable times so that, among other things, it may independently confirm the Contractor's adherence to all Contract requirements. The Contractor shall provide the Project Officer with an analysis of the bids received.

**A3.5 Bid Tabs Preparation.** The Contractor shall provide the Project Officer with an analysis of the bids received as well as a copy of each such bid. To the extent that the Contractor's award recommendation is based on scoping adjustments to the bids of the subcontractors, the Contractor shall clearly identify the scoping adjustment and the need for such adjustments. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.) and provide the basis for the Contractor's recommendation.

**A3.6 Value Engineering.** To the extent that the trade bids received by the Contractor indicate that the costs of constructing the Project will exceed the established budget, the Contractor shall work with the County's Design Team to develop value engineering strategies in an effort to return the costs of constructing the Project to budget. The Contractor shall meet with the County's Design Team and the County to review such strategies. Upon any approval by the Project Officer of any such value engineering strategies, the Contractor shall obtain revised pricing based on such approved value engineering strategies. The Contractor shall update the bid tabulations to reflect the value engineered costs and submit such updated bid tabulations to the Project Officer.

**A3.7 Submission of GMP Proposal.** Based on the trade bids received, the Contractor shall develop and submit a GMP Proposal. The GMP Proposal shall include the following elements:

- A. A list of Drawings; Specifications; Addenda; and General, Supplementary and other Conditions on which the GMP is based.
- B. A list of Unit Prices and Allowance items as well as a statement of their basis.
- C. A list of any assumptions and clarifications made in preparing the GMP, noting in particular any exclusions. The assumptions and clarifications shall take precedence over the drawings and specifications. The Contractor shall prepare a separate memorandum that highlights any differences between the then approved drawings and the modifications made in the assumptions and clarifications. Such memorandum shall specifically address any changes in the Project's aesthetics, functionality or performance.
- D. The proposed GMP, including a statement of the detailed cost estimate organized by trade categories, Allowances, Contractor's Contingency, and other items and the fee that comprise the GMP.
- E. An update to the Project's Baseline Schedule to which the Contractor will agree to be bound. This update shall be prepared in the same level of detail and in the same manner as the Baseline Schedule.

**A.3.8 Negotiation of GMP.** The County and the Contractor shall meet to negotiate the terms of the GMP Proposal. Unless the County accepts the GMP Proposal in writing and so notifies the Contractor, the GMP Proposal shall not be deemed accepted by the County. The GMP shall be subject to review and approval by the County Board and shall not be effective until so approved. If accepted, the GMP shall be memorialized in the form of the amendment attached hereto as Attachment D (Form of GMP Amendment).

**A.3.9 Failure to Execute GMP Amendment.** In the event the County and the Contractor are unable to agree on a GMP for the Project, the Contractor shall forfeit one half of the Cost of Preconstruction Services. In the event the County elects not to proceed with construction of the Project for reasons other than failure to agree upon a GMP, the Contractor shall be paid the full amount of the Cost of Preconstruction Services provided all Preconstruction services have been timely and adequately performed.

#### **A4. CONSTRUCTION PHASE SCOPE OF WORK**

**A.4.1 Construction Phase.** Construction Phase of the Project shall commence upon execution by the County of the GMP Amendment, and the executed GMP Amendment shall serve as Notice to Proceed with the Construction Phase.

**A.4.2 On-Site Management.** The Contractor shall provide on-site management and superintendence during all working hours.

**A.4.2.1 Site Office.** Throughout the Project, the Contractor shall provide and maintain a fully-equipped construction office on the Project site.

**A.4.2.2 Supervision.** Throughout the Project, the construction office shall be manned by the site superintendent and 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.

**A.4.2.3 Bi-Weekly Progress Meetings.** Throughout the Project, the Contractor shall conduct bi-weekly progress meetings following a Contractor-generated agenda with the County and key trade subcontractors. The Contractor shall draft and circulate meeting minutes within seven (7) calendar days of such meetings.

**A.4.3 Abatement & Raze.** The Project includes the abatement and removal of any and all hazardous materials found within the existing building(s).

**A.4.3.1 Abatement of Hazardous Materials.** The County will provide to the Contractor a hazardous materials survey for the existing buildings prior to development of the GMP Amendment. In order to raze the existing buildings, if any abatement will be required, the Contractor shall not commence any such abatement without authorization from the Project Officer. Further, the Contractor shall seek and obtain an authorization for any required abatement 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.

**A.4.3.2 Salvage Value.** In general, the salvage value of construction material located in the existing building shall accrue to the Contractor and/or its subcontractor. However, the County shall be entitled to the value of any piece of equipment (such as chillers, computers, etc.) that remain in the existing building(s) to the extent that such piece equipment has a salvage value of more than \$5,000.

**A4.4 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.

**A4.4.1 Safety Plan.** Prior to the start of construction activities, the contractor shall identify an on site Safety Officer and the Contractor shall prepare a safety plan for the Construction Phase conforming to OSHA 29 CFR 1926 (such plan, the "Safety Plan") and in accordance with Paragraph E.2 of Attachment D (DPR CMAR Construction 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.

**A4.4.2 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.

**A4.4.3 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.

**A4.4.4 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 their obligation to maintain a safe site or adhere to the Baseline Schedule.

**A4.5 Workhours; Coordination with DPR and Community.**

**A4.5.1 Work Hours.** 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 any applicable requirements, laws, or local ordinances.

**A4.5.2 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. The delays in approving the parking plan shall in no way absolve the Contractor from their obligation to maintain a safe site or adhere to the Baseline Schedule.

**A4.5.3 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.

**A4.5.4 Outreach Plan.** The Contractor shall keep the County informed of the construction activities and their potential impact on the community and proactively provide notice when construction activities that have the potential to have adverse impacts on the community are anticipated so that the County can provide adequate outreach to the community.

**A4.6 Quality Control.**

**A4.6.1 Quality Control Plan.** Within 15 calendar days after execution of the GMP Amendment, 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 and shall be subject to the County's

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.

**A4.6.2 Implementation.** During the Construction Phase, 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 electronically on a monthly basis. The Contractor shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming Work. The not less than monthly quality control report shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship. The monthly report should specifically address issues raised during the month and outline the steps that are being used to address such issues.

**A4.6.3 Corrective Action Plan.** The County has 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 set forth in the Specifications that are reasonably related to the quality of craftsmanship, or any provisions set forth in the Contract Documents. In the event that the County determines that any of the events specified in the preceding sentence have occurred, the County shall provide the Contractor with written notice of such event 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) calendar days after receipt of such notice. If the County and the Contractor are unable to agree on the terms of such corrective action plan within five (5) calendar 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 impose 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.

**A4.7 Final Completion & Project Close-Out.** The Contractor shall achieve Substantial Completion of the Project, as defined in the General Conditions, within 30 calendar days of the end of the period of performance for Substantial Completion.

**A4.7.1 Punch List.** Promptly after the Project reaches Substantial Completion, the County's Design Team will develop a punch list. Once the punch list is prepared, the Contractor shall inspect the work along with representatives from the County. The punch list shall be revised to reflect additional work items that are discovered during such inspection. The Contractor shall correct all punch list items no later 30 days after issuance of a punch list.

**A4.7.2 Training.** The Contractor shall provide training to County staff on all of the building systems. The Contractor shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to the date of Substantial Completion.

**A4.7.3 Warranties & Manuals.** The Contractor shall prepare and submit the following documentation: (i) Pre-final (90%) Operations and Maintenance (O&M) and as-built drawings shall be submitted approximately 10 calendar days prior to final completion date. (ii) a complete set of final product O&M manuals, training videos, warranties, etc. at final completion; (iii) an equipment schedule; (iv) a proposed schedule of maintenance for the new building; (v) environmental, health and safety documents for the new building; (vi) all applicable inspection certificates/permits (boiler, elevator, emergency evacuation plans, health inspection, etc.) for the new building; and (vii) a complete set of the Contractor's Project files.

**A4.7.4 Six and Eleven Month Walk.** The Contractor must schedule a joint inspection of the Project during the sixth and eleventh months after Final Completion is achieved. During such inspection, the Contractor and a representative of the County shall walk the Project to identify any necessary warranty work

**A4.8 Administrative Matters.**

**A4.8.1 Monthly Report.** The Contractor shall provide written daily reports and monthly reports to the Project Officer, on the progress of the entire Work from Preconstruction NTP until Final Completion of the Project. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient Work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

**A5. COMPENSATION**

**A5.1** Other than the Construction Management Fee and the General Conditions Fee, the Contractor's sole compensation for the Work shall be reimbursement of the Cost of the Work, as defined in Section A5.1.1 herein, at cost and without mark-up of any kind. The County shall have no obligation to reimburse the Contractor for Cost of the Work that together with the Construction Management Fee and the General Conditions Fee exceed the GMP established in the GMP Amendment.

**A5.1.1 Cost of the Work.** The Cost of the Work consists of the following, 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. All amounts due to the Contractor under the terms of the County's written authorization for the Contractor to perform any portion of the Work as self-performed work. If an authorization for the Contractor to engage in self-performed work is not on a fixed-price basis, then, as to that Work, the following costs shall be within the Cost of the Work:
  - 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 law 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.
3. Royalty and license fees paid for use of a design, process or product, if its use is required by this Contract or has been approved in advance by the County;
  4. Fees for obtaining all required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation, as well as all trade permit and the building permit fee;
  5. All fees and other costs necessarily incurred to carry out testing and inspections required by the Contract 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 require 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;
  6. All bonds to jurisdictional agencies (utilities, storm water management, land disturbance, and grading); and
  7. All performance and payment bonds and general liability insurance attributable to the Project.

**A5.1.2 General Conditions Costs.** The General Conditions cost, which is included in the General Conditions Fee and are reimbursable, shall include, but not be limited to the following:

- A. The cost of Construction Staff. The term Construction Staff shall mean the Project Executive, 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;
- B. Fringe Benefits associated with Construction Staff;
- C. Payroll taxes and payroll insurance associated with Construction Staff;
- D. Staff costs associated with obtaining permits and approvals;
- E. Out-of-house consultants;
- F. 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 Services Phase; (iv) furniture; (v) office supplies;



- G. 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; (v) job radios;
- H. Local delivery and overnight delivery costs; and
- I. First aid facility.

**A5.1.3. Non-Reimbursable Costs.** The following are some of, but not all of, the costs that shall not be 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 Construction Management Fee.
4. Sales or use taxes.
5. Costs due to the errors or omissions of the Contractor or its subcontractors or suppliers at all tiers, negligent or otherwise.
6. 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.
7. Any costs incurred in performing work of any kind before Notice to Proceed, unless specifically authorized by the County.

**A5.1.4 Cost of Preconstruction Services.** The Cost of Preconstruction Services shall be paid at the conclusion of the Preconstruction Phase, which shall not be deemed complete unless and until the GMP Amendment is executed by the parties. In the event a GMP Amendment is not executed, the terms of Paragraph A3.9 of this Attachment A (Scope of Services) shall apply.

**A5.1.5 General Conditions Fee.** The Contractor's General Conditions Fee shall be paid in equal monthly installments over the period of performance for Substantial Completion and shall be subject to retainage as outlined in the Agreement. The General Conditions Fee shall not be increased or decreased as a result of Change Orders or Change Directive unless such Changes (i) extend the period of performance for Substantial Completion; and (ii) the Contractor can demonstrate to the satisfaction of the County that such additional Cost of General Conditions are reasonable, necessary, and not due to any fault of the Contractor, its Subcontractors, materialmen, consultants or anyone making claims thereunder.

**A5.1.6 Construction Management Fee.** The Contractor's Construction Management Fee shall be as set forth in Attachment B (Contractor's Pricing), and 10% of the Construction Management Fee shall be allocated to the Preconstruction Phase of the Project (such amount, the "Cost of Preconstruction Services"). The Contractor acknowledges and agrees that 40% of the Construction Management Fee (the "At Risk Portion") is at risk.

**A5.1.6.1 At Risk Portion of Construction Management Fee.**

1. If the County and the Contractor agree upon a GMP that is equal to or less than the Design-to-Budget amount that was established by the County, the Contractor shall earn 25% of the At-Risk Portion of the Construction Management Fee. In the event this milestone is achieved, then this portion of the At-Risk Portion shall be paid on a monthly basis in equal installments over the then-remaining life of the Project through Substantial Completion.

2. If the Contractor achieves Substantial Completion of the Project on or before the period of performance for Substantial Completion established in this Agreement and without regard to any modifications to such date that may be made in the GMP Amendment or thereafter, the Contractor shall earn 25% of the At-Risk Portion of the Construction Management Fee. The Contractor shall lose entitlement to such portion of the Construction Management Fee even if Substantial Completion is not achieved due to the fault of the Contractor, the County's Design Team, the Code Official, events of force majeure or otherwise. In the event this milestone is achieved, then this portion of the At-Risk Portion shall be paid in the first progress payment that is due after Substantial Completion of the Project occurs.

3. The Contractor shall be eligible to earn up to 50% of the At-risk Portion of the Construction Management Fee based on the level of construction quality of the Project as (such amount the "Construction Quality Incentive"). Upon Final Completion of the Project, the portion of the Construction Quality Incentive to which the Contractor shall be entitled will be determined by the Project Officer based on his/her reasonable assessment of quality of the workmanship exhibited by the Work. The Project Officer shall share his/her proposed determination regarding the quality of the work with the Contractor. The Project Officer shall consider and discuss in good faith any comments provided by the Contractor with regard to the proposed determination. In the event the Project Officer and the Contractor cannot agree on the appropriate allocation of the Construction Quality Incentive, the Project Officer's determination shall prevail. At a minimum, the Project Officer's obligation to consult with the Contractor shall include the obligation to walk the Project with Contractor and, if the Contractor so desires, an independent construction professional engaged by the Contractor. Any portion of the Construction Quality Incentive to which the Project Officer determines that the Contractor is entitled shall be paid in the first progress payment that is due after Final Completion of the Project occurs.

In making the determinations set forth in this subparagraph 4 and subparagraph 3 above, the Project Officer shall award 100% of the available incentive if the Project Officer determines that the Contractor's efforts were very good or better, at least 67% of the available incentive if the Project Officer determines that the Contractor's efforts were good, at least 33% of the available incentive if the Project Officer determines that the Contractor's efforts were fair.

**A5.1.6.2 Not At-Risk Portion of Construction Management Fee.** The Not At-Risk portion of the Construction Management Fee is the 50% of the Construction Management Fee remaining after

deduction of the Preconstruction Services Fee and the At-Risk portion of the Construction Management Fee. The Not At-Risk portion of Construction Management Fee will be paid proportionately with the progress of construction pursuant to Progress Payments paragraph.

**A5.1.6.3 Changes to the Construction Management Fee.** The Construction Management Fee shall not be increased or decreased as a result of Change Orders or Change Directives unless such Changes (i) extend the period of performance for Substantial Completion from that contemplated in the GMP Amendment; or (ii) the County makes additions to the scope provided for in the GMP Amendment that either individually or in the aggregate cause the GMP to exceed the Project Budget by more than five percent (5%).

**A5.1.7 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, and for which proper Applications for Payment have been submitted and approved. The amount of each progress payment shall be as follows:

The Costs of Work Completed to Date			
Plus	(Cost of Work for Pay Period / Current approved estimated Cost of Work through completion)	X	(Not At-Risk Portion of the Construction Management Fee)
Plus	Any subset of the At-risk Portion of the Construction Management Fee to which the County has determined the Contractor to be entitled		
Plus	The applicable portion of General Conditions Fee		
Minus	Applicable Retainage		
Minus	Amounts previously paid by the County		

In the event the Project schedule has been extended, the monthly portions of the General Conditions Fee and the Not At-Risk Construction Management Fee will be recalculated so the then remaining unpaid portion of both fees are spread evenly over the then-remaining duration of the Construction Phase.

**A6. DIVERSION OF KEY PERSONNEL**

**A6.1 Identification of Key Personnel.** The following individuals shall be considered Key Personnel: (i) the Project Executive; (ii) the Preconstruction Services Manager; (iii) the Lead Superintendent; (iv) the Project Manager(s) who will supervise the construction of the park and associated improvements; and (vii) the Quality Control Manager. It is understood that in certain cases one individual may serve in more than one role upon approval from the Project Officer and that the role of the Preconstruction Services Manager ends once the GMP has been negotiated and at that point the Preconstruction Services Manager shall cease to become Key Personnel.

**A6.2 Liquidated Damages.** If the Contractor removes or reassigns one of the Key Personnel (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 of the Contractor) the Contractor shall pay to the County the sum of \$1,000.00 per day as liquidated damages, to include instances when the County requests that a Key Personnel 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 member of the Key Personnel has been removed or replaced by the Contractor.

The Contractor must submit any request to remove or replace Key Personnel to the County Project Officer at least 15 calendar days in advance of the proposed action. For circumstances where earlier termination may be appropriate, the Contractor shall make such request by notifying the County Project officer. The County Project Officer, in his or her sole discretion, may deem such earlier termination to be in the best interest of the County.

The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If any of the Key Personnel must be absent for more than 15 consecutive calendar days the Contractor must provide an interim Key Personnel, subject to the County's written approval.

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

The Key Personnel are identified below:

1. Project Executive – [NAME]
2. Preconstruction Services Manager – [NAME]
3. Lead Superintendent – [NAME]
4. Project Manager(s) – [NAME(S)]
5. Quality Control Manager – [NAME]

## **A7. DELIVERABLES**

### **A7.1 Preconstruction Deliverables**

1. Baseline Project Schedule (Section A2.2)
2. Preliminary Budget Estimate (Section A2.3)
3. Value Engineering Memorandum – Concept Design (Section A2.4)
4. Constructability/Sole Source/Long-Lead Time Memorandum (Section A2.5)
  
5. Construction Administration Plan (Section A2.7)
6. Memorandum on Mid-Point Construction Document packages Over the Shoulder Design Review (Section A2.8)

### **A7.2 GMP Formation Deliverables**

1. Bidders List (Section A3.3)
2. Analysis of Bids Received and Recommendation for Award (Section 3.4)
3. Bid Tabulation (Section A3.5)
4. Value Engineering Update (Section A3.6)
5. GMP Proposal (Section A3.7)

**A7.3 Construction Phase Deliverables**

1. Bi-Weekly Progress Meeting Minutes (Section A4.2.3)
2. Safety Plan (Section A4.4.1)
3. Outreach Plan (Section A4.5.4)
4. Quality Control Plan (Section A4.6.1)
5. Warranties and Manuals (Section A4.7.3)
6. Monthly Reports (Section A4.8.1)
7. Building systems training for County staff (Section A4.7.2)
8. Submittal Log
9. Monthly Project Schedule updates

**EXHIBIT B**

A. The Construction Management Fee is: \$449,865 or 3.25% of  
\$13,842,000

The Contractor acknowledges and understands that the Construction Management Fee a firm, fixed price and other than as permitted in the Scope of Work will not be subject to further adjustment. The Offeror further acknowledges that ten percent (10%) of the Construction Management Fee shall be allocated to the Contractor's preconstruction phase scope of work. Further, the Contractor acknowledges that forty percent (40%) of the Construction Management Fee shall be at risk, and the Contractor shall only be entitled to such portion as set forth in the Scope of Work.

B. The General Conditions Fee is: \$402,648

The Contractor's General Conditions Fee is a firm, fixed price and consists of the following elements:

Cost of construction staff	<u>\$306,650</u>
Fringe Benefits associated with field staff costs	<u>\$Included</u>
Payroll taxes and payroll insurance associated with field staff costs	<u>\$Included</u>
Staff costs associated with obtaining permits and approvals	<u>\$Included</u>
Out-of-house consultants	<u>\$w/precon</u>
Travel, Living and Relocation expenses	<u>\$3,500</u>
Job vehicles	<u>\$2,500</u>
Field office for CM, including, but not limited to:	<u>\$33,000</u>
• Trailer purchase and/or rental	
• Field office installation, relocation and removal	
• Utility connections and charges during the Construction Services phase	
• Furniture	
• Field offices for the Library and its Program Manager	
• Office supplies	
Office equipment including but not limited to:	<u>\$3,000</u>
• Computer hardware and software	
• Copy machines	
• Telephone installation, system and uses charges	
Job radios	<u>\$500</u>
Local delivery and overnight delivery costs	<u>\$747</u>
Field computer network	<u>\$1,000</u>
First aid facility	<u>\$500</u>
Progress photos	<u>\$500</u>
Printing cost for drawings, bid packages, etc.	<u>\$750</u>
Other (please itemize) PRECONSTRUCTION	<u>\$50,000</u>

**EXHIBIT C**  
**ARLINGTON COUNTY DPR CMAR CONSTRUCTION GENERAL CONDITIONS**

**TABLE OF CONTENTS**

- A. **INTRODUCTION TO TERMS**
  
- B. **DRAWINGS, SPECIFICATIONS AND RELATED DATA**
  - 1. INTENT OF THE DRAWINGS AND SPECIFICATIONS
  - 2. DISCREPANCIES AND ERRORS
  - 3. DIFFERING SITE CONDITIONS
  - 4. DOCUMENTS ON THE JOBSITE
  - 5. OWNERSHIP OF DRAWINGS AND SPECIFICATIONS
  - 6. SUBMITTALS
  - 7. TESTS
  - 8. STANDARDS
  - 9. SUBSTITUTIONS AFTER CONTRACT AWARD
  - 10. SURVEYS AND CONTROLS
  - 11. AS-BUILT DRAWINGS
  - 12. RECORDKEEPING AND PROJECT DOCUMENT FILES
  
- C. **COUNTY, COUNTY PROJECT OFFICER, AND CONTRACTOR RELATIONS**
  - 1. STATUS OF PROJECT OFFICER
  - 2. LIMITATION ON COUNTY'S RESPONSIBILITIES
  - 3. DISPUTES
  - 4. INSPECTION OF WORK
  - 5. INSPECTION OF MATERIALS
  - 6. EXAMINATION OF COMPLETED WORK
  - 7. RIGHT TO SUSPEND WORK
  - 8. RIGHT TO CARRY OUT THE WORK
  - 9. SUPERINTENDENCE BY CONTRACTOR
  - 10. DRUG FREE POLICY
  - 11. LANDS BY COUNTY
  - 12. LANDS BY CONTRACTOR
  - 13. PROTECTION OF WORK AND PROPERTY
  - 14. SEPARATE CONTRACTS
  - 15. SUBCONTRACTS
  - 16. ELIMINATED ITEMS
  
- D. **MATERIALS AND WORKMANSHIP**
  - 1. MATERIALS FURNISHED BY THE CONTRACTOR
  - 2. IBC AND VUSBC REQUIREMENTS

3. ADA COMPLIANCE
4. MANUFACTURER'S DIRECTIONS
5. WARRANTY
6. INSPECTION, ACCEPTANCE AND TITLE TO MATERIALS
7. CONTRACTOR'S TITLE TO MATERIALS
8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS
9. CUTTING, PATCHING AND DIGGING
10. REJECTED WORK AND MATERIALS
11. HAZARDOUS MATERIALS
12. HAZARDOUS WASTE
13. ASBESTOS
14. PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS

**E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY**

1. MAINTENANCE OF TRAFFIC
2. SAFETY AND ACCIDENT PREVENTION
3. OVERHEAD HIGH VOLTAGE LINES SAFETY ACT
4. SANITARY PROVISIONS
5. DAMAGES CAUSED BY WORK
6. CLEANING UP

**F. PROGRESS AND COMPLETION OF THE WORK**

1. NOTICE TO PROCEED
2. TIME FOR COMPLETION
3. SCHEDULE OF COMPLETION
4. CONDITIONS FOR COMPLETION
5. USE OF COMPLETED PORTIONS

**G. MEASUREMENT AND PAYMENT**

1. PAYMENTS TO CONTRACTOR
2. PAYMENT FOR MATERIALS ON SITE
3. STIPULATED PRICE ITEMS
4. PAYMENTS WITHHELD
5. COUNTY ORDERED CHANGES IN WORK
6. CLAIMS FOR EXTRA COST
  7. DAMAGES FOR DELAY; EXTENSIONS OF TIME FOR COMPLETION OTHER THAN FOR WEATHER
8. TIME EXTENSIONS FOR WEATHER
9. RELEASE OF LIENS
10. FINAL PAYMENT



**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 Contractor, signed by the County and the Contractor, which authorizes a change in the Work, or an adjustment in the Contract Amount, and/or the Time for Completion issued after execution of the Agreement and is incorporated into and becomes part of the Contract Documents.
6. The term "Commencement Date" means the date on which the Time for Completion shall commence for the Contractor to begin to perform his obligations under the Contract Documents, as provided in the Notice to Proceed.
7. 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.
8. The term "Contract Documents" means the Agreement and all the documents and Exhibits identified therein, which shall include the Drawings and the Specifications and all modifications thereto properly incorporated in the Contract.
  - a. The term "Contract Drawings" means all drawings and construction notes which show the locations, character, dimensions, and details of the Work pertaining to the Contract.
  - b. The term "Specifications" means that part of the Contract Documents that describes the quality of materials, methods of installation, standard of workmanship, and the administrative and procedural requirements for the performance of the Work under the Contract.
  - c. The term "Special Conditions" means the written statements modifying or supplementing the General Conditions for requirements or conditions particular to the Contract.

9. 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.
10. The term "Critical Path" shall mean the longest sequence of activities in the Project schedule which must be completed on time for the Project to be completed within the Time for Completion.
11. The term "Delay" means an event or condition that results in a work activity starting or being completed later than originally planned.
12. The term "Final Acceptance" shall mean the date on which the County issues the final payment for the Work.
13. 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 punch list.
14. The term "Landscape Architect" means the County Landscape Architect assigned by the Director of the County Department responsible for the project or a contractor employed by the County to perform design services or design oversight and identified in the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project.
15. The term "Notice to Proceed" shall mean a written notice issued by the County to the Contractor stating the Commencement Date. The County will issue separate Notices to Proceed for the Preconstruction Phase and the Construction Phase. The Notice to Proceed for the Construction Phase shall state the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work required under the Contract. The Notice to Proceed will specify the Time for Completion of the Contract.
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 responsible for the project, or the Director'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 the Contract Documents or in a written notice to the Contractor from the Project Officer responsible for the project. The designee may be a professional architect, landscape architect, engineer or other person employed by or hired by the County to perform construction services administration, design services, or project oversight.
18. The term "Punch List" means unfinished items of the construction of the Project. The unfinished items of construction shall be 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 specified limits following Substantial Completion.

19. The term "Request for Information" (RFI) means a request originated by the Contractor requesting clarification or additional information from the Project Officer and/or Architect/Engineer concerning information in the construction documents where the Contractor believes there is insufficient information or a conflict in the documents. RFI's shall be submitted by the Contractor sufficiently in advance of the Work to provide time for assessment and response without delay of the Work.
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 and shall include the Technical Specifications, the Special Conditions, if any, and all written agreements and instructions pertaining to the performance of the Work.
24. The term "Subcontractor", as employed herein, 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 review, cost estimating, value engineering, scheduling, trade subcontractor bidding, preparation of a GMP proposals, 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 AND RELATED DATA**

**1. INTENT OF THE DRAWINGS AND SPECIFICATIONS DURING CONSTRUCTION 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. Any additional drawings and other instructions deemed necessary by the Project Officer will be furnished to the Contractor when required for the Work and shall become incorporated into the Contract Documents.
- c. Unless otherwise specifically noted, the word "similar" where it occurs in the Drawings, shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their locations and their connection with other parts of the Work.
- d. Where "as shown", "as indicated" "as detailed", or words of similar import are used, it shall be understood that the direction, requirements, permission, approval or acceptance of the Project Officer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install".
- e. Materials or work described in words which, so applied, have a well-known technical or trade meaning, shall be held to refer to the recognized technical or trade meaning.
- f. Figured dimensions on the plans shall be used; drawings shall not be scaled.

**2. DISCREPANCIES AND ERRORS DISCOVERED DURING THE CONSTRUCTION PHASE**

If the Contractor discovers any discrepancies between the Drawings and Specifications and the site conditions or any errors or omissions in the Drawings or Specifications, the Contractor shall at once, but in no event later than two business days after discovery of the discrepancy or error, report them in writing to the Project Officer. If the Contractor proceeds with any work that may be affected by such discrepancies, errors, or omissions, after their discovery, but before their clarification, such work shall be at the Contractor's sole risk and expense and such work may not be the basis of any Claim for Extra Cost. Issues affecting critical path activities shall be made known to the Project Officer or designee within two business days after discovery.

**3. DIFFERING SITE CONDITIONS**

The Contractor shall, within twenty-four (24) hours after becoming aware of differing site conditions, and before the conditions are disturbed, give a written notice to the Project Officer of subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site.

The Project Officer will investigate the site conditions within five (5) calendar days after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the Work, or the time required for performing any part of the Work under the contract, 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.

**4. DOCUMENTS ON THE JOBSITE**

The Contractor shall keep on the site of the Project a copy of the Drawings, Specifications, Permits, Permitted Drawings, and all other applicable documents including all authorized revisions, and shall at all times give the County and its authorized representatives access thereto.

**5. OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

All Drawings and Specifications and copies thereof furnished by the County are the property of the County and shall not be used on other projects. Upon completion of the Project, all copies of the Drawings and Specifications except the signed Contract sets shall be returned to the Project Officer.

**6. SUBMITTALS**

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 submit to the Project Officer or designee any and all submittals required by the specifications or requested by the Project Officer. Each such submittal shall be made at the appropriate time and provide sufficient time for review without impact to the Project schedule. A listing of all such submissions and a submittal schedule shall be included with the GMP package. Any delays associated with the late submission of submittals will be at Contractor's risk.

c. Submittals shall be submitted in such number of copies that three (3) copies may be retained by the Project Officer or designee after review and acceptance. Each

submission shall be accompanied by a letter of transmittal in duplicate, 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 or designee. 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. When submittals cannot be checked because a submission is not complete, or because submittals on related items have not been received by the Project Officer or designee, then such submittals will be returned without action or will be held, not checked, until the missing material is received. Incomplete or defective submittals shall not be considered to have been submitted. Failure to deliver submittals within the specified time will not be grounds for additional time or compensation.
- e. Submittals shall have been reviewed by the Contractor and coordinated with all other related or affected work before they are submitted for review and acceptance and shall bear the Contractor's certification that the Contractor has checked and approved them as complying with all relevant information in the Contract Documents. Submittals submitted without such certification and coordination will be returned to the Contractor without action and will not be considered as a formal submission.
- f. If shop drawings show variations from the Drawings and Specifications because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in the Contractor's letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment; otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Drawings and Specifications even though shop drawings have been accepted.
- g. The Project Officer or designee shall review the shop drawings with reasonable promptness. Review and/or acceptance of shop drawings will be general for conformance with the design concept of the Project and compliance with the information given in the Contract Documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Acceptance shall not be construed as permitting any departure from Contract requirements, as authorization of any increase in price nor as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist. Review is not intended to relieve the contractor of full responsibility for the accuracy and completeness of the plans and calculations, or for the complete compliance with the contract documents. Contractor is solely responsible for the means and methods of the construction, including temporary items proposed for use.

## 7. SAMPLES

The Contractor shall submit to the Project Officer or designee, all samples required by the specifications or requested by the Project Officer or designee. Samples shall be submitted in single units only, unless the Contractor desires additional units for the Contractor's own use. 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 entitled to additional time or compensation.

**8. TESTS**

The County, through a third-party testing agency, will perform any specified laboratory tests of materials and finished articles at the County's expense. Failure of any material to pass the specified tests or any test performed by the third-party testing agency will be sufficient cause for refusal to consider, under this Contract, any further materials of the same brand or make of that material. Additionally, the Project Officer, in his discretion, may order that any failed test be re-performed at the Contractor's sole expense. Samples of various materials delivered on the site or in place may be taken by the third-party testing agency for testing. Samples failing to meet the Contract requirements will automatically void previous approvals of the items tested. The Contractor is required to coordinate and schedule all testing in a manner that permits the quality control standards to be met, but does not incur unreasonable expenses upon the County. Any charges resulting from the Contractor failing to coordinate testing services will be the responsibility of the Contractor.

**9. STANDARDS**

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.

**10. SUBSTITUTIONS AFTER CONTRACT AWARD**

Requests for substitutions for specified items after the award of Contract will not be considered except with just cause and with the written approval of the Project Officer. Applications for acceptance of substitutions for 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 will be valid unless it is in written form and signed by the Project Officer or designee. The Contractor shall use Form CSI 13.1A when requesting a substitution.

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 or an extension of contract time to the County, 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.

**11. 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.

**12. RECORD DRAWINGS**

Record drawings shall be the responsibility of the Contractor. The Contractor shall maintain and mark up one set of prints of the applicable Contract Drawings 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 Contract Drawings, 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 or designee 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 or designee prior to Final Completion.

**C. COUNTY, PROJECT OFFICER, AND CONTRACTOR RELATIONS**

**1. STATUS OF PROJECT OFFICER**

The Project Officer or designee shall be the County's representative during the construction period. The Project Officer or designee shall have authority to suspend the Work whenever such suspension may be necessary in the reasonable opinion of the Project Officer. The Project Officer or designee 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 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**

Except as modified by the Contract Documents, 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, for 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 a 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 limit or relieve 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 by the Project Officer 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 the 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, restoration, and/or 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.

**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 ten-day (10) 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 County's expenses, including 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.

**9. SUPERINTENDENCE BY CONTRACTOR**

The Contractor shall keep a competent superintendent and any necessary assistants on the Work site at all times during progress of the Work and such persons shall be satisfactory to the Project Officer. The superintendent shall not be changed, except on the Project Officer's determination the superintendent is no longer satisfactory or except with the consent of the Project officer where the superintendent proves to be unsatisfactory to the Contractor or ceases to be in the Contractor's employment. If requested by the County, the superintendent must be replaced within seven (7) calendar days of Project Officer's written notice. The superintendent shall represent the Contractor in the Contractor's absence and all directions given to him shall be as binding as if given to the Contractor. In general, instructions by the Project Officer shall be confirmed in writing, and always upon written request from the Contractor. The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ any person on the Work 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 Owner. 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 for the Construction Phase. 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 the lands shown on the Drawings 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 of the lands, rights-of-way or easements have not been obtained as herein contemplated before construction begins, the Contractor shall begin its work on such lands and rights-of-way as the County may have previously acquired.

**12. LANDS BY CONTRACTOR**

If the Contractor requires additional land 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, 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 written permission. The Contractor shall provide copies of all agreements to the County and shall include language in the agreement indemnifying and holding harmless the County 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.

**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 markers 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 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 designee 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 the opportunity for the delivery and 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 provide to the Project Officer or designee, in writing with the Contractor's GMP proposal, the names of all subcontractors proposed for the principal parts of the Work who have been selected through the competitive process defined in the Contract Documents and for such others as requested by the Project Officer or designee, and shall not employ any subcontractors that the Project Officer or designee may object to as incompetent or unfit after an appropriate determination of the subcontractor's ability. No proposed subcontractor will be disapproved except for cause.
- b. The Contractor shall make no substitutions for any subcontractor previously selected and approved unless first submitted to the County for approval.
- c. 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.

- d. 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 documents comprising the Contract insofar as such documents are applicable to the work of subcontractors.
- e. 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.
- f. If requested by the County, the Contractor shall replace any subcontractor at no cost to the County within seven (7) calendar days of the Project Officer's written notice. No additional time or compensation will be provided in the event a subcontractor is removed due to non-compliance of the requirements outlined within the Contract.

**16. ELIMINATED ITEMS**

The Project Officer may, upon written notice to the Contractor, eliminate item(s) from the Contract. Payment shall not be made for such item(s) so eliminated; except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item(s) and the net cost of materials purchased before the item(s) was eliminated from the Contract, including freight and tax costs, as evidenced by invoice. If the County notifies the Contractor of such elimination at least fifteen (15) calendar days prior to scheduled installation of such item(s), then no additional compensation will be made for overhead or anticipated profit.

**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. All workmanship 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**

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 is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines, or other applicable regulations and standards. However, should the

Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform the County and its design consultant, if applicable, to allow for corrective action.

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 approved by the Project Officer, unless herein specified to the contrary.

**5. WARRANTY**

Unless otherwise specified, 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 manufacturer's warranties to the Project Officer by the date of Final Completion.

Unless otherwise specified by the Contract Documents, all work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials, or inferior or faulty workmanship, or work not in accordance with the requirements of the Contract Documents for one (1) year from the date of Final Acceptance of the work by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of Final Acceptance shall govern the effective date of the Guaranty or 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 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 of materials 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. The County will not inspect, accept, or pay for any materials stored off-site by the Contractor. Title and risk of loss or damage to all items 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 advisable to assure that goods or services conform to the specification. 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.

**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 Contractor's invoice.

**8. TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS**

All material and work covered by partial payments made by the County shall 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 shall 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 shall 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. CUTTING, PATCHING, AND DIGGING**

The Contractor shall do all cutting, fitting, or patching of the Contractor's work that may be required to make its several parts come together properly and 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, as the Project Officer may direct. The Contractor shall not endanger any work by cutting, digging, or otherwise, and shall not cut or alter the work of any other contract except with the consent of the Project Officer.

**10. 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, are not equal to samples approved 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 at the Contractor's expense and to the satisfaction of the County. 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 at no cost to the County. The fact that the Project Officer may have previously overlooked such defective materials or work shall not constitute acceptance of any part of it.

b. If the Contractor fails to proceed at once with the replacement of rejected materials 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. At its discretion, the County shall

be entitled to offset such expenses against any sums owed by the County to the Contractor under the Contract. This clause applies during the Contract and during any warranty or guarantee period.

- c. If the Project Officer and County deem 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 therefor.

**11. HAZARDOUS MATERIALS**

Arlington County is subject to the Hazard Communication Standard, 29 CFR §1910.1200 (Standard). The Contractor agrees that it shall 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 information 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 information has 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 information 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 on site an up to date and complete SDS binder for all materials used and delivered to the Project. The County Project Officer or designee shall be allowed access to the SDS book at all times.

**12. 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 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 Environmental Protection Agency (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.

**13. 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.

**14. 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 a 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. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the County, the County shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The County shall be entitled to offset such expenses against any sums owed by the County to the Contractor under this Contract.

**E. LEGAL RESPONSIBILITY AND PUBLIC SAFETY**

**1. MAINTENANCE OF TRAFFIC**

The Contractor shall conduct its operations in a manner that will ensure that all modes of traffic (vehicular, bicycle, pedestrian) will be uninterrupted except as approved by the County. At the close of each work day, the area of work shall be confined to the smallest area possible, but in no event larger than the area designated in the Construction Documents, so that the maximum use of the street and sidewalk will be restored and the hazard to traffic reduced to the minimum. No excavation shall remain open within the roadway or sidewalk without the approval of the County except when the excavation can be safely bridged with the use of steel plates or other materials acceptable to the County. When areas of excavation do remain open, the area shall be barricaded and warning signs shall be posted. Approved safety barriers may be required.

At all times the Contractor shall use the personnel and traffic control signs and devices necessary to comply with Part VI of the "National Manual on Uniform Traffic Control Devices, latest edition." During the progress of the work when the street may be obstructed to any extent by construction equipment or construction operations, in addition to the signs and barricades, special workers, equipped with VDOT required "STOP\SLOW" double sided traffic

control paddles, shall be designated by the Contractor to direct traffic. These workers so designated shall not be assigned to any other duties while engaged in directing traffic. The Contractor has sole responsibility for ensuring that its operations are conducted in a safe manner and notwithstanding any other provision to the contrary, shall fully indemnify Arlington County, its officers, agents and employees for any damage or injury related to traffic operations which is caused by negligent or otherwise improper or deficient performance under the Contract or nonperformance of the terms of the Contract. All personnel, signs, barricades and any other items necessary for the maintenance of traffic and safety shall be provided by the Contractor. No separate payment shall be made by the County for Maintenance of Traffic, unless otherwise specified.

**2. 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, the U.S. Department of Labor's Occupational Safety and Hazard Administration (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.

The Contractor shall provide to the County, within the time frame set forth in the Scope of Work, a copy of the Contractor's written safety policies and safety procedures applicable to the scope of work. Failure to provide this information within may result in cancellation of the Contract.

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.

**3. OVERHEAD HIGH VOLTAGE LINES SAFETY ACT**

If any work required herein will be performed within ten (10) 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. 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.

**4. 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 the local and state departments of health and where additional accommodations are necessary to maintain a reasonably sanitary environment, then such additional accommodations shall be made as determined by the Project Officer.

**5. DAMAGES CAUSED BY WORK**

Any damage resulting from Work performed by the Contractor under this Contract shall be repaired to the County's satisfaction at the Contractor's expense.

**6. 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. 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. NOTICE TO PROCEED**

- a. **PRECONSTRUCTION PHASE:** Execution of the Agreement by the County shall serve as a Notice to Proceed for Preconstruction Services as outlined in the Contract Documents.
- b. **CONSTRUCTION PHASE:** The execution of the GMP Amendment by the County shall serve as a Notice to Proceed for the Construction Phase. Every calendar day following issuance of such Notice to Proceed shall be counted in computing the actual Time for Completion.

**2. TIME FOR COMPLETION**

It is hereby understood and mutually agreed by and between the Contractor and the County that the Commencement Date, 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 Preconstruction Phase services in accordance with the timelines set forth in the Scope of Work and the Baseline Schedule approved by the Project Officer. The Contractor agrees that the Construction Phase work shall be started promptly upon execution of the GMP Amendment by the County and shall be completed in accordance with the schedule set forth in the Contract Documents.

**3. SCHEDULE OF COMPLETION**

Unless otherwise specified, the Contractor shall within five (5) calendar days prior to the pre-construction meeting, submit schedules which show the order in which the Contractor proposes to carry on the Work in accordance with the Specifications. When the Work is 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 five (5) calendar days of the County's written demand.

**4. CONDITIONS FOR COMPLETION**

- a. **SUBSTANTIAL COMPLETION:** The Work shall be considered Substantially Complete when the provisions of the Closeout Procedures Section of Project Specifications have been met, in addition to the following:
  - 1) The Project Officer has agreed that the condition of the Work warrants Substantial Completion; and
  - 2) All hazards, including, but not limited to, electrical, structural, mechanical or plumbing, shall be removed. Site has been cleaned of construction material and equipment has been removed from site. All subsurface structures are in place; and
  - 3) All entrances and site walkways have been completed and can remain clear of construction activities.
- c. **FINAL COMPLETION:** The Work will be considered Finally Complete when the provisions of Project Specifications Section 017700, Closeout Procedures, have been met, in addition to the following:

- 1) The Project Officer has agreed that the condition of the Work warrants Final Completion; and
- 2) All construction deficiencies and punch list items have been closed and all construction deficiencies corrected and accepted by the Project Officer; and
- 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; and
- 4) All warranty certificates and contact information for parties providing warranties have been delivered and accepted by the Project Officer; and
- 5) All final Operating and Maintenance manuals have been delivered and accepted by the Project Officer; and
- 6) All final As-Built Drawings in .PDF format on a CD and one full-size paper copy have been delivered and accepted by the Project Officer.

**5. 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.

**G. PAYMENT, CHANGES, CLAIMS, DELAYS**

**1. PAYMENTS TO CONTRACTOR**

The County will make partial payments, less retainage, to the Contractor in accordance with the Contract Documents. The accepted Schedule of Values shall be used as the basis for preparing payment applications, 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 or designee.

The Contractor's application for payment will not be reviewed or processed unless an updated Construction Schedule is attached. The payment application shall also contain a certification by the Contractor that due and payable amounts have been paid by the Contractor, including payments to subcontractors and suppliers, for work which previous payment was received by the Contractor from the County.

**2. PAYMENT FOR MATERIALS ON SITE**

When requested in writing by the Contractor, payment allowances may be made for material secured for use on the Project and secured at the project site. Such payments will only be made for materials scheduled for incorporation into the work within sixty (60) calendar days.

**3. 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.

**4. 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 amount or aggregate change amount that will increase the total Contract Amount more than 10% will require notice to sureties and require that Performance and Payment bonds be increased by the Contractor. 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 or designee 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 from the County signed or countersigned by the Project Officer or designee, and no claim for an addition to the Contract Amount or Time for Completion shall be valid unless so ordered.
- b. The Contractor shall review any County requested or directed change and shall respond in writing within ten (10) calendar days after receipt of the proposed change, or such other reasonable time as the County may direct, 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.
- 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 and acceptance by the County in a lump sum; (b) by cost and fixed fee; (c) by time and materials; 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 or designee may direct, a correct account of the cost, together with vouchers. The Project Officer or designee 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 or designee 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 fifteen (15) 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 cost proposal for the change in the Work and the Contractor's signature on the cost proposal is its agreement that the adjustments in Contract Price and/or Time stipulated in this change order proposal constitutes full, complete and final compensation for all costs and time associated (direct and indirect), impacts and/or delays arising out of, or incidental thereto, the applicable work as indicated herein. The Contractor further agrees to waive all rights to make any further claim arising out of or as a result of this change. All terms and conditions of the Contract shall remain unchanged and in full force and effect.

The allowable percentage markups for overhead and profit in the cost proposal 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) For Work performed by a Subcontractor with its own forces, the Subcontractor shall be entitled to a mark-up of not more than 15% (covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on the Base Cost, as defined in the General Conditions. For Work that the County permits the Contractor to self-perform, the Contractor shall also be entitled to a mark-up of not more than 15% of the Base Cost. With regard to any such Work that is self-performed by the Contractor, the markup contemplated in this Paragraph shall be the Contractor's exclusive compensation and the Contractor shall not be entitled to the markup set forth in item (3) below;
  - (2) Intervening tier Subcontractors shall be entitled to a mark-up of not more than five percent (5%) (covering home office overhead, the cost of insurance and bonds, field supervision, general conditions and profit) on Work Performed by lower-tier Subcontractors;
  - (3) To the extent permitted by Section A5.1.5 (Construction Management Fee) of the Scope of Work, the Contractor shall be entitled to an increase in its Construction Management Fee at a rate of [Construction Management Fee divided by (\$ [Project Budget minus Construction Management Fee minus General Conditions Fee]) on work performed by Subcontractors; and
  - (4) In no event shall the maximum mark-up on the Base Cost exceed 25%.
- 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) Site superintendent's pro-rata salary; and
  - 2) Temporary site office trailer expense; and
  - 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 the 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, and then only to the extent that, 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.

## 5. 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 instructions from the Project Officer, by drawings or otherwise, will incur the Contractor extra cost under this Contract, then, except in emergencies endangering life or property, the Contractor shall give written notice thereof before proceeding to execute the work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than ten (10) calendar days after the event or receipt of such instruction. The Contractor's



notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. No such claim shall be valid unless so made. If the Project Officer agrees that such instructions involve extra cost to the Contractor, any additional compensation will be determined by one of the methods provided in "Changes in Work" section of these General Conditions. Except as otherwise specifically provided, no claims for extra cost shall be allowed unless timely notice is given by the Contractor, as required by this Section.

**6. DAMAGES FOR DELAY; EXTENSION OF TIME FOR COMPLETION OTHER THAN FOR WEATHER**

The Contractor's relief for any claim for delay which is unreasonable, and 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, but only to the extent any damages for delay were actually caused by the County. 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 calendar days following the perceived onset of the delay. The Contractor's complete submittal for a time extension shall be submitted no later than thirty (30) calendar days after the cessation of the delay or within such longer period as the County may agree in writing to allow. The Contractor's written notice 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.

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:

- a. Site superintendent pro-rata salary, temporary site office expense, temporary site facilities, and temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets.
- b. 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 Work. 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, and that the additional costs incurred by the Contractor are directly attributable to the delay in the Work claimed.

**7. 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 solely 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 solely 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 (Rain Days). If the number of days with precipitation in excess of 0.10", as recorded at Washington Reagan National Airport, exceeds the anticipated Rain 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 Rain Days illustrated in Figure 1. The anticipated value of Rain 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.

**8. RELEASE OF LIENS**

The County, before making any payment including Final Payment, shall require the Contractor to furnish a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, and if required in either case, an affidavit that so far as the Contractor has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. 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.

**9. 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 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: \_\_\_\_\_

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: \_\_\_\_\_

**EXHIBIT D**

**GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT**

**THIS GUARANTEED MAXIMUM PRICE AMENDMENT ("Amendment")** is entered into by and between the County Board of Arlington County, Virginia (the "County"), and name of Contractor, (the "Contractor") pursuant to Agreement No. 19-173-RFP-CMAR (the "Agreement"), dated \_\_\_\_\_, between the County and the Contractor, for \_\_\_\_\_ to establish a Guaranteed Maximum Price (GMP) and Time for Completion of Construction Services as set forth below.

**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 \_\_\_\_\_ dollars (\$ \_\_\_\_\_) ("Guaranteed Maximum Price"). 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:

- D. 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;
- E. a Construction Management Fee for the Contractor, as defined in the Contract Documents, in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_); and
- F. a General Conditions Fee, as defined in the Contract Documents, in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

The Guaranteed Maximum Price is further broken down into line items and categories as specified in Attachments \_\_\_\_\_ to this Amendment.

**3. BASIS FOR THE GMP**

The GMP is for the performance of the Work in accordance with the Contract Documents and the following Attachments to this Amendment:

- A. Attachment \_\_\_\_\_: List of Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based.
- B. Attachment \_\_\_\_\_: A list of Unit Prices and Allowance items as well as a statement of their basis.
- C. Attachment \_\_\_\_\_: Assumptions and Clarifications made in preparing the Guaranteed Maximum Price, noting in particular any exclusions. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications but shall be subordinate to the Agreement and the terms of this Amendment.

- D. Attachment \_\_\_\_: The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, Allowances, Contractor's Contingency, and any other items, as well as the Construction Management Fee and General Conditions Fee that comprise the Guaranteed Maximum Price.
- E. Attachment \_\_\_\_: A Construction Phase Schedule, which shall include, but not be limited to, the Substantial and Final Completion Dates upon which the proposed Guaranteed Maximum Price is based, and a schedule of issuance of the Construction Documents upon which the Substantial and Final Completion Dates are based (the "Project Schedule").

**4. INCOMPLETE DRAWINGS AND SPECIFICATIONS**

The Contractor and the County acknowledge that the Drawings and Specifications are not complete and, as of the date hereof, that such Drawings and Specifications have reached the level of approximately \_\_\_\_\_% of the total design effort. The Contractor, however, has been actively involved in the design process and hereby represents that it has a sufficient understanding of the Project to agree to a Guaranteed Maximum Price to fully complete the Project. The Contractor hereby acknowledges that the GMP Drawings and Specifications provides sufficient detail and information to provide a firm Guaranteed Maximum Price and that the Guaranteed Maximum Price proposed therein is intended to represent the Contractor's offer to fully complete the Project. The Contractor and the County agree to work together to complete the Drawings and Specifications as provided in the Contract Documents, consistent with the Guaranteed Maximum Price premises and assumptions, and with Project Schedule.

**5. DESIGN INTENT; INFERABLE WORK**

The GMP Drawings and Specifications include various clarifications and assumptions that are intended to further define the scope of Work that will be required to complete design. The Contractor has included within the Guaranteed Maximum Price sufficient amounts to cover aspects of the Work that are not shown on the GMP Drawings and Specifications.

**6. COST OVERRUNS**

Subject to additions or deductions, which may be made in accordance with the Contract, the Contractor shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from the County. The Contractor shall not be entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in the Agreement.

**7. ALLOWANCES**

The Guaranteed Maximum Price includes specific "Unit Price Allowance Amounts" for certain items as shown on the Schedule of Values and budgeted in the Guaranteed Maximum Price ("Allowance Items"). The only Allowance Items shall be those specifically identified as such in the Schedule of Values and in the Guaranteed Maximum Price. The Allowance Amounts represent all Costs of the Work of the Allowance Items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by the Contractor.

**8. 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.

**9. CONTRACTOR'S RESPONSIBILITIES**

The Contractor has been, and will continue to be, an active participant in the design process. Given such participation, the Contractor represents that it is familiar with the scope and quality of those aspects of the Project that have not yet been fully designed and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price. The Contractor agrees to work with the County in managing the construction and design work to complete the design process. If necessary, the Contractor shall work with the Architect to facilitate redesign or value engineering necessary or advisable for certain aspects of the Project in order to bring the cost of undesigned Work within or below the respective allowances, budgeted or allocated amounts included in the Guaranteed Maximum Price for such Work. Once the Drawings and Specifications are complete, it is recognized by the Contractor and the County that the scope of the Guaranteed Maximum Price may include Work not expressly indicated in the Contract Documents, but which is reasonably inferable from the Contract Documents, and such Work shall be performed without any increase in the Guaranteed Maximum Price or extension of Contract Time, except if and to the extent otherwise expressly provided in the Agreement.

WITNESS these signatures:

**THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA**

**MCN BUILD, INC.**

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

NAME AND TITLE: SHARON T. LEWIS  
PURCHASING AGENT

NAME AND  
TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_