



May 20, 2022

ADDENDUM NO. 7 TO ALL OFFERORS:

Request for Proposal: RFP NO. 2387

Description: Architectural and Engineering Services

RFP Dated: April 8, 2022

For Delivery To: Alexandria City Public Schools (ACPS)

RFP Proposals Due: May 25, 2022 AT 3:00 PM. EST

THE RFP IS HEREBY BEEN MODIFIED AS FOLLOWS:

- THE TIME AND DUE DATE FOR THE PROPOSALS HAS CHANGED TO WEDNESDAY MAY 25, 2022 AT 3:00 P.M. EST
- PLEASE SEE ATTACHED SAMPLE DRAFT CONTRACT

Note: A signed acknowledgment of this addendum should be received at the location indicated on the RFP either prior to the due date and hour or attached to your response. Signature on this addendum does not substitute for your signature on the original RFP document. The original RFP document must be signed.

Best Regards,

Lander Napper
Buyer II

Name of Firm/Contractor

Authorized Signature/Title

Date



**ALEXANDRIA CITY SCHOOLS BOARD
dba ALEXANDRIA CITY PUBLIC SCHOOLS
ALEXANDRIA, VIRGINIA**

AND

(FIRM NAME)

ARCHITECTURAL AND ENGINEERING SERVICES AGREEMENT

FOR

(LOCATION)

DRAFT

TABLE OF CONTENTS	PAGE
ARTICLE 1 GENERAL PROVISIONS	3
ARTICLE 2 BASIC SERVICES	7
ARTICLE 3 ADDITIONAL SERVICES	13
ARTICLE 4 ACPS RESPONSIBILITIES.....	13
ARTICLE 5 THE AE’S DOCUMENTS.....	14
ARTICLE 6 PAYMENTS TO THE AE	14
ARTICLE 7 BASIS OF COMPENSATION.....	16
ARTICLE 8 TIME	18
ARTICLE 9 INSURANCE AND INDEMNITY	19
ARTICLE 10 DISPUTE RESOLUTION	22
ARTICLE 11 TERMINATION.....	23
ARTICLE 12 AUTHORIZED TO REPRESENT THE PARTIES.....	24
ARTICLE 13 MISCELLANEOUS PROVISIONS	24
EXHIBIT A AE COST PROPOSAL SUMMARY	33
ATTACHMENT B PROPOSAL FORMS SUBMITTED. RFP	37
ATTACHMENT C INSURANCE PROVISION RFP	45

**ARCHITECTURAL AND/OR ENGINEERING SERVICES
AGREEMENT**

THIS AGREEMENT (hereafter “Agreement,”) is dated _____, 2022 (the “Effective Date”), is being made by and between the Alexandria City School Board, dba Alexandria City Public Schools (hereinafter referred to as “ACPS”), a public entity and or political subdivision of the Commonwealth of Virginia with offices located at 1340 Braddock Place, Alexandria, Virginia 22314, and (_____), a Corporation duly organized under the laws of, (“AE”), who is authorized to do business in the Commonwealth of Virginia and with a principal place of business at

RECITALS

WHEREAS, ACPS Procurement Office through a Competitive Negotiation process, as defined and authorized in the pursuant to the Virginia Public Procurement Act (“VPPA”), Code of Virginia §2.2-4302.1 solicited and received proposals in response to Request for Proposals (RFP) Number XXX;

WHEREAS, on DATE, in response to the Request for Proposal, AE submitted a proposal for the provision of Architecture & Engineer Services and was awarded Contract No. XXX;

WHEREAS, on DATE, AE was selected by ACPS for the provision of services, subject to the terms and provisions in the Request for Proposal, and this Agreement; and

NOW, THEREFORE, IN CONSIDERATION with the intent to be legally bound hereby, the parties to this Agreement set forth the following as the terms and conditions of their understanding and in consideration of the mutual promises contained herein, ACPS and AE agree as follows:

**ARTICLE 1
GENERAL PROVISIONS**

1 DEFINED TERMS

1.1 ACPS’ Budget for the Construction Cost: The amount that ACPS and has budgeted for the Construction Cost, which is \$000,000. This includes all direct costs for the development of the site amenities, new school and parking garage.

1.2 Additional Services: Services provided by the AE in addition to Basic Services and rendered only if ACPS authorizes them in writing, consistent with Article 3 of this Agreement.

1.3 Agreement: This signed Agreement between ACPS, the AE, including all Agreement Documents and Exhibits explicitly referenced herein or attached hereto.

1.4 Agreement Documents: The documents enumerated in Section 1.20, below.

1.5 Applicable Law: All laws, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, and codes applicable to the Services.

1.6 Basic Services: The services required of the AE as defined in Article 2 of this Agreement.

1.7 Construction Cost: The total cost to ACPS to construct all elements of the Project designed or specified by the AE including, but not limited to, the Contractor’s general conditions costs, permits, fees, direct costs (including without limitation monies paid to or for subcontractors, suppliers, laborers and materialmen), overhead and profit. The Construction Cost does not include the compensation of the AE, the costs of the land, rights-of-way, financing, or other soft costs that are the stated responsibility of ACPS.

1.8 Construction Documents: The drawings, specifications and related Instruments of Service prepared by or on behalf of AE for use in the construction of the Project.

1.9 Contractor: The entity ACPS retained to construct the Project. If the Project is delivered through use of a Construction Manager (“CM” or “CMAR”) then the terms “Contractor” shall refer to the CM or CMAR.

1.10 Damages: Individually and collectively, as applicable, all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and attorney’s fees.

1.11 Instruments of Service: Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by AE and AE’s subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, calculations, responses to Requests for Information, and other similar materials.

1.12 The Project. The Project is the total design and construction of [Describe]

1.13 Published Industry Standards. The most recent standards published by recognized organizations as establishing industry standards applicable to the design and construction, such as ASCE, ASTM, NAFP, and ICI standards.

1.14 Proposal: The written proposal that the AE submitted to ACPS in response to, and in accordance with, the RFP, together with any written supplements or addenda to such proposal.

1.15 RFP: ACPS’s Request for Proposal Number XXX for Architectural and Engineering Services

1.16 Services: The services furnished by the AE pursuant to the Agreement Documents, including the Basic Services defined in Article 2 of this Agreement and any Additional Services that may be required under Article 3 of this Agreement.

1.17 Work: Everything required of the Contractor pursuant to the Construction Documents and Contractor’s contract with ACPS for the Project.

1.18 Standard of Care: The professional skill and care ordinarily exercised by like professionals performing similar work under similar circumstances in the Northern Virginia area comprised of the City of Alexandria, and the Counties of Arlington, Fairfax, Loudoun and Prince William, inclusive of any independent cities within or adjacent to such Counties.

1.19 THE AE’S SERVICES

1.19.1 Standard of Care. The AE shall perform all the Services in accordance with the Standard of Care and in accordance with all Applicable Laws. The AE accepts the relationship of trust and confidence established by this Agreement and agrees to cooperate with ACPS and exercise the AE’s professional skill and judgment in furthering the interests of ACPS and represents that it possesses the requisite skill, expertise, and resources necessary to perform the Services, and that it possess all professional, business and other licenses necessary to perform the Services in the jurisdiction where the Project is located. To the extent AE does not have the licenses or expertise necessary to perform the Services, AE has or will engage the services of licensed subconsultants with the expertise necessary to perform the required services in accordance with the standard of care. AE, its Key Personnel, and the subconsultants shall sometimes be referred to as AE Team. Consistent with the Standard of Care, the AE and AE Team are knowledgeable of all Applicable Laws and Published Industry Standards applicable to the Work, and shall ensure that the Instruments of Service comply with the same.

1.19.2 AE Representations. The AE hereby represents to ACPS that the AE is (1) financially solvent and possesses sufficient experience, and all required licenses, authority, personnel and working capital to complete the Services, (2) has carefully read and examined the RFP to understand the extent and character of the Services required,

and (3) has visited the site and become familiar with the observable conditions on and around the site as required to undertake the Services.

1.20 SUBCONSULTANTS.

1.20.1 Subconsultants. The AE shall be required to retain, at its own cost and expense, all of the necessary subconsultants to complete its scope of services under the Agreement Documents. AE shall be responsible for properly supervising and directing the Services and all subconsultants that it may utilize and shall be fully responsible to ACPS for the performance of the Services by its subconsultants of any tier.

1.20.2 Approved Subconsultants. AE shall not subcontract the Services in whole, or in part, without the prior written authorization of ACPS. All Subconsultants shall be subject to the approval of ACPS, provided that AE shall not be required to contract with any subconsultant to which it has an objection. If AE identified subconsultants in the Proposal to perform certain aspects of the Services, then AE shall engage those subconsultants to perform those aspects of the Services to the extent ACPS did not object to them in writing at or before execution of this Agreement. If ACPS unreasonably objects to use of any subconsultant and AE is required to contract with another subconsultant, the price shall be equitably adjusted to reflect the difference in cost between the two subconsultants.

1.20.3 Subconsultant Flow Down. AE shall bind its subconsultants to the provisions of the Agreement Documents to the extent applicable to their services, provided that neither this Agreement, nor any agreement between AE and a consultant, shall create any contractual relationship between ACPS and any such subconsultant. ACPS shall have no responsibility for payment or any other obligation to any such subconsultants. Each consultant agreement entered into by AE in connection with the Services shall be assignable to ACPS upon ACPS's written request.

1.20.4. Subconsultant Substitution and Staffing. AE shall not replace any subconsultant submitted by AE in its proposal without the prior written consent of ACPS and shall ensure that all its subconsulting agreements of any tier contain provisions obligating their Subconsultants to staff the Project with their Key Personnel in the same manner that AE is required to staff the Project under **Section 2.11** below..

1.20.5 Basic Services Subconsultants. Consistent with its proposal in response to RFP No. **XXXX**, the AE shall retain the following types of subconsultants at a minimum, without limitation, as part of its Basic Services described in Article 2, below:

- a. Structural Engineer;
- b. Mechanical/Plumbing Engineer;
- c. Electrical Engineer;
- d. Civil Engineer;
- e. IT / AV Consultant
- f. Landscape Architect
- g. Environmental Consultant (for Phase I ESA and Hazardous Material Surveys)
- h. Environmental Consultant for any wind, snow, or other climate related analyses necessary or desirable for the Project.
- i. Food Service Consultant
- j. Fire Suppression Consultant
- k. Lighting Consultant
- l. Acoustical Engineer
- m. Geotechnical Engineer
- n. Archaeological Consultant
- o. Security / Access Control AE

1.20.6 Additional Services Subconsultants. The following subconsultants shall be retained by the AE as an Additional Service if approved in writing by ACPS:XXXXXX– Optional Services

1.20.7. Subconsultant Tax information. AE shall furnish to ACPS the names and Federal Employer Identification Numbers for all subconsultants of any tier who are to perform any work or provide any materials in connection with this Agreement.

1.21 Licensure. AE and all subconsultants shall be properly registered and licensed in the Commonwealth of Virginia and in accordance with City requirements.

1.22 Independent Contractor. The AE is an independent contractor, and neither AE nor its employees or consultant(s) will, under any circumstances, be considered employees, or agents of ACPS. ACPS will not be legally responsible for any negligence or other wrongdoing by AE, its employees, or agents. ACPS will not withhold from payments to AE any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to AE or its employees, servants or agents. Furthermore, ACPS will not provide to AE any insurance coverage or other benefits, including workers' compensation, normally provided by ACPS for its employees.

1.23 AGREEMENT DOCUMENTS

The Agreement Documents are comprised of the following, which are listed in their order of preference:

1. The terms and conditions of all written and properly executed modifications, amendments and change orders after execution of this Agreement with the most recent modification, amendment, or change order taking priority over any earlier executed modification, amendment or change order;
2. The terms and conditions of this Agreement # XXXX.
3. The Request for Proposal XXXX, including, all addenda;
4. Exhibit A, Cost Proposal Summary, initialed or executed by the parties after completion of any negotiations.
5. Attachment B, The Original Proposal Submission Forms from RFP No. XXXX, submitted and duly signed by AE, dated XXXX

The Agreement Documents set forth the entire Agreement between ACPS and AE, and agree that all prior representations, negotiations, and agreements prior to execution of the Agreement have been merged into the Agreement Documents and are of no force or effect.

1.24 AGREEMENT TERM / TIME FOR COMPLETION

This Agreement shall remain in force from the date of award through the later of the completion of commissioning, construction close out, the expiration of the Contractor's Correction Period, or when a final Certificate of Occupancy is obtained by the Owner unless earlier terminated in accordance with its terms.

1.25 AGREEMENT AMOUNT

ACPS will pay AE in accordance with the terms of the Payment and Invoices paragraph, and Exhibit A for AE's completion of services described and required in the Agreement Documents. Additional, task may be requested, and a proposed cost provided by task. Negotiation of task and cost shall be allowed in alignment with established rates included in the base scope and options.

1.26 PROJECT DELIVERY METHOD

1.26.1 CMAR. The current planned Project delivery method is Construction Manager at Risk ("CMAR"). It is anticipated that ACPS will select a CMAR in the Design phase to perform preconstruction services in an effort to assist the ACPS Project team in meeting the Project goals with respect to schedule, constructability, and budget. AE agrees that it shall not be entitled to any additional compensation if ACPS determines, in its sole discretion to employ an alternative Project delivery method after execution of the Agreement.

1.26.2 Cooperation with Preconstruction Service Providers. ACPS may elect to retain preconstruction services from one or more entities. AE is to cooperate fully with such entities to the extent required by ACPS as part of the Basic Services.

ARTICLE 2
BASIC SERVICES

2 GENERAL

2.1 Basic Services. The AE shall provide all Basic Services. The AE's Basic Services consist of the Architectural and Engineering services described in this Article 2, the RFP, as supplemented by the portion of the Proposal included in the Agreement Documents, and include all specifications, drawings, studies, building information modeling (BIM), analyses, reports, meetings, supervision, labor, materials, supplies, insurance, systems, transportation, and all other items necessary to perform and complete the Basic Services. AE shall comply with all requirements of the Agreement Documents in the performance of the Services and other activities in connection with this Agreement.

2.2 Correction of Errors. To the extent the AE provides Services or generates Instruments of Service that contains errors or omissions, the AE shall promptly remedy such problem. Such remedial action shall be performed by AE at no additional cost as part of its Basic Services.

2.3 Design Responsibility. The AE shall be and remain solely responsible for the completeness and accuracy of all Services and Instruments of Service and for their compliance with all Applicable Laws. ACPS' actions or inactions, including without limitation its review and approval of any Services shall neither alter nor relieve the AE of its sole responsibility for, nor be deemed a waiver of the AE's sole liability or responsibility in connection with the same.

2.4 Books and Records. AE shall retain all books, records, and other documents relative to this Agreement for five (5) years after its receipt of final payment hereunder, or until audited by the Commonwealth of Virginia, whichever is later. Such records shall include, but not be limited to, all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices, including AE's copies of periodic estimates for partial payment; ledgers; cancelled checks; deposit slips; bank statements; journals; amendments and change orders to the Agreement Documents; insurance documents; payroll documents; timesheets; memoranda; and, correspondence. ACPS their respective authorized agents, and auditors of the Commonwealth of Virginia shall have full access to and the right to examine all such documents during said period. Records will be available on demand and with reasonable notice during normal working hours.

2.5 Confidentiality. The AE shall maintain the confidentiality of documents designated as such by ACPS, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the AE from establishing a claim or defense in an adjudicatory proceeding. The AE shall require of the AE's subconsultants' similar agreements to maintain the confidentiality of information specifically designated as confidential by ACPS. All documents relating to School Security or student, or medical information protected by Federal, State, or Local law shall be deemed to be confidential regardless of whether ACPS marks such documents as Confidential.

2.5.1 Student Data. Regardless of whether ACPS has marked any document as confidential, All student data is considered to be confidential under this Agreement as well as under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records and will only be released in accordance with the applicable laws and regulations. All student data received by AE shall be maintained by AE in a secure location.

2.5.2 Notification of Legal Proceedings. No Confidential Documents shall be shared or produced in response to any subpoena or other legal proceeding, without giving ACPS prior written notice of the request and a reasonable period of not less than ten workdays to object and/or intervene to prevent the disclosure of confidential information.

2.5.3. Injunctive Relief. The Parties agree that they shall have no adequate remedy at law if Confidential Information is or is threatened to be disclosed in violation of this Section 2.5 or any other Confidentiality provisions in the Agreement Documents, and accordingly agree that either party may apply to the appropriate court for injunctive relief to enforce the confidentiality provisions of this Agreement.

2.6 Reliance on Owner Services. The AE shall be entitled to rely on the accuracy and completeness of services and information furnished by ACPS; provided, however, that the AE shall not be entitled to rely on the accuracy and completeness of such services and information if a competent architect or engineer could have reasonably identified significant inaccuracies, incompleteness, inconsistencies or errors in reviewing such information. The AE shall provide prompt written notice to ACPS if the AE becomes aware of any errors, omissions or inconsistencies in such services or information.

2.7 Geo-Referencing. All survey and site/civil engineering drawings shall be geo-referenced in accordance with the City of Alexandria standards.

2.8 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES

2.8.1 AE shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Agreement and shall correct all errors and omissions in the Instruments of Service at no additional cost to ACPS. AE shall be liable for ACPS costs resulting from errors or omissions in designs furnished under the Agreement and not complying with the standard of care. If ACPS incurs additional costs of construction due to a negligent error or omission, then ACPS shall consider the extent to which AE and Contractor may be reasonable for the additional costs and the Project Manager may allocate the costs of correction between AE and Contractor. The Project Manager shall serve a written statement of the reasons for its allocation on AE, and such statement shall be included as part of the ACPS Project file. If AE disputes any allocation of liability to it, it may submit a Claim to the Procurement Officer in accordance with the Dispute Resolution Procedures set forth in Article 10 below. ACPS shall be entitled to withhold payment for any liabilities allocated to AE by the Project Manager in its written statement pending final resolution of the Claim.

2.9 DESIGN WITHIN FUNDING LIMITATIONS

2.9.1 Design within Funding Limitations. AE shall accomplish the design services required under this Agreement and issue Construction Documents so as to permit the award of a Construction Contract at a price that does not exceed available funding limitations for the construction Work. When bids for the construction contract are received that exceed the estimated price, AE shall perform such re-design and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this Agreement. However, AE shall not be required to perform such additional services at no cost to ACPS if the unfavorable bids are the result of conditions beyond its reasonable control.

2.9.2. Allowance for Market Conditions. AE represents that it is familiar with prevailing market conditions relating to the availability and pricing of construction materials and equipment and systems to be incorporated into the Project and that it shall work with any Contractor retained by ACPS to perform preconstruction services to design the Project with a reasonably appropriate contingency to account for such market conditions. As part of this effort, AE will prioritize design efforts to allow for the procurement of long lead and other materials or equipment and systems so as to mitigate the impacts of supply chain disruptions and price volatility on the Project. ACPS and AE agree that market conditions are extremely volatile and that nothing in this Agreement shall be construed as a guarantee that sudden shifts in such conditions will not cause the price of the Project to exceed funding limitations, but only that AE will use its best efforts consistent with the Standard of Care to anticipate and prepare for such volatility and to mitigate the impact of such volatility on the Project.

2.10 REDESIGN RESPONSIBILITY FOR DESIGN OR DEFICIENCIES

2.10.1 AE shall be required to make necessary correction, at no cost to ACPS, when the design, drawings, specifications or other items or services furnished contain any errors, deficiencies, or inadequacies. AE shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by AE under this Agreement. AE shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other services.

2.11 KEY PERSONNEL AND STAFFING.

2.11.1 Key Personnel. The professional and managerial personnel (“Key Personnel”) employed by AE and any subconsultants identified in AE’s Proposal and thereafter accepted by ACPS are considered essential to AE’s qualifications. So long as such key personnel are (a) employed by AE, its Subconsultants, or any of their affiliates and (b) capable of performing their duties, AE or Subconsultants may not re-assign, replace, substitute or augment such Key Personnel without prior written approval of ACPS. Key Personnel shall devote all time reasonably necessary to the Project in accordance with the staffing plan provided in the Proposal and AE shall ensure that they shall devote all time necessary or desirable for the prompt and efficient completion of AE’s duties. Any request to replace or substitute any key personnel shall be provided to the ACPS Project Manager at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by ACPS.

2.11.2 Project Staff. ACPS has the right of reasonable rejection and approval of staff or subconsultants assigned to the Project by AE. If ACPS reasonably rejects staff or subconsultants, AE must provide replacement staff or subconsultants satisfactory to ACPS in a timely manner and at no additional cost to ACPS. The day-to-day supervision and control of AE's employees, and employees of any of its subconsultants, shall be the sole responsibility of AE.

2.12 PROJECT ADMINISTRATION

2.12.1 AE shall manage the Services, consult with ACPS, research applicable design criteria, attend Project meetings, communicate with members of the ACPS Project Team and report progress to ACPS. AE shall review ACPS’ Program, Schedule, and Budget for Construction Cost, the Project Site, the proposed Delivery Method, and other information furnished by ACPS, and shall review laws, codes, and regulations applicable to the Services and notify ACPS of any inconsistencies in the information and other information of consulting services that may be reasonably needed for the Project.

2.12.2 AE shall coordinate the Services with those services provided by ACPS and its respective consultants.

2.12.3 Upon request of ACPS, AE shall make periodic presentations to explain the design of the Project to representatives of ACPS and to others in support of ACPS’ efforts for the Project. AE understands and agrees that this obligation will require the AE to participate in briefings of the affected Parent Teacher Association, neighbors, community organizations, community leaders and City of Alexandria government officials as identified by ACPS. AE understands and acknowledges that this Project will require a substantial level of effort in this regard and will require attending regular monthly stakeholder meetings, briefing the staff of the Planning and Zoning Board on a periodic basis, and making formal presentations to others as reasonably required by ACPS.

2.12.4 AE shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the AE shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

2.12.5 AE shall assist ACPS in connection with their respective responsibility for preparing, filing and obtaining approval of documents or other submittals required by governmental authorities having jurisdiction over the Project.

2.12.6 Once established by ACPS, AE will be expected to utilize the Project Manager’s file-sharing website to share documents such as drawing submissions, presentations, meeting minutes, and other design-related documents throughout the course of the Project.

2.12.7 AE shall at all times enforce strict discipline and good order among the workers performing under the Agreement and shall only employ on the work persons reasonably proficient in the work assigned.

2.12.8 AE shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by AE under the Agreement. AE shall, without additional compensation, correct, or revise

any errors or deficiencies that significantly affect the work product, as determined by the Project Manager.

2.13 SCOPE OF WORK

2.13.1 DESIGNING TO BUDGET

AE shall accomplish the design services required under this Agreement so as to permit the award of a construction contract and/ or agreement on a Cost Reimbursable basis subject to a Guaranteed Maximum Price (GMP) using ACPS procedures for construction of the Project at a price that does not exceed available funding limitations as provided in Section 2.9 above.

AE will promptly advise the Director of Procurement and General Services if it finds that the Project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Director of Procurement and General Services will review AE's revised estimate of construction cost. If ACPS determines that the funding limitations for the Project are too low to reasonably expect to be able to award a construction contract within such limitations, then ACPS may (a) authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract budget, (b) seek additional funding, or (c) terminate this Agreement for convenience. ACPS may use any methods it finds reasonable to verify the accuracy of the estimated construction costs.

2.13.2. AE GENERAL OBLIGATIONS.

Based on any relevant available ACPS/City documents provided, AE shall engage in planning and design which will provide recommendations for the Project. The selected offeror will work closely with ACPS, and all other firms or personnel contracted by ACPS in a cooperative and coordinated fashion. ACPS will deliver the Project using a Construction Manager at Risk or CMAR method and expects to have a Construction Manager in place early in the design. ACPS will also retain Commissioning Agents (CxA) and Building Enclosure Commissioning Agent (BECx) as necessary to work closely with the AE and CMAR for pre-construction planning, estimating, scheduling and constructability reviews, and the LEED commissioning.

2.13.3. GREEN BUILDING

2.13.3.1 LEED. AE shall design this Project to obtain a minimum of LEED Gold certification per the latest version of US Green Building Council LEED for Schools. LEED eligibility is of the essence of the contract.

2.13.3.2. NET ZERO. AE shall design this Project to be Net Zero Ready. Net Zero Ready is defined as designing the building so that one hundred percent of the building's energy needs on a net annual basis can be supplied by on-site renewable energy. **[ACPS may want to include certification, such as from the International Living Future Institute or another organization, in which case this definition should be modified to meet that of the certifying body].** No combustion is allowed. If the scope of the AE's work does not involve design of PV arrays or other energy sources providing energy to the building (e.g. geothermal wells), and ACPS has not yet selected a vendor to install those energy sources, then the AE shall design the system and structures to accommodate future PV arrays or other energy sources based on reasonable assumptions regarding the future placement of such energy sources. This includes designing conduits reasonably necessary to conduct power from PV arrays on the building to inverters located outside the building footprint. Net Zero Ready is of the essence of the contract.

2.13.4. COMMUNICATIONS.

Throughout the Project, AE shall provide ACPS with timely information allowing the ACPS to render decisions and otherwise perform its obligations without interfering with the timely development of the design and progress of the Work. However, the AE shall have sole responsibility for managing the execution and performance of its work under this Agreement.

INSERT FROM RFP

2.14 BIDDING OR NEGOTIATION PHASE

2.14.1 Bidder List. AE shall assist ACPS and the CMAR in establishing a list of prospective Contractors, obtaining competitive bids or proposals, and confirming the responsiveness of the same.

2.14.2 Buyout Support. AE shall support ACPS and CMAR buyout by:

1. Preparing responses to questions posed by prospective Contractors about the Construction Bid Documents.
2. Participating in a pre-bid conference for prospective bidders and post-bid meetings with ACPS to review and evaluate the bids (if bids are solicited) or participating in selection interviews and negotiations with prospective Contractors (if proposals are requested).

2.14.3 Substitutions. AE shall review requests for substitutions by prospective Contractors, consult with ACPS about the same, and, with ACPS' prior approval, prepare responses to questions and requests, including addenda to the Construction Bid Documents.

2.14.4 Negotiations with CMAR If ACPS elects to price the construction contract with a cost reimbursable contract and GMP, the AE shall perform all necessary services to allow the Owner and Contractor to arrive at a mutually-acceptable GMP for the Project. Such efforts will include, but not be limited to, value engineering services in conjunction with the Contractor and making necessary revisions to the Construction Documents. If such efforts result in the Architect making significant revisions to the Construction Documents, the Architect will be entitled to reimbursement for such efforts as an Additional Services, as provided in the Agreement Documents.

2.15 CONSTRUCTION ADMINISTRATION DUTIES.

2.15.1 AE as Owner Representative. The AE shall advise and consult with ACPS and the Contractor during the Construction Phase of the Project. The AE shall have authority to act on behalf of ACPS only to the extent expressly provided in this Agreement and the General Conditions to the Construction Contract as may be later agreed. AE's duties, responsibilities and limitations of authority under this section 2.15 shall not be restricted, modified or extended without the express written agreement of ACPS and AE.

2.15.2. Contractor Responsibilities. The AE shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs of the Contractor in connection with the Project, nor shall the AE be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Construction Documents. However, AE shall be responsible if it fails to meet the standard of care with respect to AE's Construction Phase Services.

2.15.3 Term of Construction Administration Duties. The AE's responsibility to provide Construction Phase Services commences with the award of the contract for construction and extends through the later of the completion of commissioning, construction close out, the expiration of the Contractor's Correction Period or when a final Certificate of Occupancy is obtained by the Owner, unless otherwise terminated in accordance with the terms of this Agreement.

2.15.4 Prompt Responses. AE shall review and promptly provide written responses to Contractor requests for additional information, approvals, instructions, and direction. If appropriate or requested by ACPS, AE shall prepare, reproduce and distribute supplemental instructions, drawings, and specifications.

2.15.5 Other Construction Administration Duties. At a minimum and in addition to any services otherwise identified in the Agreement Documents or that would typically be provided by an architect during this phase, and without additional compensation, the AE shall perform the following tasks during this phase of the Basic Services:

1. Attend biweekly progress meetings.
2. Review and process shop drawing submissions, submittals, RFIs, etc.
3. Prepare meeting notes and records of decisions/changes made.

4. Participate in pre-construction meetings with the Contractors and their major trade contractors.
5. Review and sign off on monthly pay applications from the Contractor for accuracy and acceptance of work in place.
6. Review change proposals from the Contractor for accurate scope and cost.
7. Participate in regular meetings with the Owner's commissioning agent.
8. Review substitution requests from the Contractor.
9. Finalize the LEED score card submission and manage all other administration of the Project LEED uploads to USGBC to achieve LEED Silver status.
10. Produce Final Record Drawings in BIM format.
11. Conduct various punchlist inspections.
12. Review closeout documents.

2.15.6 Construction Administration Deliverables. The AE shall prepare and provide to ACPS the following deliverables during this phase, all of which are subject to ACPS's review and approval:

1. Meeting minutes.
2. ASI's, RFI responses and other documents necessary to clarify the design intent.
3. Punchlists.
4. Closeout document review comments.
5. Record Documents, except an updated Building Information Modeling (BIM) model is not included in the scope.

2.16 EVALUATIONS OF THE WORK

2.16.1 Site Visits. The AE shall visit the site and attend construction progress meetings at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Construction Documents. However, the AE shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the AE shall keep ACPS reasonably informed about the progress and quality of the portion of the Work completed, and report to ACPS (1) known deviations from the Construction Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

2.16.2 Rejection of the Work. The AE, while under contract to ACPS, shall, after notification to ACPS have the authority to reject Work that does not conform to the Construction Documents. Whenever the AE considers it necessary or advisable, the AE shall have the authority to require inspection or testing of the Work by a certified third-party firm in accordance with the provisions of the Construction Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the AE nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the AE to the Contractor, or its subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.17 SUBMITTALS

2.17.1 Submittal Schedule. The Contractor and the AE shall develop a mutually agreeable, written submittal schedule. The AE shall review and respond to submittals in accordance with such schedule, and if a submittal is not included in such schedule, then within no more than fourteen (14) calendar days of receipt; provided, however, the AE agrees that certain submittals will require quicker processing and the AE shall use its reasonable best efforts to accommodate shorter timelines. AE shall provide written responses to RFIs within five (5) business days of receipt.

2.17.2 Submittal Review. The AE shall review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's

responsibility. The AE's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the AE, of any construction means, methods, techniques, sequences or procedures. The AE's approval of a specific item shall not indicate approval of an assembly of which the item is a component. AE shall advise the Contractor and ACPS if AE becomes aware of Work proceeding in the absence of approved submittals.

2.17.3 Review of Design-Build/Design Assist Documents. If the Construction Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the AE shall specify the appropriate performance and design criteria that such services must satisfy. The AE shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the AE. The AE shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

2.17.4 The AE shall maintain a record of, and copies of, all submittals supplied by the Contractor.

2.18.4 PROJECT COMPLETION

2.18.1 Closeout. At a minimum and in addition to any services otherwise identified in the Agreement Documents or that would typically be provided by an architect during this phase, and without additional compensation, the AE shall perform the following Project close-out administration tasks during this phase of the Basic Services:

- a. Review the Contractor's punchlist, inspect the Work to determine if the punchlist is complete, and supplement the punchlist as appropriate to ensure that all work placed shall embody first class workmanship.
- b. Thoroughly inspect the punchlist work to determine if the Contractor has completed the same, update the punchlist to reflect completed and remaining punchlist items, and complete follow-up until Contractor properly completes all punchlist Work, inclusive of Final Site Plan requirements.
- c. Compensation, conduct a meeting with ACPS and the Builder to review the facility operations and performance and to make appropriate recommendations to ACPS allowing sufficient time for any corrective work to take place prior to the end of one-year Warranty period.

2.18.2 Closeout Inspections. AE's inspections referenced in Section 2.9.4.1, above, shall be conducted with ACPS' Project Manager to check conformance of the Work with the requirements of the Construction Documents and to verify the accuracy and completeness of the punchlist submitted by the Contractor.

2.18.3 Facility Operation Meetings. AE shall meet with ACPS and/or ACPS's Project Manager promptly after Substantial Completion to review the need for facility operation services. Upon request of ACPS and prior to the expiration of one year from the date of Substantial Completion, the AE shall, without additional compensation, conduct a meeting with ACPS to review the facility operations and performance and to make appropriate recommendations to ACPS.

ARTICLE 3 **ADDITIONAL SERVICES**

3.1 TBD

ARTICLE 4 **ACPS' RESPONSIBILITIES**

4.1 Information from Owner. ACPS shall Provide all information reasonably necessary and within its reasonable control regarding its objectives for the Project and the site and any structures located in the site. Such information may include geotechnical reports, site surveys, building surveys, and the results of any testing or due diligence performed by the City. Notwithstanding anything to the contrary in Section 2.6 above, ACPS shall not be

liable or responsible for any error or omission contained within geotechnical reports, site surveys, building surveys or other documents created by third parties who were not commissioned by ACPS.

4.2. ACPS Decisions. ACPS shall Render decisions in a timely manner pertaining to documents submitted by the AE, as well as issues the AE brings to ACPS' attention that require its decision, in order to avoid unreasonable delay in the orderly and sequential progress of the Services. AE shall be responsible for keeping ACPS and the ACPS Project Manager fully informed of design schedule deadlines for any such decisions sufficiently in advance of when those decisions are needed that ACPS shall have a reasonable time to render such decisions. AE shall notify ACPS and the ACPS Project Manager in advance in writing of the possible impacts due to any ACPS delay, thus allowing ACPS reasonable opportunity to avoid or mitigate any such impacts.

4.3. ACPS Project Manager The performance of AE required by this Agreement is subject to the review and approval of ACPS' Project Manager, who shall have all authority to bind ACPS, provided that any decision involving costs of greater than \$_____ shall require the approval of _____.

4.4. ACPS Project Teams. Through the life cycle of the Project, ACPS will develop various teams, including an ACPS Project Team responsible for administration of the Project under the Project Manager, a School Core Team, responsible for providing input on the needs of the end user, and an ACPS Facilities Team responsible for providing input on facility needs, including the desire for use of common systems between the Project and other ACPS facilities for ease of maintenance and operational savings. While ACPS attempts to work through consensus, only the Project Manager is authorized to make or communicate binding decisions on the ACPS.

ARTICLE 5 LICENSES

5.1 Copyright Ownership. The AE and the AE's subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all rights, including copyrights.

5.2 License. Upon execution of this Agreement, the AE grants to ACPS an irrevocable and nonexclusive license to use the Instruments of Service for the purposes of constructing, using, maintaining, altering, and adding to the Project. The AE further grants to ACPS a license to use the Instruments of Service as the basis of design for future ACPS Projects, including, but not limited to any aesthetic features of such Projects.

5.3 ACPS Use without AE Involvement. If ACPS uses the Instruments of Service to alter or add to the Project without retaining the author of the Work Product, ACPS releases the AE and AE's subconsultants from all claims and causes of action arising from such uses. If ACPS uses the Instruments of for the basis of design for any future projects without the AE's involvement, it shall remove all seals and other indicia of authorship from the Instruments of Service, release the AE from any claims arising from or related to such use, and shall obtain an agreement from the Architect or Engineer using such documents to defend and hold harmless the AE from any claims arising from such use.

5.4. Royalties, Patents, and Copyrights: AE shall pay all royalties license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by AE or its subconsultants and incorporated in the design documents for this Project. AE shall indemnify and hold ACPS, the Contractor, and its subcontractors of any tier harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection and/or the making or using of any article described in the Instruments of Service, which when infringes upon any patent right after the Work is performed. All fees associated with the aforementioned shall be included in AE's cost proposal for the Project, and AE shall be solely responsible for any such fees not identified in its proposal without any right to an increase in the Agreement Amount.

ARTICLE 6 PAYMENTS TO THE AE

6.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

6.1.1 ACPS shall make payments to the AE for Basic Services in accordance with Article 7, below.

6.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 ACPS shall make payments to the AE for Additional Services and for Reimbursable Expenses in accordance with Article 7, below.

6.3 REIMBURSABLE EXPENSES

6.3.1 See Article 7, below

6.4 PAYMENTS AND INVOICES

6.4.1 Purchase Order. No Work or delivery of services is authorized until the Contactor receives a valid ACPS Purchase Order encumbering the required funds. Such Purchase Order will be provided to AE by ACPS representative placing the orders. ACPS will not be liable for payment of any purchases made by its employees without appropriate purchase authorization issued by ACPS. AEs providing goods or services without a signed Purchase Order, do so at their own risk.

6.4.2 Invoices. AE shall submit invoices for the actual services that were performed and accepted by ACPS. Each Invoice must identify the Purchase Order pursuant to which Services have been authorized and shall include a detailed breakdown of the services that were performed, including locations(s), date(s), a description of services performed, and all other pertinent information. All invoices shall reference the Agreement and ACPS Purchase Order numbers under authority of which the purchase(s) were authorized. In order to be deemed submitted by ACPS, all invoices must be delivered in electronic form only to the following address: email: CIPinvoices@acps.k12.va.us

6.4.3 Payment Terms. Payment terms will be recorded by ACPS as net forty-five (45) days. ACPS will pay AE within forty-five (45) days after the date of receipt of a correct (as determined by ACPS) invoice approved by ACPS. Unless otherwise specified by the Agreement Documents, payment shall not be made prior to delivery and acceptance of the services.

6.4.4 Non-Compliant Invoices. All non-compliant invoices will be rejected for correction and reissuance. Unless otherwise specified by the Agreement Documents, payment shall not be made prior to delivery and acceptance of the entire order by ACPS.

6.5 PROGRESS PAYMENTS AND RETAINAGE

6.5.1 Progress Billing. Estimates shall be made monthly of the amount and value of the work of services performed by AE under this Contract which meets the standards of quality established under this Contract and that are consistent with the agreed upon schedule of values. The estimates, along with any supporting data required by the ACPS Project Manager, shall be prepared by AE and submitted along with its voucher.

6.5.2 Retainage. After receipt of each substantiated voucher, ACPS shall pay the voucher as approved by the Director of Procurement and General Services or authorized representative. The Director of Procurement and General Services may withholding up to 10 percent of the approved amount for each invoice if the Director of Procurement and General Services determines that such a withholding is necessary to protect ACPS's interest and ensure satisfactory completion of the contract. The amount withheld shall be determined based upon AE's performance record under this contract. Whenever the Director of Procurement and General Services determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of ACPS, the Director of Procurement and General Services shall release the excess amount to AE.

6.6 FEDERAL, STATE, AND LOCAL TAXES

6.6.1 Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State, and local taxes and duties. AE, and not ACP, shall be responsible for payment of all taxes, including sales and

use taxes that are imposed on AE. AE understands that ACPS is exempt from taxes and that AE is not entitled to the benefit of, and cannot claim exemption under, any tax exemption to which ACPS is entitled.

6.7 PAYMENT TO SUBCONSULTANTS

6.7.1 Prompt Payment to Subconsultants. For each Sub Consultant, AE shall take one of the following two (2) actions within seven (7) calendar days after it receives payment from ACPS under this Agreement:

- a. Pay the subconsultant its proportionate share of the total payment AE received from ACPS that is attributable to the work performed and materials provided by the subconsultants; or
- b. Notify ACPS and the subconsultants, in writing, of AE intention to withhold all or a part of the subconsultant's payment with the reason for nonpayment.

6.7.2 Interest. For each subconsultant, AE shall pay interest to the subconsultants on all amounts AE owes the subconsultants that remain unpaid after seven (7) calendar days following AE's receipt of payment from ACPS for work performed or materials provided by the subconsultant, except for amounts withheld from subconsultant and for which written notice was provided to ACPS and the subconsultant. Unless otherwise provided in these Terms and Conditions, interest shall accrue on said amounts at the rate of one percent per month.

6.7.3 Lower-Tier Subconsultants. By appropriate agreement with each subconsultant, AE shall require each subconsultant to include or otherwise be subject to the same payment and interest requirements with respect to its lower-tier subconsultant.

6.8. FINAL PAYMENT.

6.8.1 Right to Final Payment. Upon satisfactory completion by AE of its services and delivery of any instruments of service in a form acceptable to ACPS, and final acceptance by the Director of Procurement and General Services of all the work done by AE, ACPS shall pay AE the unpaid balance of any money due for work under this Agreement, including any withheld amounts.

6.8.2 Release of Claims. Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, AE shall execute and deliver to the ACPS Project Manager a release of all claims against ACPS arising under or by virtue of this Agreement on ACPS' Release and Request for Final Payment form.

6.8.3 Reservation of ACPS Claims. Final Payment hereunder shall not constitute a release of any claims that ACPS may have arising from or related to performance of the Services, unless such claims have been expressly waived and released by a writing signed by ACPS.

6.9 AMENDMENTS

Unless otherwise specified herein, this Agreement shall not be amended except by written amendment executed by persons duly authorized to bind AE and ACPS.

ARTICLE 7 **BASIS OF COMPENSATION**

ACPS shall compensate the AE as follows:

7.1 BASIC SERVICES

7.1.1 For the proper and full performance of the Basic Services, the AE's compensation shall be [Describe], which includes all taxes applicable to the Basic Services, and which is broken down as set forth in Exhibit A, "AE Cost Proposal Summary."

7.2 ADDITIONAL SERVICES

7.2.1 Compensation for Additional Services. For Additional Services listed in Exhibit A, ACPS shall pay AE the amount listed in Exhibit A for those Additional Services. For Additional Services not listed in Exhibit A, ACPS and AE shall agree in writing on the amount of, or basis for, compensation prior to the rendering of such Additional Services. If ACPS and AE agree as to the scope of such Additional Services, but are unable to agree upon such compensation in advance, then the AE shall be paid for agreed upon Additional Services on an hourly rate basis based upon the hourly rates set forth in Exhibit A, "Labor Rate Schedule," which shall remain constant for the duration of the Agreement, plus Reimbursable Expenses incurred in the performance of the Additional Services. AE's rights under this Section to receive additional compensation or adjustments to time shall be subject to Article 8, below.

7.2.2 Changes. ACPS may order changes in the scope of Services within the general scope of the Services to be provided, consisting of additions, deletions or other revisions. No claim may be made by AE that the scope of the Project or of AE's services has been changed requiring adjustments to the amount of compensation due AE or an increase in the time for performance of the services unless ACPS has provided written direction for such a change, acknowledging ACPS' responsibility for additional costs or for an increase in the time for performance of the services. If ACPS does not acknowledge ACPS responsibility for additional costs or time in the written direction or the AE believes that oral direction from ACPS has resulted in changes to the scope of services requiring additional work or time to complete the work, then AE shall deliver written notice to ACPS that it believes such direction constitutes a change to its scope of services. Failure to provide such notice before starting changed work shall be deemed a waiver of any right to recover any compensation or to any increase in the contract time based on such direction.

7.3 REIMBURSABLE EXPENSES

7.3.1 Actual costs. For Reimbursable Expenses, compensation shall be the actual expenses incurred by the AE, without markup.

7.3.2 Reimbursed Expenses. The following expenses incurred by AE, and its subconsultants, in performing its responsibilities under the Contract will be reimbursed:

- a. Reproduction, incurred by AE using the ACPS authorized reproduction service providers, postage, and handling of drawings, specifications, and other documents, as required for formal submission to ACPS.
- b. Models requested by ACPS
- c. Long distance travel, as authorized by ACPS. Long distance travel is considered to be travel in excess of the state of Virginia, Maryland, and the District of Columbia. In these circumstances, travel expenses will be reimbursed in accordance with the GSA Per Diem Rates for Alexandria City, Virginia at www.gsa.gov/perdiem.

7.3.3 Non-Reimbursable Expenses. Expenses incurred by AE, and its subconsultants, which will not be reimbursed include, but are not limited to:

- a. Transportation (mileage, parking bike or car rental) within the States of Virginia, Maryland and the District of Columbia and Unauthorized out of Alexandria City or long-distance travel; Communications and Internet connectivity; meals and entertainment.
- b. USGB/ Green Building, Permits, etc.....
- c. Those expenses identified at 7.1 above are to be included in AE's Lump Sum Price, Not to Exceed Price and Loaded Hourly Rates.

7.3.4 Duty to Disclose Additional Reimbursable Expenses. If an AE has expenses which it deems to be reimbursable in nature outside the items noted above, AE shall bring these items to the attention of ACPS prior to the final negotiation of AEs fees and also provide justification for consideration to ACPS for approval on such expenses.

7.4 AVAILABILITY OF FUNDS

7.4.1 All funds for payment by ACPS under this Agreement are subject to the availability of an annual appropriation for this purpose by ACPS. In the event of non-appropriation of funds, ACPS will terminate the Agreement, without the termination charge or other liability to ACPS on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Agreement is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Agreement, cancellation will be accepted by AE on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and ACPS shall not be obligated under this Agreement beyond the date of termination specified in ACPS' written notice.

ARTICLE 8 **TIME**

8.1 Time is of the essence. The times and dates pursuant to this Agreement are of the essence. AE shall complete the Basic Services in accordance with the Proposed Project Milestone Schedule set forth in the RFP, as the same is adjusted in writing in accordance with the Agreement Documents.

8.2 Schedule and Updates. AE shall develop a Design Schedule and submit it to ACPS for approval. AE shall update the Design Schedule on a monthly basis and provide such updates to the ACPS Project Manager and such other persons as the ACPS Project Manager may designate. Failure to provide such Schedule updates shall entitle ACPS to withhold processing of AE's invoices. ACPS's review of, and response to, the Design Schedule and updates thereto shall not be construed as relieving AE of its complete and exclusive control over the means, methods, sequences and techniques for performing the Services.

8.3 Milestones Not To Be Adjusted. The Design Schedule shall accurately reflect the current state of the design and projected dates for completion of all activities, including any milestone activities. ACPS acceptance of a project schedule showing a projected milestone completion beyond the dates required in the Agreement Documents shall not have the effect of modifying the dates by which AE must obtain such milestones. If the Schedule Update shows that AE will not meet a milestone or ACPS believes that AE is unlikely to meet a milestone due to inexcusable delays, then the AE shall provide ACPS with a plan to accelerate or modify its work to meet the milestone dates. ACPS shall not be liable for any additional costs incurred by AE to achieve the milestones.

8.4 Notice of Delays. AE shall provide ACPS with written notice of any delay within two business days of when it first becomes aware of any delay or reasonably should have been aware of the delay and also furnish solutions to mitigate the delay.

8.5 Force Majeure. If AE is delayed by causes outside of its reasonable control and which the AE could not have reasonably anticipated or contemplated at the time the Agreement was executed, then ACPS shall either (a) extend the Contract time in an amount equal to the impact of the delay or (b) pay the AE for its actual additional costs necessary to recover some or all of the delay. AE will not be afforded any extensions of time for delays caused by the AE, its subconsultants, or anyone for whom any of them may be responsible, provided that if the failure to perform is caused by the default of a subconsultant at any tier, and if the cause of the default is beyond the control of both AE and the subconsultant, and without the fault or negligence of either, AE shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for AE to meet the required delivery schedule.

8.6 Damages for Owner Delay. AE acknowledges that it has included a reasonable time in the Project Schedule for Owner-caused delays of up to 30 calendar days and shall not be entitled to any compensation for delays within that thirty-day period.

8.7 SUSPENSION OF WORK

ACPS may issue AE one or more written notices to suspend the Services and AE shall suspend the Services for the period stated in such notices. AE is not entitled to compensation for “down time” during the period of suspension when it is not performing Services on the Project. AE may temporarily assign members of the AE team to other Projects during periods of ACPS directed suspension, and those individuals shall immediately resume their Project roles when the suspension is lifted. AE is required to maintain its AE team for the entirety of the Project and shall not permanently reassign individuals to other Projects without ACPS’s express written consent. Should ACPS suspend the Services for more than 90 consecutive calendar days, ACPS will reasonably consider AE’s request to change the members of AE team. Requests, submissions, claims or disputes arising under this Article shall be subject to the requirements and procedures of Article 10, below.

ARTICLE 9
INSURANCE AND INDEMNITY

9.1 AE’S INSURANCE

9.1.1 Types and Amounts of Insurance. The AE shall provide to the ACPS Procurement Director a Certificate of Insurance indicating that AE has in force the coverages below prior to the start of any Work under the Contract and upon any Contract extension. AE agrees to maintain such insurance until the completion of the Contract or as otherwise stated in the Agreement Documents. All required insurance coverage’s must be acquired from insurers authorized to do business in the Commonwealth of Virginia, rating of “A- “or better and a financial size of “Class VII” or better in the latest edition of A.M. Best Co., and acceptable to ACPS. The minimum insurance coverage shall be:

1. Workers Compensation/Employers Liability Insurance – Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employer’s liability with limits of \$1,000,000, per accident for Bodily Injury \$1,000,000 and \$1,000,000 each employee for each Disease.
2. Commercial General Liability Insurance – \$1,000,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent AEs, and Products Liability. The general aggregate limit shall apply to the Contract. Evidence of Contractual Liability coverage shall be typed on the certificate. All such policies shall be on ISO CG 00 01 or an equivalent form.
3. Automobile Liability Insurance – AE shall purchase and maintain during the life of the Contract, the proper amount of comprehensive automobile liability insurance in the amount of no less than \$1,000,000 Combined Single Limit Bodily Injury and property damage each accident \$1,000,000 uninsured and Underinsured Motorists. Must include the following: Owned, non-owned and hired. Motor Carrier Act Endorsement, where applicable. All such policies shall be provided on an ISA CA 00 01 form equivalent form.
4. Excess or Umbrella Liability Insurance – with limits of liability of not less than: \$2,000,000 each occurrence and aggregate for bodily injury, property damage, personal and advertising injury and products and completed operations. Limits should include an aggregate per Project for construction Projects. Higher limits may be required in some cases.
5. Professional Liability and or Miscellaneous Errors and Omissions–AE shall carry Professional Liability/and/or/Miscellaneous Errors and Omissions insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract, in the amount of \$5,000,000. This policy Insurance shall contain a retroactive date not later than the first day on which AE shall provide services on the Project and shall remain in force for at least 5 years beyond the substantial completion date of the Project. If the Consultant chooses to terminate or non-renew coverage before such 5-year period, it shall either obtain an extended reporting endorsement (tail coverage)

extending the terminated coverage through the 5-year period or obtain a new policy with a retroactive date not later than the date required in the policy at the time of contracting

6. Crime Policy- \$1,000,000 for employee theft of money, securities and other property owned by the Consultant. An endorsement should also be added to the policy to cover theft of ACPS' money, securities, or other property (third party coverage).
7. Garage Liability-\$1,000,000 bodily injury and property damage each occurrence/accident.
8. Pollution Liability-\$1,000,000 limit for each occurrence, claim or pollution incident. This coverage is required of all Consultants performing any type of hazardous material remediation, working with pollutants including asbestos and lead abatement, or performing underground work. Higher limits may be required in some circumstances.
9. Cyber Security- \$1,000,000 per occurrence.
10. Alexandria City Public Schools must be named as an additional insured on all insurance policies other than Worker's Compensation and Professional Liability and must be stated on the certificate(s) of insurance (or the certified policy, if required).
11. Contract Identification - The insurance certificate shall state the Contract's number and title.
12. Cancellation - All insurance policies required by the Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Procurement Director." If there is a material change or reduction in coverage AE shall notify the Procurement Director immediately upon AE's notification from the insurer. Any policy on which AE has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of the Contract, and ACPS notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

AE shall require all subconsultants to maintain during the term of the Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for AE. AE shall furnish subconsultants' certificates of insurance to ACPS immediately upon request by ACPS. On a case-by-case basis, ACPS may agree to reduce professional liability limits on subconsultants to \$1 million if requested by AE.

No acceptance or approval of any insurance by ACPS shall be construed as relieving or excusing AE from any liability or obligation imposed upon AE by the provisions of the Agreement Documents.

AE and its subconsultants of every tier shall produce a copy of the actual insurance policy with unredacted declarations pages to ACPS. The party producing such policies may produce them under a claim of trade secret protection.

AE shall be responsible for the work performed under the Agreement Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. AE assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

AE shall be as fully responsible to ACPS for the acts and omissions of its subconsultants and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, AE may NOT satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required.

9.1.2 Terms, Conditions and Endorsements. All of the insurance described in Section 9.1.1, above, shall be subject to the following terms, conditions and endorsements.

1. **Insurer.** The insurance shall be purchased from a company with an “A-: VII” or better rating from A.M. Best Company, which is both lawfully able to provide insurance in the Commonwealth of Virginia and reasonably acceptable to ACPS.
2. **Additional Insureds Endorsements.** All insurance, except the workers compensation and professional liability insurance, shall include The Alexandria City Public Schools, and its School Board, directors, officers, employees and agents as additional insureds under ISO Form CG 20 37 10 01 (or its equivalent), as well as the City of Alexandria. A copy of the additional insured endorsement must be provided along with the insurance certificate. Subsequent, non-equivalent editions of this ISO Form are not acceptable. The coverage provided to the additional insureds must be as broad as that provided to the AE and shall not contain any additional exclusionary language or limitations applicable to such additional insureds. These endorsements shall apply without regard to other provisions of the Agreement Documents.
3. **Primary Insurance.** The commercial general liability insurance under Section 9.1.1.2, above, the automobile liability insurance under Section 9.1.1.3, above, and the excess/umbrella liability insurance under Section 9.1.1.4, above, shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by ACPS. Any general liability, automobile liability, excess/umbrella liability or other insurance purchased by ACPS, or has been, specifically purchased as excess over any general liability, automobile liability or excess/umbrella liability insurance purchased by the AE.
4. **Contractual Liability Insurance.** ISO or other endorsements that restrict or modify the extent of the standard contractual liability coverage afforded by the commercial general liability and automobile liability insurance policies are not acceptable.
5. **Severability of Interest.** The insurance shall include a severability of interest clause for all named insureds and additional insureds.
6. **Duration.** Coverage shall be maintained, without interruption, from the date of commencement of the Services until the date of final payment for the Services, except that the professional liability insurance shall continue until the expiration of the applicable statute(s) of limitations. The insurance obligations shall survive the expiration or termination of this Agreement.
7. **Notice of Cancellation, Etc.** AE must notify ACPS in writing at the addresses listed below by mail, hand-delivery or facsimile transmission, within 2 days of any notices received from any insurance carriers providing insurance coverage that concern any proposed modification, cancellation, or termination of coverage:
Alexandria City Public Schools
Attn: Procurement Officer
1340 Braddock Place
Alexandria, Virginia 22314
Facsimile No. (703) 619-8090

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

8. **Defense.** The insurance obtained by the AE, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Except for the professional liability insurance, defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

9. **Delivery of Certificates and Policies.** AE shall provide ACPS with original certificates of insurance and all endorsements, in a form acceptable to ACPS, within fifteen (15) days after this Agreement has been fully executed, and thereafter, with a certificate evidencing renewals or changes to required policies of insurance at least fifteen (15) days prior to the expiration of previously provided certificates. The Certificate Holder box shall identify the name and address of The Alexandria City Public Schools and the City of Alexandria. With respect to insurance coverage required to remain in force after final payment for the Services, the AE shall annually submit certificates of insurance evidencing continuation of such coverage. The AE shall submit copies of the policies or provide other policy related information within seven (7) days following a request from ACPS.
10. **Non-Waiver.** Permitting the AE to commence Services or releasing any payment prior to compliance with the requirements in this Section 9.1 shall not constitute a waiver thereof.

9.2 WAIVERS OF SUBROGATION

The AE and ACPS waive all rights of recovery against each other for any losses covered and paid by insurance.

9.3 INDEMNIFICATION

9.3.1 To the fullest extent permitted by law, the AE shall indemnify and hold harmless ACPS and its directors, officers, employees, agents, representatives and volunteers (the "Indemnitees") from and against all Damages, including, but not limited to, economic loss and direct damages, arising out of or in any way related to the Project, but only to the extent caused by the intentional misconduct or negligence of the AE or anyone for whom AE is responsible or liable, regardless of whether or not such Damages are caused in part by the Indemnitees. Nothing herein shall require the AE to indemnify the Indemnitees for their own sole negligence or intentional misconduct. The AE's indemnity obligations hereunder shall not be limited by any limitation on the amount of Damages it may owe (or those for whom it is liable or responsible may owe) under any employee benefit acts, including workers' compensation and disability acts.

9.4 INDEPENDENT OBLIGATIONS

9.4.1 Any of the insurance required to be provided by the AE under this Article 9 is in addition to, and is separate and distinct from, any other obligation of the AE under any other provision of the Agreement Documents. By requiring minimum insurance limits, ACPS is not representing that such limits are adequate to protect the AE or its subconsultants from claims that may arise from or relate to the Project.

ARTICLE 10 **DISPUTE RESOLUTION**

10.1.1 Any claim or dispute between the AE and ACPS that arises under or in any way relates to the Agreement Documents or the Project, including without limitation requests, demands, submissions, disputes or claims for money, additional time or other relief ("Claim") shall be resolved as follows: AE and the ACPS Project Manager shall first attempt to resolve the claim by mutual agreement. If the ACPS Project Manager and the AE are not able to resolve the matter by mutual agreement, then either of them may give Notice to the other that they have reached an impasse on all or some of the Claim. The unresolved portion of the Claim shall be decided by the Procurement Officer, who shall reduce its decision to writing and mail or otherwise forward a copy thereof to the AE within ninety (90) days after the date it receives the Claim. For all Claims that AE has or wishes to pursue against ACPS arising under or related to the Agreement Documents or the Project, whether for money, additional time or other relief, AE shall: (1) provide ACPS with written Notice of AE's intention to file such a claim within ten (10) days of the occurrence given rise to the Claim or beginning the work upon which the Claim is based, whichever is sooner; and (2) submit a fully documented and supported Claim to ACPS in writing no later than thirty (30) days after the either AE or ACPS provides Notice to the other that they have reached an impasse. Under no circumstances may AE submit a Claim to ACPS more than sixty (60) days after it receives final payment from ACPS for Basic Services. The time for providing a Notice of Intention to file a claim shall not be tolled by negotiations with the ACPS Project Manager or any act, omission, or representation of anyone on behalf of ACPS. All requirements

stated in this Section 10.1.1 constitute express conditions precedent to AE's right to pursue a Claim and AE waives any and all Claims against ACPS to the extent it does not comply with such requirements.

10.1.2 The AE may not institute legal action prior to receipt of the final written decision of the Procurement Officer unless the Procurement Officer fails to render a written decision within 90 days of submission of the Claim. If AE has failed to provide full documentation and support for its claim, the Procurement Officer may, at its sole discretion, extend the time for rendering a decision for up to 30 days by providing AE with written notice specifying the additional information required and giving AE a reasonable time to provide such information, provided that the Procurement Officer may not unilaterally extend the time for rendering a final decision beyond 120 days from the date after it received Notice of the Claim. The decision of the Procurement Officer shall be final and conclusive unless the AE appeals the decision within six months of the date of the final decision by instituting legal action as provided in Section 10.1.3, below. Failure of the Procurement Officer to render a decision within 90 days (or 120 days if the period is extended) shall be deemed a denial of said Claim, and AE may not recover on any Claim so-denied without filing a timely appeal as provided in Section 10.1.3. The sole remedy for the Procurement Officer's failure to render a decision within 90 days shall be the AE's right to institute legal action on the Claim.

10.1.3 The Agreement Documents, and all Claims arising under or related to the Agreement Documents or the Project, whether framed in contract, tort or otherwise, shall be governed by laws of the Commonwealth of Virginia, without regard to its choice of law provisions and shall be resolved by way of litigation in the Circuit Court for Alexandria City, Virginia. The Parties hereby waive trial by Jury.

10.1.4 Each party hereto shall be required to continue to perform its obligations under the Agreement Documents pending the resolution of any Claim arising under or related to the Agreement Documents or the Project.

10.1.5 ACPS's payment for Services rendered or on a Claim by AE shall not preclude ACPS or the City from making a Claim against AE for any Services found not to comply with the Agreement Documents.

ARTICLE 11 **TERMINATION**

11.1.1 Termination for Cause: Notwithstanding anything to the contrary in the RFP, if ACPS determines that the AE is (a) failing to perform satisfactorily, (b) in breach of any provision of the Agreement Documents, (c) unable to complete the work with requisite quality and quality controls, (d) insolvent, or (e) intentionally delaying the Work, then ACPS shall have the option to terminate this Agreement for cause. Prior to termination, ACPS shall provide AE with written notice of default and an opportunity to cure. If AE is unable to cure the default within such 15-day period or unable to provide reasonable evidence within such fifteen (15) days of its ability to cure, then ACPS may terminate this Agreement by providing AE with a written notice of termination, which shall become effective immediately upon receipt. ACPS's right to terminate this Agreement shall not be affected by any forbearance beyond the 15-day period in providing notice of termination. Upon termination, ACPS shall be entitled to complete the Services by whatever method ACPS may deem expedient, deduct the cost thereof from any amount due or to become due to AE under this Agreement or any other agreement between the parties. AE shall be responsible for all Damages incurred by ACPS by reason of AE's breach, including, but not limited to, excess re-procurement costs to complete the terminated Services. If ACPS improperly terminates the Agreement for cause, the termination for cause will be automatically converted to a termination for convenience, and AE shall be reimbursed in accordance with Section 11.1.2, below.

11.1.2 Termination for Convenience: ACPS may also terminate this Agreement for its convenience and without cause at any time by giving fifteen (15) calendar days prior written notice of termination to AE. Unless otherwise directed by ACPS, AE shall cease its performance of the Services immediately following receipt of ACPS's notice of termination for convenience and terminate all commitments to third parties in connection with the Services. In the event of a termination for convenience, the AE shall only be compensated for Services actually performed and accepted by ACPS prior to termination, together with Reimbursable Expenses then due, and any other reasonable costs incurred due to the termination, but not amount shall be allowed for anticipatory overhead or profit on Services not performed.

11.1.3 Subconsultant Terms. Each subconsultant shall contain a similar termination provision for the benefit of the AE and ACPS. ACPS shall have the right to employ an independent accounting firm to verify any amounts claimed by the AE to be due under this paragraph. ACPS shall have the right of audit (and AE shall have the obligations) as far as they pertain to amounts claimed to be due hereunder.

11.1.4 Duty to Turnover Instruments of Service upon Termination. Upon the termination of this Agreement for any reason, AE shall promptly deliver to ACPS all Instruments of Service, whether the same is in draft or final form.

11.1.5 AE Right to Terminate. If ACPS suspends the Project for more than one hundred twenty (120) cumulative days for reasons other than the fault of the AE, then the AE may terminate this Agreement by giving not less than thirty (30) days' written notice to ACPS.

ARTICLE 12
AUTHORIZED TO REPRESENT THE PARTIES

12.1.1 Unless otherwise provided herein, all notices and other communications required by this Agreement shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, (d) emailed addressed as follows:

Contact Information for AE:

Name
Address

Contact Information for ACPS (Project Information)

Name
Address

Contact Information for ACPS (Legal Authorization)

Alexandria City Public Schools
Financial Services/Procurement Office
1340 Braddock Place, Suite 620
Alexandria, Virginia 22314
Attn: Dyanna McMullen, Director of Procurement
Phone: (703) 472-4034
Fax: (703) 619-8090
Email: dyanna.mcmullen@acps.k12.va.us

12.1.2 Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW. This Agreement shall be governed by the laws of the Commonwealth of Virginia, irrespective of its choice of law or conflicts of law principles.

13.2 SUCCESSORS AND ASSIGNS. The AE binds itself, and its partners, successors, permitted assigns and legal representatives to ACPS with respect to all of the AE's obligations contained in the Agreement Documents. The AE shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or any of its rights, title or interests therein, to any other entity without the previous written consent of ACPS. There are no third-party

beneficiaries to the Agreement Documents, and nothing contained in the Agreement Documents creates a contractual relationship between a third-party and ACPS or provides a third-party with any rights or causes of action against ACPS.

13.3 EQUAL OPPORTUNITY

13.3.1 AE shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, affiliation with faith-based organizations age, or any other characteristics covered by anti-discrimination provisions of applicable federal, state or local law. Failure to comply with such laws shall be a material breach of this Agreement.

13.3.2 Among other laws,

1. AE shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, affiliation with faith-based organizations or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the AE. AE shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. AE, in all solicitations or advertisements for employees placed by or on behalf of the AE, will state that AE is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 13.3.2.
4. AE shall include the provisions of this Section 13.3.2 in every consultant contract over \$10,000 so that the provisions will be binding upon each such consultant.

13.4 DRUG FREE WORKPLACE. During the performance of this Agreement, the AE shall:

- a. provide a drug-free workplace for AE's employees;
- b. 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 marijuana or any other controlled substance is prohibited in AE's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- c. state in all solicitations or advertisements for employees placed by or on behalf of AE that AE maintains a drug-free workplace; and
- d. include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each sub-Consultant or vendor.

13.4.1 For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to AE by ACPS, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

13.5 UNAUTHORIZED ALIENS. In accordance with Va. Code § 2.2-4311.1, AE acknowledges and agrees that it shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

13.6 CRIMES. AE certifies that neither it, nor any of its employees, workers or subconsultants, have been convicted of: (i) a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (ii) a crime of moral turpitude.

13.7 SURVIVAL.

The following obligations shall survive final payment, termination of, and/or the completion of this Agreement:

1. Any provision of this Agreement that expressly states it provisions survive;
2. All of AE's representations, warranties, and guarantees, made in, required by or given in accordance with the Agreement Documents;
3. Those provisions addressing
 - a. Any indemnification obligation of the AE or its subconsultants.
 - b. Insurance
 - c. Ownership and Licensing of the Instruments of Service.
 - d. Audit rights.
 - e. Confidentiality
 - f. Data security.

13.8 CONSTRUCTION. Any rule of law wherein ambiguities are construed against the drafter of a document shall not apply to the Agreement Documents and it is affirmatively waived by ACPS and AE with respect to the same.

13.9 HEADINGS/CAPTIONS. The headings or captions used in the Agreement Documents are for convenience only and shall not be used in interpreting the same.

13.10 FINAL AGREEMENT. The Agreement Documents represent the entire and integrated agreement between ACPS, and the AE and supersede all prior negotiations, representations, or agreements, either written or oral, between them concerning the subject matter of the Agreement Documents. The Agreement Documents may be amended only by a written instrument signed by ACPS.

13.11 WAIVER. ACPS failure to insist, in any one or more instances, on the performance of any of the AE's obligations under the Agreement Documents, or ACPS's approval of alternatives, variances or substitutions to AE's obligations, shall not be construed as a waiver, modification, or relinquishment of such obligation or right with respect to future performance. Likewise, ACPS's actions or inactions shall not waive, modify or alter AE's responsibilities and liability regarding the scope of the Services, including without limitation those responsibilities and liabilities described in Sections 1.18 and Article 2, above.

13.12 SEVERABILITY.

In the event any provisions of this Agreement are found to be invalid, the remaining provisions shall remain unaffected.

13.14 FORCE MAJEURE

ACPS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of ACPS that make performance impossible or illegal, unless otherwise specified in the Contract.

13.15 VIRGINIA PUBLIC PROCUREMENT ACT AND ACPS POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Virginia Public Procurement Act or any applicable ACPS policy is waived in whole or in part. Should the provisions of this agreement contradict any applicable law or ACPS policy in place at the time of contracting, the contradictory provision of this Agreement shall be stricken and replaced with that required by the applicable law or policy.

13.16 AUTHORITY TO TRANSACT BUSINESS

AE shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia throughout the term of this Agreement. A contract entered into by AE in violation of this requirement is voidable, without cost or expense, at the sole option of ACPS.

13.17 BACKGROUND CHECK AND SECURITY PROVISIONS AND CRIMES

13.17.1 Background Checks. AE shall inform its employees, representatives and agents that placement in an ACPS school or facility will be contingent upon the results of a criminal background check, background verification as well as a Sex Offender Registry Search in accordance with ACPS policies and procedures for ACPS volunteers and employees. The failure to successfully pass ACPS' background check shall serve as grounds for immediate dismissal or removal of that employee, agent or representative from any program administered on an ACPS site or facility.

13.17.2. AE Certification. AE certifies that neither it, nor any of its employees, workers or suppliers, have been convicted of: (i) a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (ii) a crime of moral turpitude.

13.17.3 Employee Certification. In accordance with Virginia state law, ACPS Purchasing Procedure DJF requires any AE or his employees that will be in the presence of students during regular school hours or during school sponsored activities certify that he/she has not been convicted of any felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. *See* <https://www.acps.k12.va.us/cms/lib/VA01918616/Centricity/Shared/documents/school-board-policies/djf.pdf>.

13.18 SAFETY

AE shall comply with and shall ensure that AE's personnel, agents and subconsultants 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 standards of the Virginia Occupational Safety and health program of Department of Labor.

13.19 ETHICS IN PUBLIC CONTRACTING

This Contract incorporates any and all Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia 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.). AE certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or sub-Consultant 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.

13.20 EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, AE acknowledges that it does not, and shall 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.

13.21 DISCRIMINATION BY CONSULTANT PROHIBITED

13.21.1 Non-Discrimination. During the performance of this Agreement, AE agrees as follows:

- a. AE shall not discriminate against any employee or applicant for employment because of race,

religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of AE. AE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- b. AE, in all solicitations or advertisements for employees placed by or on behalf of AE, will state that such Consultant is an equal opportunity employer.
- c. AE will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately-provided services and activities.
- d. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

13.21.2 Flow down. AE will include the provisions of the foregoing paragraphs **13.21.1.a**, **13.21.1.b**, **13.21.1.c** and **13.21.1.d**, in every subcontract of over \$10,000, so that the provisions will be binding on each sub-Consultant or vendor.

13.22 FAITH BASED ORGANIZATIONS

In accordance with Code of Virginia § 2.2-4343.1, ACPS does not discriminate against faith-based organizations in the performance of its procurement activity.

13.23 ACPS EMPLOYEES

No employee of ACPS shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

13.24 RELATION TO ACPS

AE is an independent AE, and neither AE nor its employees or sub-Consultant will, under any circumstances, be considered employees, servants or agents of the ACPS. ACPS will not be legally responsible for any negligence or other wrongdoing by the A.E., its employees, servants or agents. ACPS will not withhold from payments to the A.E. any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the A.E. or its employees, servants or agents. Furthermore, ACPS will not provide to the A.E. any insurance coverage or other benefits, including workers' compensation, normally provided by ACPS for its employees.

13.25 VENUE AND JURISDICTION

The exclusive forum and venue for litigation of any disputes hereunder shall be in the Circuit Court for City of Alexandria, Virginia, and in no other court. The parties hereby waive trial by jury.

13.26 NON-EXCLUSIVELY OF REMEDIES

All remedies available to ACPS under this Agreement are cumulative, and no such remedy shall be exclusive of any other remedy available to ACPS at law or in equity.

13.27 SEVERABILITY

In the event any one or more of the provisions contained in the Agreement Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement Documents, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of the Agreement Documents a provision as similar in terms

to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of the Agreement Documents is intended to be severable.

13.28 INTELLECTUAL PROPERTY INDEMNIFICATION

13.28.1 AE warrants and guarantees that no intellectual property rights (including copyright, patent, mask rights, and trademarks) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

13.28.2 AE covenants to save, defend, hold harmless, and indemnify ACPS, and all its officers, officials, departments, agencies, agents, and employees (collectively "ACPS") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however, caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Agreement, including its use by ACPS. If AE, uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that amounts paid under this Agreement includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

13.29 DATA SECURITY AND ACPS RECORDS.

13.29.1 AE agrees that it shall hold all ACPS data obtained or accessed as a result of its work under the Contract confidential. If individual employees or subconsultants of AE are performing work under the Contract on ACPS-owned property, then such individual employees or subconsultants shall be required to sign a separate NDA, which shall be incorporated by reference into the Contract, prior to performing any work or being allowed access.

13.29.2 AE shall hold ACPS data in the strictest confidence and comply with all applicable ACPS security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. AE shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted ACPS Information received from, created or maintained on behalf of ACPS and strictly control access to ACPS Information.

13.29.3 This Agreement confers no ownership rights to AE nor any rights or interests to use or to disclose ACPS' records, information, data or inputs, and AE agrees to return all records of such information and data provided by ACPS to ACPS upon completion, termination, or cancellation of this Agreement. AE shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Agreement without the written consent of ACPS. Additionally, AE agrees that the Records are confidential records and neither the Records nor their contents shall be released by AE, its sub-Consultant, or other third parties; nor shall their contents be disclosed to any person other than the designated by ACPS individuals AE agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Agreement shall be referred to ACPS for response. At ACPS' request, AE shall deliver all Records to ACPS, including "hard copies" of computer records, and at the ACPS' request, shall destroy all computer records created as a result of the ACPS' request for services pursuant to this Agreement.

13.29.4 AE agrees to include the provisions of this section as part of any contract or agreement AE enters into with sub-Consultant or other third parties for work related to work pursuant to this Agreement.

13.29.5 No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

13.30 DEBARMENT CLAUSE

AE certifies that neither the Commonwealth of Virginia, nor any other jurisdiction within the United States, currently debars or prohibits them from offering the types of goods or services covered by this Agreement, nor are they an agent, employee or representative of any person or entity that is currently so debarred.

13.31 AUDIT

13.31.1 Record Retention. AE shall retain all books, records, and other documents relative to the Agreement Documents for five (5) years after its receipt of final payment under this Contract, or until audited by the Commonwealth of Virginia, whichever is sooner. Such records shall include, but not be limited to all paid vouchers; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; amendments and change orders to the Agreement Documents; insurance documents; payroll documents; timesheets; memoranda; and correspondence. ACPS, its authorized agents, and auditors of the Commonwealth of Virginia shall have full access to and the right to examine all such documents during said period. Records will be available on demand and with reasonable notice during normal working hours.

13.31.2 ACPS Access. ACPS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the term of this Agreement or after the Final completion. If AE wishes to destroy or dispose of records (including confidential records to which ACPS does not have ready access) within five (5) years after final payment, AE shall notify ACPS at least thirty (30) days prior to such disposal, and if ACPS objects, shall not dispose of the records.

13.31.3 Price Adjustment for Defective Cost and Pricing Data: If any price, including profit or fee, negotiated in connection with this Contract or any change order or modification under this Contract, was increased by any significant amount because AE furnished cost or pricing data that were not complete, accurate and current as of the date agreed upon between ACPS and AE, the price or cost shall be reduced accordingly, and this Contract shall be modified to reflect the reduction. This right to a price reduction is limited to increases resulting from defects in data under which the submission and certification of cost or pricing data were required.

13.32 NO WAIVER OF SOVEREIGN IMMUNITY

13.32.1 The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

13.32.2 Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by ACPS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of ACPS. The parties intend for this provision to be read as broadly as possible.

**The remainder of this page is intentionally left blank
Signature Page following.**

FINAL AGREEMENT

The Agreement Documents represent the entire and integrated agreement between ACPS and AE and supersede all prior negotiations, representations, or agreements, either written or oral, between ACPS and AE concerning the subject matter of the Agreement Documents. The Agreement Documents may be amended only by a written instrument executed by an authorized representative of ACPS and AE.

IN WITNESS WHEREOF, ACPS and the Architectural Engineer have caused this Agreement to be executed by their duly authorized representatives.

ALEXANDRIA CITY PUBLIC SCHOOLS

[ARCHITECTURAL ENGINEER]

Dr. Gregory Hutchings, Jr. Superintendent of Schools

Signed: , Principal

Dr. Alicia Hart, Acting Chief of Facilities & Operations

Printed: , Principal

Erika Gulick, Director of Capital Programs, Planning & Design

Date: _____

Dyanna McMullen, Director of Procurement and General Services

RELEASE AND REQUEST FOR FINAL PAYMENT

PROJECT NAME: _____

CONTRACT NUMBER: _____

CONSULTANT'S NAME: _____

FINAL PAYMENT AMOUNT: _____

FINAL CONTRACT AMOUNT: _____

Upon completion of the Work and before final payment, AE will submit to the Alexandria City Public Schools a signed copy.

AE hereby requests final payment in the amount indicated on the above referenced Contract. AE agrees that its acceptance of final payment releases and forever discharges Alexandria City School Board and the Alexandria City Public Schools 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, with the exception of those claims previously submitted in strict compliance with the claims submission requirements of the Agreement Documents and not finally resolved.

AE certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been paid as required by the contract.

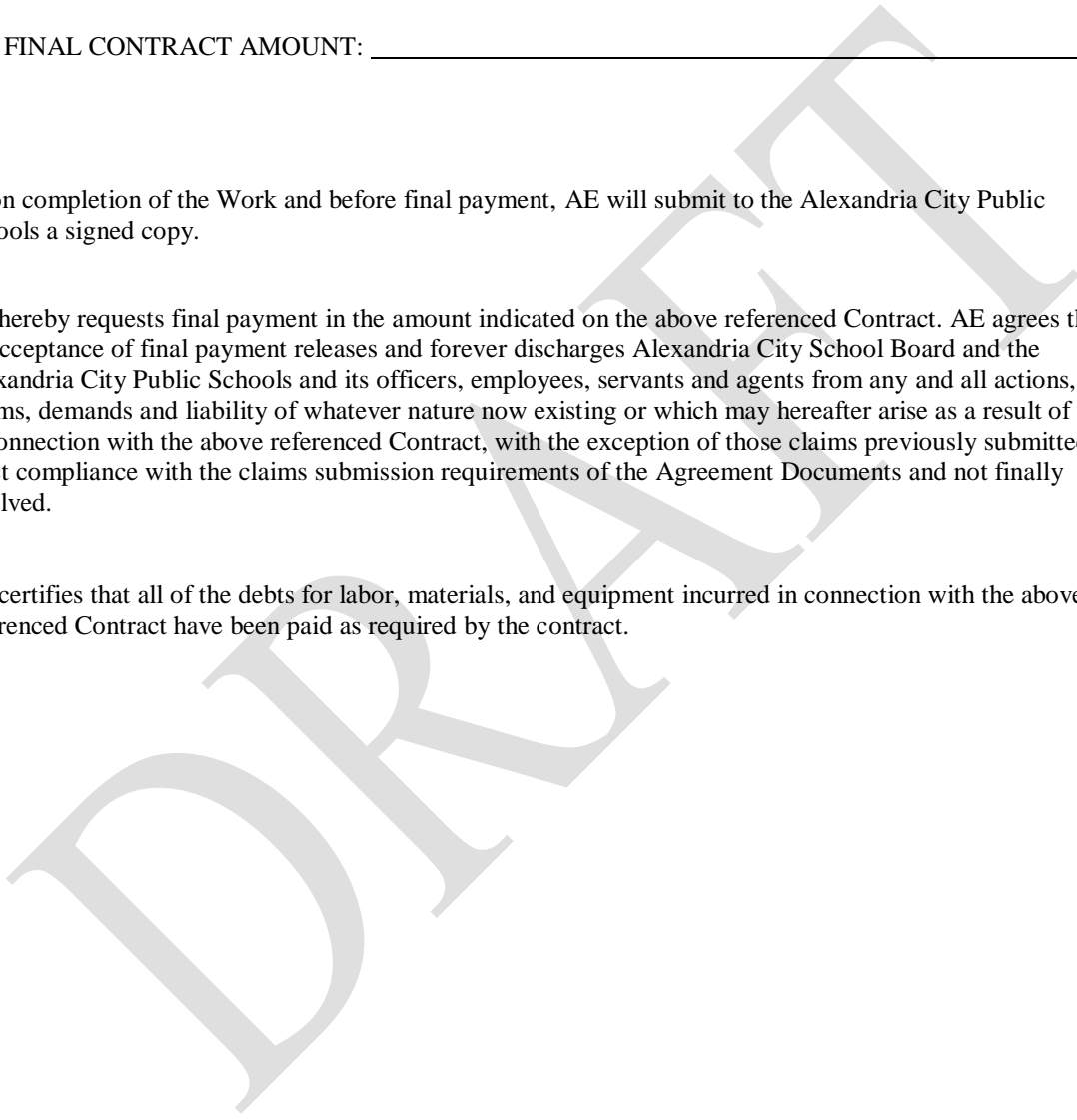




EXHIBIT A

ARCHITECT/ ENGINEER'S COST PROPOSAL SUMMARY

DRAFT