



REQUEST FOR PROPOSALS RFP-2425-528

**Construction Management at Risk (CMAR) Services for
Danville Public Schools**

Part I: Proposal Information

Danville Public Schools (DPS) is seeking a request for qualification for services of a Construction Management at Risk, (CMAR) firm to provide Pre-Construction and Construction Services for the renovations and additions to Forest Hills Elementary School. Summary and a specific scope of services is included in Part II.

Construction Management firms responding to this Request for Proposal (RFP) must submit their responses as specified herein.

Proposals are due no later than 2:00 PM on **October 22, 2024**.

All proposals should be submitted and delivered to:

**Chief Operations Officer
RFP-2425-528
Danville Public Schools
341 Main St, Suite 100
Danville, Virginia 24541**

Submissions shall be enclosed in a sealed envelope and include eight (8) hard copies of the proposal and one (1) electronic copy on a USB flash drive. All submittals shall be clearly marked with Proposer's name and labeled "Public Schools-RFP-2425-528 Construction Management at Risk Services for Danville Public Schools."

Submissions received after the deadline whether by mail or otherwise will not be accepted or reviewed. DPS reserves the right to cancel this RFP, to reject all proposals, and to waive any informalities in any proposals.

The firm submitting a proposal may be referred to herein as a "Proposer," and "Offeror," or the "Contractor."

All work performed under this RFP shall be completed with minimal interruptions to school operations.

GENERAL

All submissions must conform to the requirements and conditions contained herein and attached hereto. The Chief Operations Officer, in the form of a written addendum, will issue any changes or clarifications to this RFP.

PRE-PROPOSAL CONFERENCE

There will be a pre-proposal conference located at 155 Mountain View Ave at 10 am on **September 20, 2024**

QUESTIONS

Direct all questions regarding this RFP, no later than **5PM EDT on October 7, 2024**, to:

Mr. Yancey Powers, WM2A (yanceypowers@wm2a.com)

Michael Burriss, MBP (mburriss@mbpce.com) and

Mr. Walter Lucas, Director of Capital Improvement, by email
(wluca@mail.dps.k12.va.us)

REGISTRATION AND LICENSURE

- A. Business License: The City of Danville requires all contractors to obtain a business license to operate within the city. This license is issued by the Commissioner of Revenue and must be maintained for the life of the contract or project.
- B. Proposers submitting a proposal must be properly licensed to perform the construction management services required under this RFP in the Commonwealth of Virginia at the time of the proposal submission.

SUBCONTRACTING

The contractor may subcontract services to be performed with the prior approval of Danville Public Schools, which will not be unreasonably denied, conditioned or delayed. Such approval will not be considered as making Danville Public Schools a part of such contract, nor shall it subject Danville Public Schools to liability of any kind from any subcontractor. Danville Public Schools will deal solely with the contractor.

SPECIAL CONDITIONS

Danville Public Schools is a No Smoking facility. Smoking, Vaping or use of any Tobacco products are NOT allowed in or on the building, on school grounds or in vehicles located on school grounds. Failure to abide by this rule will be grounds for removal of the guilty party or cancellation of contract.

Prior to awarding a contract for the provision of services that require the Proposer to be in the presence of students during regular school hours or during school-sponsored activities, the School Board will require the proposer, and when relevant, any employee who will have direct contact with students, to provide certification:

- That he or she has not been convicted within the last seven (7) years of a felony

and,

- That he or she has never been convicted of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and
- Whether he or she has been convicted of a crime of moral turpitude.

Legal Refs. Code of Virginia, 1950, as amended, Sections 2.2-4300 et seq., 22.1-296.

SUMMARY

It is the responsibility of the Proposer to submit a proposal that best meets the requirements outlined in this Request for Qualifications. This RFQ contains the following items:
Appendix:

- A. Construction Schedules and Reports
- B. Division of Project Cost Elements
- C. Dispute Resolution
- D. Prequalification Policies

PROJECT DESCRIPTION

Danville Public Schools (DPS) District desires to engage the services of a Construction Management at Risk (CMAR) firm to provide Pre-Construction and Construction Services at the following locations:

Forest Hills Elementary School: This school was constructed in 1938 on 3.5 acres with an auditorium addition in 1940. Since being constructed, the only upgraded has been a chilled water HVAC system and new replacement windows. This project includes improvements to accommodate extensive campus wide renovations and approximately 30,000 sf of additions with upgrades to infrastructure, security and technology. To increase the student population from 250 to 500 students.

Project design team:

WM2A Architects

MBP, Owner's Representative, Program Manager

SUBMITTAL REQUIREMENTS

The proposal should be submitted in a bound format with section dividers corresponding to the sections that follow. Respondents are instructed to adhere to this format and to provide one (1) marked original proposal and seven (7) copies.

Provide the following information about your firm:

- Name of firm.
- Address of main office and any branch offices.
- Telephone number, email addresses and fax number for each office.
- Name and title of contact person.
- Names of officers in firm and an organizational chart.

Provide the following information:

An overview of your firm's financial status including bond rating.

- Certificates of Professional Liability Insurance.

- If your firm is selected for an interview, you will be required to provide a financial statement from your CPA, attesting to your financial solvency.

Please provide a brief overview of your firm including the number of years the firm has provided construction management services. Specifically identify the numbers of years your firm has provided services on K-12 school construction in Virginia and North Carolina.

Describe the method your firm will use to substantiate and document any savings achieved by your participation.

Provide a listing of K-12 school construction projects managed by your firm as CMAR completed within the past ten (10) years with a construction value of at least ten (\$10) million dollars. Provide the following information for each project:

- Name of project.
- Name and location of school district.
- Name, title and telephone number of school district contact.
- Name, address, telephone number and email address of project architect.
- Project description including size in square feet.
- Number of prime contractors.
- Project schedule including start and completion dates.
- Whether the project finished on time.
- Construction documents estimate and actual bid total.
- Final construction costs including change orders.
- Whether claims were presented and if so, how many, of what kind/type and how they were resolved.

Provide a listing of K-12 school projects with a value of at least twenty-five (\$25) million dollars for which your firm is currently providing construction management at risk services. Provide the following information for each project:

- Name of project.
- Name and location of school district.
- Name, title and telephone number of school district contact.
- Name, address, telephone number and email address of project architect.
- Project description including size in square feet.
- Number of prime contractors.
- Project schedule including start and completion dates.
- Whether the project is on schedule.
- Construction documents estimate and actual bid total.
- Anticipated construction costs including change orders.
- Percentage completed at the time of this proposal submission.

Provide an organizational chart of your proposed construction management team for this project. The proposal shall be based upon full-time on-site supervision of all construction activity. Provide a resume for each member of the proposed team including education,

years of construction management experience, years of K-12 school construction experience and his or her proposed role in the project.

Describe your firm's Quality Assurance Program and submit exhibits related to it.

Provide the name, address, email addresses, and telephone number of at least three (3) references familiar with the quality of work completed by the firm on similar projects.

Provide exhibits of the following items used by your firm on a current or previous K-12 school construction management at risk project:

- A detailed cost estimate developed during a project design phase.
- A value engineering study performed during a project design phase.
- A work schedule from a construction bid package.
- A typical construction manager's monthly project report.

ADDITIONAL PROPOSAL INSTRUCTIONS

The Proposer's proposal shall conform to the following instructions and contain the following required information:

- Any interpretations, corrections, revisions to this solicitation will be made only by written addendum issued by DPS. Interpretations, corrections, or revisions of this RFP made in any other manner will not be binding and Proposers must not rely upon such interpretations, corrections, or revisions. Proposers are solely responsible for ensuring that they have all addenda issued prior to submitting their proposals. DPS refuses any responsibility for a Proposer's failure to receive any addenda.
- Proposals shall be signed by an authorized representative of the Proposer. By submitting a proposal, the Proposer certifies that all information provided in response to this RFP is true and accurate.
- Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's proposal and capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- All requested information must be submitted. Proposals which are incomplete or lack key information will be rejected. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- Ownership of all data, materials and documentation originated and prepared for DPS pursuant to this RFP shall belong exclusively to DPS and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Proposer shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, **the Proposer must invoke the protection of Section 2.2-4342. F. of the Code of Virginia, in writing, either before or at the time the data or other material is submitted.** The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or

paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

- The proposal must identify any professional licenses maintained by the offeror and/or individuals identified as part of the offeror's project team relevant to the Project.
- Firm's Cost Proposal – Offerors shall **NOT** provide any estimated project costs in their proposals. During discussions with offerors, as allowed during Competitive Negotiation under Virginia Code § 2.2-4302.2, DPS may discuss nonbinding estimates of project costs with Proposers. A final price shall be determined in negotiation with the Proposer ranked first following discussions.
- The Proposer may provide any other information that the offeror feels DPS should consider in evaluating the proposal.
- Your submission of a Proposal certifies that you have either inspected the job site or voluntarily declined the inspection, are aware of the conditions under which the work must be accomplished, that you are aware of and understand the requirements for the goods and services to be provided, and that you fully understand this solicitation. It is the responsibility of each offeror to inquire about and clarify any requirements of this solicitation that are not understood. Failure to understand the requirements of this solicitation will not relieve the contractor of any responsibilities under any contract. Claims, because of failure to inspect the job site or failure to obtain clarification of requirements, will not be considered by the DPS.

Policy on Small Businesses, Businesses Owned by Women and Minorities, Service-Disabled Veteran Businesses, And Employment Services Organizations

Per Virginia Code § 2.2-4310, it is the policy of DPS to encourage and facilitate participation by small businesses, minority and women-owned businesses, service-disabled veteran businesses, and employment services organizations in all aspects of its contracting activities. DPS encourages small businesses, minority and women-owned businesses, service-disabled veteran businesses, and employment services organizations to respond to this RFP. DPS encourages potential Proposers to use small businesses, minority and women-owned businesses, service-disabled veteran businesses, and employment services organizations as subcontractors and/or suppliers. If the Proposer is a small business, minority and women-owned business, service-disabled veteran business, or employment services organization it should identify itself as such in its proposal. If the Proposer intends to subcontract work as part of its performance under this contract, it should include in its proposal a plan to subcontract to small, women-owned, minority-owned, service-disabled veteran-owned businesses, and employment services organizations. The Proposer also should identify any small businesses, minority and women-owned businesses, service-disabled veteran businesses, and employment services organizations it intends to use on the Project.

SELECTION CRITERIA

The Contract is being procured through selected qualifications and a negotiation process. With contractor having CMAR experience and knowledge of LEAN construction techniques.

Selection criteria will include, but is not limited to, the following:

- Project approach and familiarity with the Project and Danville Public Schools.
- Relevant experience with similar CMAR school projects.
- The ability, capacity and skill of the offeror to timely perform the contract or provide the services and/or items required.
- Experience with LEAN construction.

- Results of reference checks.
- The character, integrity, reputation, judgment, experience and efficiency of the offeror and its design team.
- Performance (including completion on time, on budget, and percentage of change orders) on similar projects in the past.
- Qualifications, experience and location of key project team members who will remain actively involved throughout the entire Project.
- Location of firm's offices relative to Danville, Virginia, for prompt and consistent project oversight.
- The ability, capacity or willingness of the offeror to commence and complete the contract within time frames fixed by DPS.
- Experience with providing construction management services to the City of Danville and Danville Public Schools.
- Knowledge of required state and local permitting and approval processes.
- The results of interviews, discussions, and/or negotiations with offerors.
- Any other lawful factors reasonably related to the subject of the contract to be awarded.
- Overall quality and value of the proposal as determined by DPS.
- The best value relative to DPS's needs; and/or
- The best interests of DPS.

A selection committee will review proposals received by the proposal submission deadline and engage in discussions and negotiations with selected Proposers as allowed by the Virginia Public Procurement Act. The committee will recommend to the School Board for approval of a contract with the Proposer with which DPS can negotiate a contract in accordance with Danville Public Schools policies and the Virginia Procurement Act. The selection of the Construction Management Firm will be based on the criteria set forth herein. The selection committee will review and evaluate the RFP responses. Upon approval by the School Board, the selection committee will select a firm deemed more highly qualified and suitable than the others under consideration. Danville Public Schools has sole discretion and reserves the right to reject all RFP responses received and to cancel the RFP process at any time prior to entering into a formal agreement. Danville Public Schools reserves the right to request additional information or clarification of the information provided.

AWARD OF CONTRACT

After evaluation of the offers received in response to the RFP, DPS shall engage in individual discussions, interviews with two or more Proposers deemed fully qualified, responsible, and suitable based on initial responses, and with professional competence to provide the required services. Repetitive informal interviews are permitted. Proposers shall

be encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed contract. Proposers may also propose alternate concepts or methodology. These discussions may encompass nonbinding estimates of project costs including, where appropriate, design, construction, life-cycle costing, nonbinding estimates of prices or fees for architectural/engineering services and other matters, which DPS in its discretion finds relevant. Methods to be used in arriving at a price for the services may be discussed. The reasonableness/competitiveness of a proposed nonbinding fee in no way binds DPS to select the Proposer who proposes the lowest fees or benefits for services. Proposers are advised that time is of the essence and that it is imperative that all work required for the project be completed as soon as possible. If selected for an interview, Proposers must be prepared to provide a tentative schedule indicating the period within which all work can be completed. The reasonableness of this proposed schedule in no way binds DPS to select the offeror who proposes the shortest or more aggressive schedule. Proprietary information from competing offerors (including any data on estimated person-hours or rates and the plan for accomplishing the scope of work) will not be disclosed to the public or to competitors, provided the Proposer duly marks such information as "Proprietary Information" and the designation is justified as required by Section 2.2-4342, Code of Virginia, as revised. At the conclusion of the informal interviews and on the basis of evaluation factors set forth in this Section and the information provided and developed in the selection process to this point, DPS shall rank, in the order of preference, the interviewed Proposers whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with the Proposer ranked first. If a contract satisfactory and advantageous to DPS can be negotiated at a fee considered fair and reasonable, the award shall be made to that Proposer. Otherwise, negotiations with the Proposer ranked first shall be formally terminated and negotiations conducted with the Proposer ranked second, and so on, until such a contract can be negotiated at a fair and reasonable fee. Should DPS determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offer is clearly more highly qualified and suitable than the others under consideration, a contract will be negotiated and awarded to that offeror.

PRICING

- a.** A price shall be negotiated with the selected Offeror for the Preconstruction services in accordance with Danville Public Schools Purchasing Regulations. **A proposed fee is NOT to be submitted with the proposal.**
- b.** A Guaranteed Maximum Price (GMP) will be negotiated with the selected Offeror for the construction services in accordance with Danville Public Schools Purchasing Regulations. **A proposed fee is not to be submitted with the proposal.**

End of Part I-

Part II: Scope of Services

ARTICLE 1

RELATIONSHIP OF THE PARTIES

Owner and Construction Manager at Risk, CMAR

The CMAR and the Owner shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement upon establishment of an approved GMP.

1.1.1 Standard of Care

The CMAR covenants with the Owner to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above. The CMAR shall perform its services, including but not limited to the Basic Services and any Additional Services authorized in writing by the Owner, consistent with the professional skill and care ordinarily provided by CMARs practicing in or around the Forest Hills Elementary School in Danville, Virginia area under the same or similar circumstances. The CMAR shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.1.2 CMAR Representations

The CMAR represents and warrants that at the time of execution of this Agreement the CMAR has and will retain all licenses and certifications required of him to perform the work identified in this Agreement and associated contract documents. The CMAR shall keep this licensure in good standing without lapse throughout the term of this Agreement. The CMAR shall provide proof of this licensure to the Owner and/or Design Consultant upon request.

By execution of this Agreement, the CMAR warrants that (a) it is an experienced and duly licensed having the ability and skill necessary to perform all the work required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the construction of the Project, and that the CMAR's work on the Project shall be performed in accordance with all such applicable laws, rules and regulations.

1.2 Owner and Design Consultant

The Owner shall contract separately with one or more Design Consultants to provide architectural and engineering design for the Project. The Project is defined in Article 2 of this Agreement. The Design Consultant's services shall be as stated in this Agreement and as defined in the form agreement between the Owner and Design Consultant attached as Appendix A.

Owner and Contractors

The Owner will require the CMAR to contract directly with contractors necessary for construction or supply of the project. All such contracts shall be issued consistent with the applicable provisions of this agreement

1.3 Relationship of the CMAR to the Design Consultant and Other Project Participants

In providing construction management services described in this Agreement, the CMAR shall maintain a working relationship with the owner's Design Consultant and Construction Management Team. The Design Consultant is solely responsible for the Project design and shall perform in accordance with the Design Consultant Agreement with the Owner and nothing in this Agreement shall be construed to mean that the CMAR is responsible for the design of the Project or that the CMAR assumes any of the contractual or customary duties of the Design Consultant or any other persons or parties not specified by this Agreement.

ARTICLE 2

PROJECT DEFINITION

The term "Project" when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project.

The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

The abbreviation CMAR shall mean Construction Manager at Risk.

The Project name and locations are as follows:

Forest Hills Elementary School

155 Mountain View Ave

Danville, Virginia

The Project's intended use is as an Elementary School

ARTICLE 3

CONSTRUCTION MANAGER'S BASIC SERVICES

3.1 CMAR Basic Services

The CMAR shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Design Phase – Project Management

3.2.1 Project Management

3.2.1.1 Construction Management Plan

The CMAR shall prepare a Construction Management Plan for the Project within the time mutually established by the Owner and CMAR and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the CMAR shall consider the Owner's schedule, budget, and design requirements for the Project. The CMAR shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. The CMAR shall develop a Master Schedule for the Project. The CMAR shall determine the appropriate bid packages based on the available resources. The CMAR shall familiarize itself with all available Project funding and work with the Owner and Design Consultant to maximize the scope and quality of the Project based upon the available funds. The CMAR shall make recommendations regarding communication among the parties in an effort to ensure the prompt and proper flow of Project information. The CMAR shall outline its plan for minority business enterprise participation goals required by state law and the Owner, including reporting all information required by state law on behalf of the Owner to the Virginia Department of Education and other state and local agencies required. The CMAR shall include a Project safety plan covering all critical areas of the Project.

3.2.2 Time Management

3.2.2.1 Master Schedule

In accordance with Exhibit A the Construction Management Plan, the CMAR shall prepare a Master Schedule for the Project in accordance with the deadlines and specifications established by the Owner. The Master Schedule shall specify the proposed start and finish dates for each major Project activity. The CMAR shall submit the Master Schedule to the Owner for acceptance.

3.2.2.2 Design Phase Milestone Schedule

After the Owner accepts the Master Schedule, the CMAR shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for proposals and contract for the Design Consultant and shall be a method for judging progress during the Design Phase. The CMAR shall track the Design Consultant's

progress during the design phase and alert the Owner of any delays in the Design Consultant's timely completion of its services.

3.2.3 Cost Management

3.2.3.1 Construction Market Survey

The CMAR shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials, and equipment cost and other economic factors related to the Project.

3.2.3.2 Project and Construction Budget

Based on the Construction Management Plan and the Construction Market Survey, the CMAR shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The CMAR shall submit the Project and Construction Budget to the Owner for acceptance. The CMAR shall make recommendations to the Owner and Design Consultant regarding whether the Owner should conduct any additional geotechnical, environmental, or other inspections of the Project site reasonably necessary for the CMAR to estimate the cost of the work and minimize change orders due to unforeseen conditions. If the Project involves renovation work, the CMAR shall perform inspections of the existing building, Project conditions, and perform any destructive testing reasonably necessary for the Design Consultant to prepare a complete and accurate set of construction documents and allowing the CMAR to estimate the cost of the work in order to minimize change orders due to unforeseen conditions. The cost of any destructive testing shall be billed as reimbursable and shall not be included in the CMAR's fee for basic services. The Project and Construction Budget shall be revised as directed by the Owner.

3.2.3.3 Preliminary Estimate and Budget Analysis

The CMAR shall analyze and report to the Owner the cost of various design and construction alternatives, including CMAR's assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CMAR shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

3.3 Design Phase – Design Support

3.3.1 Project Management

The CMAR will be required to submit all project documents to the Owner using the Owner's Procore MIS system for project tracking, and project management through closeout.

3.3.1.1 Revisions to the Construction Management Plan

During the Design Phase, the CMAR shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

3.3.1.2 Project Conference

At the start of the Preconstruction Phase, the CMAR shall conduct a Project conference attended by the Design Consultant, the Owner, and others, as necessary. During the Project

Conference, the CMAR shall review the Construction Management Plan, the Master Schedule, the Design Phase Milestone Schedule, the Project and Construction Budget, and the MIS. The CMAR shall be responsible for tracking the progress of the design in relation to the Design Phase Milestone Schedule and shall promptly notify the Owner of any delay. The CMAR shall make recommendations to the Owner, with a copy to the Design Consultant, regarding strategies for overcoming any delay in the design of the Project.

3.3.1.3 Design Phase Information

The CMAR shall monitor the Design Consultant's compliance with the Construction Management Plan and the MIS (Procore™), and the CMAR shall coordinate and expedite the flow of information between the Owner, Design Consultant, and others, as necessary.

3.3.1.4 Progress Meetings

The CMAR shall conduct periodic progress meetings attended by the Owner, Design Consultant, and others, as necessary. Such meetings shall serve as a forum for information exchange concerning the Project and reviewing design progress. The CMAR shall prepare and distribute minutes of these meetings to the Owner, Design Consultant, and others. During the periodic progress meetings the CMAR shall update the Owner and Design Consultant regarding the estimated cost of the design and make recommendations to the Owner and Design Consultant regarding constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and any other information reasonably necessary to assist the Design Consultant with cost, budget and schedule requirements.

The CMAR shall review the design documents and any addenda or other information from the Design Consultant for clarity, consistency, constructability, and coordination among the Contractors. If the Project is a prototype that has been previously constructed, the CMAR shall verify that all applicable change orders from previous Projects have been incorporated into the bidding documents. The review results shall be provided in writing as notations on the documents using Bluebeam Review. The CMAR is not responsible for providing, nor does the CMAR control, the Project design, and contents of the design documents. By performing the reviews described herein, the CMAR is not acting in a manner to assume responsibility or liability, in complete or in part, for all or any part of the Project design and design documents. The CMAR's actions in reviewing the Project design and design documents and in making recommendations as provided herein are for the use of the Owner and Design Consultant. The constructability review shall be thorough and complete.

3.3.1.6 Design Recommendations

The CMAR shall make recommendations to the Owner and Design Consultant with respect to constructability, construction cost, sequence of construction, construction duration, means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work. In addition, the CMAR shall give to the Design Consultant all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents.

3.3.1.6.1 On renovation Projects, the CMAR shall:

1. Conduct thorough evaluation of existing conditions of building(s), all building systems, site, and site infrastructure.
2. Conduct destructive and non-destructive testing as necessary to thoroughly evaluate existing conditions of the building(s), building systems, site, and site infrastructure (all testing, whether destructive or non-destructive, is to be approved in advance by the Owner and shall be coordinated to occur at a time that will reasonably allow the information to be used by the Design Consultant in the in the preparation of the contract documents);
3. Report to Owner and Design Consultant during design phase regarding findings of evaluation of existing building(s), building systems, site, and site infrastructure and make recommendations to the Owner and Design Consultant that will assist with establishing cost, budget, and schedule requirements.
4. Work with Owner and Design Consultant during design phase to create phasing plans that allow the work to be conducted in the most expedient manner while considering both cost and time.
5. Develop a plan to address the safety and security of all students, staff, visitors that will be on a site that is being used as a school during construction, including a plan that minimizes noise levels that would be disruptive to the educational environment without the prior approval of the Owner.

3.3.1.7 Owner Design Reviews

The CMAR shall coordinate the Owner's design reviews by compiling and conveying the Owner's comments to the Design Consultant.

3.3.1.8 Approvals by Regulatory Agencies

The CMAR shall monitor transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews of which the CMAR is aware.

3.3.1.9 General Conditions

The CMAR shall develop the General Conditions for use in the contracts between the CMAR and the Contractors for construction of the Project. Separate General Conditions for materials and equipment procurement shall be prepared by the CMAR to meet the specific requirements of the Project and all the requirements of this Agreement.

In interpreting the requirements of this Agreement, anything shown on the Design Consultant's drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. The Design Consultant's technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all relevant drawings, and the CMAR will coordinate the work and the drawings. If any portion of the Design Consultant's plans and specifications shall be in conflict with any other portion, the various documents comprising the contract documents shall govern in the following order of precedence: this Agreement; any addendum issued by the Design Consultant; the specifications; the drawings; as between schedules and information given on drawings, the schedules shall govern; as between figures given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small scale

drawings, the larger scale drawings shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Design Consultant whose decision thereon shall be final and conclusive.

3.3.1.10 Public Relations

The CMAR shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the Project.

3.3.1.11 Project Funding

The CMAR shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.

3.3.2 Time Management

3.3.2.1 Revisions to Master Schedule

While performing the services provided in Paragraphs 3.3.1.1, 3.3.1.2 and as necessary throughout the Design Phase, the CMAR shall recommend revisions to the Master Schedule. The Owner shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2 Monitoring the Design Phase Milestone Schedule

While performing the services provided in Paragraphs 3.3.1.3, and 3.3.1.4, the CMAR shall monitor compliance with the Design Phase Milestone Schedule.

3.3.2.3 Pre-Bid Construction Schedules

Prior to transmitting Contract Documents to bidders, the CMAR shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3 Cost Management

3.3.3.1 Cost Control

Following the completion of each design phase milestone, the CMAR shall prepare an estimate of the construction cost for the Design Drawings and Specifications furnished by the Design Consultant. Each estimate shall be accompanied by a report to the Owner and Design Consultant identifying variances from the Project and Construction Budget and CMAR's assumptions in preparing the estimate. The CMAR shall coordinate the activities of the Owner and Design Consultant when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.2 Project and Construction Budget Revision

The CMAR shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

3.3.3.3 Value Engineering Studies

The CMAR shall provide value-engineering recommendations to the Owner and Design Consultant for major construction components, including cost evaluations of alternative materials and systems.

3.3.4 Management Information System (MIS)

3.3.4.1 Schedule Reports

In conjunction with the services provided by Paragraph 3.3.2.1, the CMAR shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action.

3.3.4.2 Project Cost Reports

The CMAR shall prepare and distribute Project cost reports that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action.

3.3.4.3 Cash Flow Report

The CMAR shall periodically prepare and distribute a cash flow within their monthly report.

3.3.4.4 Design Phase Change Order Report

The CMAR shall prepare and distribute Design Phase change order reports that shall list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

3.4 Procurement Phase

3.4.1 Project Management

The CMAR shall procure bids in accordance with VA Gen. Stat. § 143-128.1, 143-128.2 to -128.4, 143-135.8. The CMAR shall prequalify all bidders in accordance with this Agreement. The CMAR shall ensure that all minority business participation goal requirements are followed in the solicitation and award of contracts. The CMAR shall report its efforts to solicit minority business participation to the Owner in writing. Unless approved otherwise by the Owner, a minimum of three bids shall be required for opening if bids are received in advance of the GMP having been established.

3.4.1.1 Prequalifying Bidders

The CMAR shall develop lists of potential bidders and prequalifying-bidders. This service shall be performed in accordance with the Owner's prequalification of bidders for construction projects policy. The CMAR shall also prepare and transmit to the Owner a list of prequalified and disqualified bidders for each bid package. The CMAR shall provide the Owner with the reasons that any prospective bidders have been disqualified. The Owner shall notify the CMAR promptly of any reasonable objections to a proposed bidder, and the CMAR shall remove that bidder from the bidder's list.

The CMAR shall provide the Owner with a list of all businesses in which the CMAR's Owners have any ownership interest if the business is engaged in the construction industry, including demolition and the supply of materials for construction, and the CMAR intends

to solicit bids for any work on the Project from the business. The CMAR shall provide said list to the Owner prior to prequalifying bidders for the work. The Owner shall determine whether any business listed may submit a bid or perform any work on the Project.

3.4.1.2 Bidder's Interest Campaign

The CMAR shall conduct a thorough campaign to create interest among qualified bidders. The CMAR shall provide written documents of these efforts to the Owner prior to bidding the work.

3.4.1.3 Notices and Advertisements

The CMAR shall prepare and place notices and advertisements to solicit bids for the Project

3.4.1.4 Delivery of Bid Documents

The CMAR shall expedite the delivery of bid documents to the bidders. The CMAR shall obtain documents from the Design Consultant and arrange for electronic distribution and delivery to the bidders. The CMAR shall maintain a record of bidders receiving documents. The CMAR shall notify the Owner in advance, in writing, of the anticipated number of bid documents to be produced.

3.4.1.5 Pre-Bid Conference

In conjunction with the Design Consultant, the CMAR shall conduct a Pre-Bid Conference. These conferences shall be forums for the CMAR and Design Consultant to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Project administrative requirements and technical information.

3.4.1.6 Information to Bidders

The CMAR shall develop and coordinate procedures to provide answers to bidders' questions.

3.4.1.6.1 Site Access for Bidders

In the event bidders require access to the site to gain information necessary to prepare their bids, the CMAR shall be responsible for coordinating access with the Owner. Any access shall be during regular business hours or otherwise at a time that would not unreasonably disturb the adjacent property Owners or interfere with the school day. If the information sought by the bidders requires any alteration to the existing building or site or destructive testing, the CMAR shall notify the Owner in advance and coordinate said work so that it does not cause any disruption to the current use of the site or building. The CMAR shall ensure that any disturbed areas are repaired if the Owner is currently using the building. In all situations, the CMAR shall ensure that the site or building is left in a safe and secure condition and that the disturbed area is cleaned of any debris resulting from the access. In the event that the bidders' access disturbs any adjacent property, including depositing dirt, soil, or debris on the roads adjacent to the site, the CMAR shall promptly clean all areas and be responsible for any claims, fines or penalties resulting from said access.

3.4.1.7 Addenda

The CMAR shall receive from the Design Consultant a copy of all addenda. The CMAR shall review addenda for clarity, consistency, and coordination. By performing the reviews described herein, the CMAR is not acting in a manner to assume responsibility or liability, in completely or in part, for all or any part of the Project design. The CMAR shall also distribute a copy of all addenda to each bidder receiving documents.

3.4.1.8 Bid Opening

The CMAR shall act as the fiduciary of the public entity in handling and opening bids. All bids shall be received and opened in a manner agreed upon by the Owner. The CMAR shall conduct bid openings and evaluate bids to determine the lowest responsive and responsible bidder, considering quality, performance, and time specified to perform. The contracts shall be awarded in accordance with VA and DOL guidelines.

3.4.1.9 Construction Contracts

The CMAR shall prepare, execute, and deliver the contract documents between the CMAR and the Contractors. The contract documents shall consist of the plans and specifications, any addendum, the general conditions, the form of Agreement between the CMAR and the contractor, bid manual, and any other documents incorporated by the CMAR. The CMAR shall also issue the notices to proceed. The CMAR shall not issue contract documents or notices to proceed with the work to the contractors until the Owner and CMAR have agreed upon the amount of the GMP and the Owner has notified the CMAR that it can proceed with the work.

3.4.1.10 Permits, Insurance and Labor Affidavits

The CMAR shall verify that the Contractors have secured the required building permits, bonds, insurance, labor affidavits, employee background checks, and waivers.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule

The CMAR shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The CMAR shall inform the bidders of the Owner's requirements for scheduling and communication between the parties.

3.4.2.2 Construction Schedule

The CMAR shall provide a copy of the Master Schedule to the bidders. The CMAR shall prepare a Construction Schedule and all updates in accordance with the Owner's scheduling requirements in section 3.5.2. The Owner shall provide the CMAR with its scheduling requirements prior to receipt of bids for the Project.

3.4.3 Cost Management

3.4.3.1 Estimates for Addenda

Unless the Owner has elected to establish the GMP after bids have been received, the CMAR shall prepare an estimate of costs for all addenda and shall submit the estimates to the Owner for approval. After approval by the Owner, the addenda shall be transmitted to

bidders and the Guaranteed Maximum Price and the CMAR's compensation shall be adjusted as provided in this Agreement.

3.4.3.2 Analyzing Bids

Upon receipt of bids, the CMAR shall evaluate the bids, including alternate prices and unit prices.

3.4.4 Management Information System (MIS)

3.4.4.1 Schedule Maintenance Reports

The CMAR shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.4.2 Project Cost Reports

The CMAR shall prepare and distribute the Project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget. The CMAR shall provide updated Project cost reports to the Owner, with a copy to the Design Consultant, at least monthly.

3.4.4.3 Cash Flow Reports

The CMAR shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference

In connection with the Design Consultant, the CMAR shall conduct a Pre-Construction Conference during which the CMAR shall review the reporting procedures, site operations and other contractual requirements.

3.5.1.2 Onsite Management and Construction Phase Communication Procedures

The CMAR shall provide and maintain a management team on the Project site to provide contract administration and the CMAR shall establish and implement coordination and communication procedures among the CMAR, Owner, Design Consultant, and Contractors. The Owner shall approve the CMAR's Project manager and superintendent. The Owner reserves the right to require the removal of a particular PM, superintendent, at any time the Owner reasonably believes the PM, or superintendent is adversely affecting the Project. A PM or superintendent approved by the Owner shall not be reassigned by the CMAR unless they cease to be on the CMAR's payroll, or the Owner otherwise agrees to. The CMAR shall observe the work as required for general conformance with the contract documents. The CMAR shall be responsible for Project site safety and the means and methods for the construction of the Project.

3.5.1.3 Contract Administration Procedures

The CMAR shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CMAR shall maintain daily job reports. The CMAR shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted. The CMAR shall provide periodic reports to the Owner, with a copy to the Design Consultant and Owner's Representative, updating the status of the Project. The reports shall be provided no less than bi-weekly. The Owner shall have no duty to respond to any information in the periodic reports, unless the CMAR specifically requests a response or action by the Owner in writing in a separate document.

3.5.1.4 Project Site Meetings

Periodically, the CMAR shall conduct meetings at the Project site with each Contractor and the CMAR with all Contractors, the Owner, and Design Consultant. The CMAR shall conduct bi-weekly progress meetings with the Owner and Design Consultant. The CMAR shall record, transcribe, and distribute minutes to all attendees, the Owner, and Design Consultant.

3.5.1.5 Coordination of Other Independent Consultants

The CMAR shall coordinate technical inspection and testing provided by the Design Consultant or others. The CMAR shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CMAR is not responsible for providing, nor does the CMAR control, the actual performance of technical inspection and testing. The CMAR is performing a coordination function and is not acting in a manner to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

3.5.1.6 Review of Requests for Changes to the Contract Time and Price

The CMAR shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CMAR's analysis reveals that the request is valid, the CMAR shall prepare a detailed report Using Primavera P6 or similar product using Fragnet logic to justify any time request. the Owner and Design Consultant for review. If the Owner approves the change, the Design Consultant shall prepare the necessary change order documents for signing by the CMAR and Owner. The CMAR shall prepare the necessary change order documents for execution by the CMAR and contractors.

3.5.1.7 Quality Review

The CMAR shall establish and implement a program to monitor the quality of construction. The CMAR shall observe the work as required for general conformance with the contract documents. The program's purpose shall be to guard the Owner against defects and deficiency in the Contractor's work. The CMAR shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CMAR that the work does not conform to the requirements of the Contract Documents. Except for minor

variations as stated herein, the CMAR is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Design Consultant shall have the final authority to decide the acceptability of the work.

3.5.1.8 Operation and Maintenance Materials

The CMAR shall receive from the Contractors operation and maintenance manuals, warranties, and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents. The CM and its contractors shall provide testing and balancing and commissioning services support. The Owner will provide formal commissioning project management services as part of the Owner's team. Full cooperation and participation are required.

3.5.1.9 Substantial Completion

The date of substantial completion of the work or designated portion thereof the date certified by the Design Consultant when the work or a designated portion thereof is sufficiently complete. In accordance with the contract documents, and a Temporary Certificate of Occupancy is issued so the Owner can fully occupy and utilize the work or designated portion thereof for the use for which it is intended, with all the Project's parts and systems operable as required by the contract documents, including a preliminary test and balance report for the mechanical system. The CMAR acknowledges and agrees that the intercom, telephone, data, security, building automation system (including functional graphics at the site), MATV, and other educational operational systems are required for the Owner's use of the building for its intended purpose. The CMAR shall provide operation & maintenance manuals to the Owner as required by the contract documents prior to substantial completion and shall provide the required training on the operation of the equipment and systems within two weeks of substantial completion of the Project. The Owner's occupancy of incomplete work shall not alter the CMAR's responsibilities pursuant to this paragraph. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for completion. Issuing a temporary or final certificate of occupancy shall not constitute substantial completion. When the CMAR considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined above. The CMAR shall prepare for and submit to the Design Consultant and Owner a list of all items which in the CMAR's opinion are to be completed or corrected and shall attach it to a request in writing that the Design Consultant perform a substantial completion inspection. The Owner's occupancy of incomplete work shall not alter the contractor's responsibilities. The Design Consultant shall review the CMAR's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such a list does not alter the responsibility of the CMAR to complete all work in accordance with the contract documents. When the Design Consultant and CMAR based on an inspection, determine that the work or designated portion thereof is substantially complete. The Design Consultant will then prepare a certificate of substantial completion which shall establish the date of substantial completion, shall state the responsibilities of the Owner and the CMAR for security, maintenance, heat, utilities, damage to the work, and insurance, and shall signify the beginning of the time within which the CMAR shall complete the items listed therein. Warranties required by the contract documents shall commence on the date

of substantial completion of the work or designated portion thereof, unless otherwise provided in the certificate of substantial completion. The certificate of substantial completion shall be submitted to the Owner and the CMAR for their written acceptance of the responsibilities assigned to them in such certificate.

Upon substantial completion of the work or designated portion thereof and upon application by the CMAR and certification by the Design Consultant, the Owner shall make payment, except retainage held pursuant to the contract documents and state law, for such work or portion thereof as provided in the contract documents.

The acceptance of final payment shall constitute a waiver of all claims by the CMAR and its contractors, except those previously made in writing and identified by the CMAR as unsettled at the time the CMAR submits the application for payment for substantial completion, and except for the retainage sums due at final acceptance. The CMAR shall indemnify and hold the Owner harmless against any claims by the contractors that are waived because they were not made in writing and identified by the CMAR as unsettled when the CMAR submitted the application for payment for substantial completion.

The Owner shall have the option to correct or complete all punch list items not completed by the CMAR to the satisfaction of the Design Consultant and the Owner within the time specified for completion by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the final payment to the CMAR. If CMAR does not complete certain punch list items within the required time, all warranties and guarantees for such incomplete punch list items shall become effective upon issuance of final payment for the Project.

The issuance of the certificate of substantial completion does not indicate final acceptance of the Project by the Owner, and the CMAR is not relieved of any responsibility for the Project except as specifically stated in the certificate of substantial completion.

Should the Design Consultant and the Owner determine that the work or a designated portion thereof is not substantially complete, they shall provide the CMAR with written notice stating why the Project or designated portion is not substantially complete. The CMAR shall expeditiously complete the work and shall re-request in writing that the Design Consultant perform another substantial completion inspection. Costs, if any, associated with such re-inspection shall be assessed to the CMAR at the rate specified in the Design Consultant's contract.

3.5.1.10 Completion

In consultation with the CMAR, the Owner and the Design Consultant shall determine when the Project and the contractors' work is finally completed and, following completion of corrections not to exceed seventy-five (75) calendar days, the Design Consultant and the Governing body's issuance of final Certificate of Occupancy to the Owner. The date of final completion of the work is the date certified by the Design Consultant and the Owner when the work is complete, to include punch list work, in accordance with the contract documents and the Owner may fully occupy and utilize the Project for the use for which it is intended. Issuance of a temporary or final certificate of occupancy, in of itself, shall not constitute completion. If more than two (2) final completion inspections are required by the Design Consultant due to the CMAR's failure to complete the work, the additional inspections shall be charged to the CMAR at the rate specified in the Design Consultant's contract and all punch list work shall be complete. If any change order is issued for work to be performed after the substantial completion certificate is issued, the completion date for that work shall be established separately and shall not prevent the Project from

achieving completion for purposes of Sections 7.6 and 7.7 of this Agreement. Following receipt of payment from the Owner, the CMAR shall make all payments due to contractors within ten (10) days.

For multi-phased projects, completion of each phase shall include the completion of all work for the phase apart from any system that must be integrated into a phase that has a later contract date for completion. This exception might apply to the HVAC, data, intercom, or similar systems. Notwithstanding the above, complete and proper operation of all systems shall be required for the Project to achieve completion.

3.5.2 Schedule

Master Project Schedule. The contractor shall deliver to the School Board's Project Manager and Authorized Representative a Construction Schedule (GANTT CHART), which shall include a comprehensive, fully developed, horizontal Gantt-chart-type schedule for all construction services. The Project Schedule will show the progress of Work on the Project using a critical path method (CPM) methodology. Constructor's Project Schedule will be submitted within sixty (60) calendar days of the delivery of the Notice to Proceed. This Project Schedule will indicate each significant construction activity separately. Identify the first workday of each week with a continuous vertical line. The Project Schedule will call for the Substantial Completion of the Project no later than June 30, 2027

3.5.2.1 Master Schedule

The CMAR shall adjust and update the Master Schedule and distribute copies to the Owner and Design Consultant. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.5.2.2 Construction Schedule

The CMAR shall adjust and update the Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Owner noted in Paragraph 3.4.2.2 and that it establishes completion dates that comply with the requirements of the Master Schedule. The CMAR agrees that the construction schedule benefits the entire Project team and by execution of this Agreement gives permission and direction to its scheduler to provide copies of the schedule in a format as required by the Owner.

3.5.2.3 Construction Schedule Report

The CMAR shall review the progress of construction of each Contractor monthly, evaluate the complete percentage of each construction activity as indicated in the Construction Schedule and review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, the Owner and Design Consultant. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The CMAR shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Contractor.

3.5.2.4 CMAR Review of Time Extension Requests

The CMAR shall, prior to the issuance of a change order, determine the effect on the construction and Master Schedules of time extensions requested by the Contractor.

3.5.2.5 **Recovery Schedules**

The CMAR shall prepare and submit a recovery schedule in accordance with the Owner is scheduling requirements specified in Appendix ??

3.5.3 **Cost Management**

3.5.3.1 **Schedule of Values**

The contractor shall deliver to the School Board's Project Manager and Authorized Representative a Schedule of Values in the format of a Payment Application with continuation sheets. The Schedule of Values will be submitted to the School Board at the earliest possible date following the issuance of the Notice to Proceed, **no later than thirty (30) calendar days**. The CMAR shall, with the Contractors, determine a Schedule of Values for each construction contract. The Schedule of Values shall be the basis for payment to the contractors.

3.5.3.2 **Change Order Control**

The CMAR shall establish and implement a change order control system approved by the Owner.

3.5.3.2.1 All proposed Owner-initiated change orders shall first be described in detail in writing.

In response to the request for a proposal, the Contractor shall submit to the CMAR for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CMAR shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor's basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CMAR shall present its findings to the Owner and, following Owner acceptance, the Design Consultant shall prepare the change order documents for signature by the CMAR and Owner. Upon execution of the change order documents between the CMAR and Owner, the CMAR shall prepare change order documents for signature by the affected Contractor. The CMAR shall verify that the Work, and any adjustment of time required by approved change orders has been incorporated into the Contractor's Construction Schedule.

3.5.3.2.2 The CMAR shall review the contents of all Contractor-requested changes to the contract time or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price.

The CMAR shall provide the Design Consultant with a copy of each change request, and the CMAR shall, in its evaluations of the Contractor's request, consider the Design Consultant's comments regarding the proposed changes. The CMAR shall present its findings to the Owner regarding the proposed changes and at the Owner's direction, shall prepare the change order documents for signature by the CMAR and Owner. Upon execution of the change order documents between the CMAR and Owner, the CMAR shall prepare change order documents for signature by the affected contractor.

3.5.3.3 **Cost Records**

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.5.3.2, the CMAR shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.

3.5.3.4 Trade-Off Studies

The CMAR shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Design Consultant.

3.5.3.5 Progress Payments

In consultation with the Design Consultant, the CMAR shall inspect the work in order to ensure compliance with the contract documents, review the payment applications submitted by each contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CMAR shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report using DGS-30-104 (Form CO-12). The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CMAR and delivered to the Owner. The CMAR shall make payments that are due to all contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the Owner. In addition, the CMAR shall keep the Project and the site on which Work is performed free and clear of all liens from Contractors, subcontractors, or suppliers.

Payments may be made by the Owner, at its sole discretion, because of materials or equipment not incorporated in the work but delivered and suitably stored by the CMAR or contractor at the site or offsite in a location approved by the Owner in writing. Payments for materials or equipment stored. Shall only be considered upon submission by the CMAR of satisfactory evidence for example, (releases or paid invoices from the seller, visual verifications) that the CMAR or the contractor has acquired title to. Such material, that will be utilized on the work under this contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. In the event the materials are stored offsite in a location approved by the Owner in writing that is not located in the county of the Project, the CMAR shall provide a copy of insurance required at that location. The CMAR shall reimburse the travel cost and hourly billing expenses incurred by the Design Consultant or Owner's representative for travel to view and assess whether the materials meet the requirements of the contract documents. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site or bonded warehouse, other than to be delivered from the warehouse to the site, without the Owner's written permission. Responsibility for such stored materials and equipment shall remain with the CMAR and the contractor regardless of Ownership.

The Owner will retain five (5%) percent retainage of the amount for each progress payment until the projects final completion.

3.5.3.6 Decisions to Withhold Payment

The Design Consultant may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Design Consultant is unable to

certify payment for application, the Design Consultant will notify the CMAR and the Owner in writing. If the CMAR and Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue a certificate for payment for the amount for which the Design Consultant is able to make such representations to the Owner. The Design Consultant may also withhold a certificate for payment, in whole or in part, to such extent as may be necessary in the Design Consultant's opinion to protect the Owner from loss for which the CMAR or the contractor(s) is responsible, including loss resulting from acts and omissions, because of:

- 1) Defective work not remedied.
- 2) Third party claims filed or reasonable evidence indicating probable filing of such claims unless the CMAR provides security acceptable to the Owner.
- 3) Failure of the CMAR or contractor(s) to make payments properly to subcontractors or for labor, materials or equipment.
- 4) Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.
- 5) Damage to the Owner or another contractor.
- 6) Reasonable evidence that the work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 7) Failure to carry out the work in accordance with the contract documents.
- 8) Failure to provide sales tax documentation as required by the Owner.
- 9) Failure or refusal of the contractor to submit the required information on minority business enterprises.
- 10) Any other reason deemed necessary by the Design Consultant to protect the Owner;
or
- 11) Subsequently discovered evidence that work previously approved was not performed in accordance with the contract documents.

3.5.3.7 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

3.5.3.8 No interest shall be added to any amounts withheld pursuant to Paragraph 3.5.3.6.

3.5.4 Management Information Systems (MIS)

The CMAR shall utilize the Danville Public School's Procore website and licenses for creation and filing of all project information for the project team.

3.5.4.1 Schedule Maintenance Reports

The CMAR shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports

The CMAR shall prepare and distribute monthly Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget.

3.5.4.3 Project and Construction Budget Revisions

The CMAR shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4 Cash Flow Reports

The CMAR shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5 Progress Payment Reports (Each Contract)

The CMAR shall prepare and distribute the progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage, sales tax paid, and actual amounts owed during this period. A portion of this report shall be a certificate of payment that shall be signed by the CMAR certifying that the work complies with the contract documents and delivered to the Owner for use by the Owner in making payments to the CMAR.

3.5.4.6 Change Order Reports

The CMAR shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percentage of completion of the change order work. The report shall also include similar information for potential change orders of which the CMAR may be aware. The report shall also include a summary of the impact of the change orders on the Project schedule and completion dates.

3.5.4.7 Contractor's Safety Program

The CMAR shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents.

3.6 Post Construction Phase

Punch list phase, coordination and approvals.

3.6.1 Project Management

3.6.1.1 Record Documents

The CMAR Project superintendent shall maintain a field set of drawings for the duration of the construction period. The CMAR Project manager shall review the superintendent's field set to confirm that all addenda and bulletin drawings have been accurately incorporated. During construction, the field set shall be updated to include all RFI responses, approved change orders and any minor plan clarifications made by the Design Consultant during site visits. The CMAR shall provide evidence to the Design Consultant on a monthly basis that it is maintaining an accurate and complete copy of all changes in

the work in a form that will facilitate the prompt and accurate creation of record drawings. Within 30 days of substantial completion, the field set (including general, plumbing, mechanical and electrical as-built drawings) shall be delivered to the architect for preparation of record drawings. Prior to delivery, the CMAR Project manager shall thoroughly review the as-built field set for completeness and transmit said drawings to the Design Consultant with a letter stating that the drawings are complete and accurately reflect the construction.

3.6.1.2 Organize and Index Operations and Maintenance Materials

Prior to substantial completion of the Project, the CMAR shall compile manufacturers' operations and maintenance manuals, warranties, guarantees, and bind such documents in an organized manner. A minimum of two (2) copies of this information shall then be provided to the Owner one copy downloaded to Owners Procore.

3.6.1.3 Occupancy Permit

The CMAR shall be responsible for obtaining the final Certificate of occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

3.6.1.4 Closeout Documents and Test Reports

The CMAR shall organize and provide the Owner two hard copies. All closeout documents and test reports that the contractors are required to provide for the Project are to be uploaded to the owner's "Procore" Construction management software.

3.6.1.5 Owner Training

The CMAR shall coordinate or provide all training of the Owner's personnel required by the contract documents.

3.6.2 Time Management

3.6.2.1 Occupancy Plan

The CMAR shall prepare an Occupancy Plan for the Project. This plan shall be provided to the Owner. The plan shall include early access, training in the use of equipment and systems, delivery of furniture and any other activities requested by the Owner. The plan shall comply with all deadlines provided by the Owner.

3.6.3 Cost Management

3.6.3.1 Change Orders

The CMAR shall continue to provide services related to change orders as specified in Paragraph

3.6.4 Management Information System (MIS)

The CMAR shall utilize the Danville Public School's Procore website and licenses for creation and filing of all project information for the project team.

3.6.4.1 Closeout Reports

At the conclusion of the Project, the CMAR shall prepare final Project accounting and closeout reports. All Closeout Reports are to be uploaded to the owner's "Procore" Construction management software.

3.6.4.2 Reports for Move-in and Occupancy

The CMAR shall prepare and distribute reports associated with the Occupancy Plan.

3.7 Additional Services

3.7.1 At the request of the Owner, the CMAR shall perform the following Additional Services and shall be compensated for the same, as provided in Article 7 of this Agreement. Unless the need for the service is due to the CMAR's actions or inactions on the Project, and regardless Paragraphs 3.7.1.2, 3.7.1.7, 3.7.1.8, 3.7.1.10, 3.7.1.12, 3.7.1.15, 3.7.1.16 and 3.7.1.17 shall be provided as part of the basic services.

The CMAR shall perform Additional Services only after the Owner and CMAR have executed a written change order to this Agreement providing for such services. Additional Services may include:

3.7.1.1 Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner that are not required to be performed by the CMAR in the basic services.

3.7.1.2 Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings:

3.7.1.3 Services related to determination of space needs

3.7.1.4 Preparation of space programs

3.7.1.5 Services related to building site investigations and analyses that are not required to be performed by the CMAR in the basic services.

3.7.1.6 Services for tenant or rental spaces

3.7.1.7 Preparation of a Project financial feasibility study

3.7.1.8 Preparation of financial, accounting or MIS reports not provided under Basic Services

3.7.1.9 Performance of technical inspection or testing

3.7.1.10 Preparation of an Operations and Maintenance Manual for all materials and equipment reasonably required for the Owner's use of the Project

At the completion of the Project the CMAR will provide the owner two (2) hard copies and one (1) uploaded copy on owner's Procore software copies of all manufacturers Operations and Maintenance Manuals pertaining to all equipment and hardware installed in the project.

3.7.1.11 Services related to recruiting and training of maintenance personnel

3.7.1.12 Performance of warranty inspections and correction of warranty items during the warranty period of the Project:

During the Project warranty period all warranty recalls that affect Life-Safety or resulting Building Damage are to be responded to within 8 hours from receipt of call and worked on continuously until problem has been resolved. All other warranty calls are to be responded to within 72 hours of receipt of the call and worked on continuously until the problem has been resolved.

3.7.1.13 Services related to interfacing or working with the Design Consultant or other consultants that are beyond the scope of this Agreement

3.7.1.14 Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work:

All consultation and replacement/repairs caused by fire during the Project will be the CMAR's responsibility.

3.7.1.15 Preparation for and serving as a witness regarding the CMAR's observations on the Project in connection with any public or private hearing or arbitration mediation or legal proceeding

3.7.1.16 Assisting the Owner in public relations activities and preparing information for and attending public meetings.

On occasion the CMAR will be asked to attend Government, Board and Public forums to discuss the Project. The CMAR will be responsible for providing all documents, and audio-visual aides needed for the forums.

3.7.1.17 Services related to move-in, including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, conducting pre-moving conferences, administering the contract for moving activities in conjunction with the move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

3.8 Warranty

3.8.1 The CMAR warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all workmanship will be in accordance with generally accepted industry standards, free from faults and defects and in conformance with the contract documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.2 The CMAR will be required to complete the work specified and to provide all items needed for construction of the Project, complete and in good order.

3.8.3 The warranties set forth in this section and elsewhere in the contract, documents shall survive completion of the work.

3.8.4 The CMAR guarantees and warrants to the Owner all work as follows:

- 1) That all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified.
- 2) That all work will be in accordance with accepted industry standards and free of omissions and faulty, inadequate quality, imperfect and defective material, or workmanship:
- 3) That the work shall be watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement
- 4) That the work, including but not limited to, mechanical and electrical machines, devices, and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care:
- 5) That consistent with requirements of the contract documents, the work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment:
- 6) That the work will be free of abnormal or unusual deterioration which occurs because of inadequate quality materials, workmanship or unsuitable storage; and
- 7) That the products or materials incorporated in the work will not contain asbestos.

3.8.5 All work not conforming to guarantees and warranties specified in the contract documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant or Owner, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.5.1 The CMAR will submit a written affidavit certifying that none of the materials incorporated in the Project contain asbestos.

3.8.6 If, within one (1) year after the date of substantial completion of the work or designated portion thereof or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the contract documents, any of the work is found to be defective, not in accordance with the contract documents, or not in accordance with the guarantees and warranties specified in the contract documents, the CMAR shall correct it within five (5) working days or such other period as mutually agreed, after receipt of notice from the Owner to do so. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items that remain incomplete or uncorrected on the date of substantial completion, the one (1) year warranty shall begin on the date of completion of the work or upon correction of the defective work.

3.8.7 If at any time deficiencies in the work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the CMAR, any contractor or supplier, the CMAR will be liable for replacement or correction of such work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

3.8.8 Any materials or other portions of the work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Design Consultant or the Owner, shall be immediately removed and replaced by the CMAR to the satisfaction of the Design Consultant and Owner, when notified to do so by the Design Consultant or Owner.

3.8.9 If the CMAR fails to correct defective or non-conforming work as required, or if the CMAR fails to remove defective or non-conforming work from the site, the Owner may elect to either correct such work or remove and store materials and equipment at the expense of the CMAR. If the CMAR does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the CMAR, including compensation for the Design Consultant's additional services and Owner's reasonable attorney's fees made necessary thereby. If such proceeds of sale do not cover all costs, which the CMAR should have borne, the difference shall be charged to the CMAR and an appropriate change order shall be issued. If the payments then or thereafter due to the CMAR are not sufficient to cover such an amount, the CMAR shall pay the difference to the Owner.

3.8.10 The CMAR shall bear the cost of making good all of the work of the Owner, separate contractors, or others, destroyed or damaged by such correction or removal required under this section or elsewhere in the contract documents.

ARTICLE 4

DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1 The duration of the CMAR's Basic services under this Agreement shall be from the date of this Agreement through the issuance of final payment. The CMAR shall provide any warranty phase services at no additional cost to the Owner.

4.1.1 The commencement date for the CMAR's Basic Services shall be the date of execution of this Agreement and Notice to Proceed by the Owner. As stated herein or the date on which the Owner issues to the CMAR a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CMAR's Basic Services shall be performed for the periods indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1 The CMAR's Basic Services during the Pre-Design Phase shall be performed as required during the pre-design phase.

4.1.2.2 The CMAR's Basic Services during the Design Phase shall be performed as required during the design phase.

4.1.2.3 The CMAR's Basic Services during the Procurement Phase shall be performed as required during the procurement phase.

4.1.2.4 The CMAR's Basic Services during the Construction Phase shall be performed as required during the construction phase.

4.1.3 The CMAR's Basic Services during the Post-Construction Phase shall be performed as required during the post-construction phase.

4.1.4. The CMAR shall achieve substantial completion of the Project on or before June 30, 2027, unless the Owner and CMAR agree to a different date in writing. The date for completion shall be thirty (30) days after substantial completion.

4.2 Delays and Extensions of Time

4.2.1 The time during which the CMAR or any of the contractors is delayed in the performance of the work by the issuance of any required permits, acts of god, excessive inclement weather, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the CMAR's or the contractors' control and which the CMAR or the contractors could not reasonably have foreseen and provided against, except for delays caused solely by the Owner, Design Consultant or their consultants, shall be added to the time for completion of the work stated in the Agreement. Neither the Owner nor the Design Consultant shall be obligated or liable to the CMAR or the contractors for indirect or direct damages, costs or expenses of any nature which the CMAR, the contractors, or any other person may incur as a result of any of the delays, interferences, or changes in sequence in the work included in this section 4.2.1. The CMAR hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, lost profits, costs or expenses of any nature which the CMAR, the contractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, and it is understood and agreed that the CMAR's sole and exclusive remedy in any such events shall be an extension of the contract time in accordance with the contract documents

4.2.2 In the event Project delays arise from or out of any act or omission of the Owner, Design Consultant or their consultants, the time during which the Project is delayed shall be added to the Agreement and the CMAR may be reimbursed for its direct Project damages, excluding general overhead expenses and indirect costs, if the CMAR strictly complies with this Article 4.2. Notwithstanding the previous sentence, if the CMAR, a contractor and/or subcontractor in any way shares in responsibility for the delay, neither

the Owner nor the Design Consultant shall be obligated or liable to the CMAR or the contractors for indirect or direct damages, costs or expenses of any nature which the CMAR, the contractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence of the work, and the CMAR's sole remedy, if any, shall be an extension of the contract time.

4.2.3 In the event Project delays arise solely from or out of any act or omission of the CMAR, contractors, subcontractors or their agents, the CMAR shall not be entitled to extension of the contract time and shall be subject to the payment of liquidated damages as provided in this Agreement.

4.2.4 The contract time shall be adjusted only for changes authorized pursuant to this Agreement, suspension or the work by the Owner, and excusable delays pursuant to section 4.2.4.2. In the event the CMAR requests an extension of the contract time or files a claim related to any form of delay, it shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the CMAR is entitled to an extension of time under the provisions of the contract, and shall further outline the alleged impact on the schedule's critical path. The burden of proof to substantiate a claim shall rest with the CMAR, including evidence that the cause was beyond its control. The Owner shall base its findings of fact and decision on such justification and supporting evidence, including a finding that the alleged delay impacted the Project's critical path, and shall advise the CMAR in writing thereof. If the Owner finds that the CMAR is entitled to any extension of the contract time, the Owner's determination of the total number of days' extension shall be based upon the currently approved progress schedule and on all data relevant to the extension. Such data will be incorporated into the schedule in the form of a revision thereto, accomplished in a timely manner. The CMAR acknowledges and agrees that actual delays (due to said changes, suspension of work or excusable delays) in activities which, according to the schedule, do not affect the contract time, do not have any effect upon the contract time and therefore will not be the basis for a change therein. The CMAR acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the critical path activities in the currently approved schedule.

4.2.4.1 Extensions in the contract time by change orders are subject to extension-in-time audit by the Owner as follows:

4.2.4.1.1 The CMAR agrees that, even though the Owner, CMAR and Design Consultant have previously signed a change order containing an extension-in-time resulting from a change in or addition to the work that said extension in the contract time might be adjusted by an audit after the fact by the Owner. If such an audit is to be made, the Owner must undertake the audit and make a ruling within 30 days after the completion of the work under the change order.

4.2.4.1.2 The CMAR agrees that any extension of the contract time to which it is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the work of the change order is completed. Such rulings shall be made by the Owner within 30 days after

a request for it is made by the CMAR or Design Consultant, except said 30 days will not start until the work under the change order is completed.

4.2.4.1.3 Should a time extension be granted for substantial completion the date for completion shall be appropriately adjusted unless specifically stated otherwise.

4.2.4.2 Subject to other provisions of the contract, the CMAR may be entitled to an extension of the contract time (but no increase in the GMP) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the CMAR, the contractors or suppliers as follows:

4.2.4.2.1 Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly delay the progress of the work on the critical path; however, an extension of contract time on account of an individual labor strike shall not exceed the number of days of said strike;

4.2.4.2.2 Acts of God: tornado, fire, hurricane, blizzard, earthquake, or flood that damage completed work or stored materials and affecting the critical path:

4.2.4.2.3 Excessive inclement weather; will be monitored via spread sheet. However, the contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this contract, as stated in this Agreement, includes an allowance for calendar days, which may not be available for construction out-of-doors; for the purposes of this contract, the CMAR agrees that the number of calendar days per month stated below are to be considered reasonably anticipated inclement weather and planned for in the construction schedule. Unless the CMAR can substantiate to the satisfaction of the Owner. That there was greater than the reasonably anticipated inclement weather from the time of the notice-to-proceed until the building is enclosed using data from the national weather service station at Danville City airport or, a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the work or portions thereof which had an effect upon the contract time, the CMAR shall not be entitled to an extension of time.

For the purpose of this contract, the CMAR agrees to anticipate and plan for inclement weather for the number of calendar days in accordance with the following table:

	Planned Days/Month
Jan	9
Feb	9
Mar	10
Apr	11
May	12
Jun	12
Jul	13
Aug	11
Sep	10

Oct	9
Nov	8
Dec	11

In addition, the CMAR agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of those shown for each month in the table above, in which precipitation exceeded .10 inch, or in which the highest temperature was 32 degrees F or less as recorded at the approved weather station. Rain days from hurricanes not causing damage in the City of Danville shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the notice-to-proceed until the building is enclosed, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the building is enclosed. For the purpose of this contract, the term "enclosed" is defined to mean when the building is sufficiently roofed and sealed, either temporarily or permanently, to permit the structure to be heated and the plastering and dry wall trades to work. The Design Consultant shall determine when the structure is "enclosed". Upon the request of either party, the Design Consultant shall issue a letter certifying to the Owner, with a copy to the CMAR, stating the date the building became enclosed. No change in GMP will be authorized because of adjustment of contract time due to excessive inclement weather; and

4.2.4.2.4 Delays in the issuance of a required permit, acts of the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the Owner relating to the Project.

4.2.5 If the CMAR shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the CMAR does hereby agree, as a part consideration for the awarding of this contract, to pay the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the CMAR shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the CMAR and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

4.2.6 The CMAR and the contractors shall not be entitled to and hereby expressly waive any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay for all delays, except excessive inclement weather which shall be made in writing to the Owner within forty-five (45) days after the date the structure is enclosed. Circumstances and activities leading to such a claim shall be indicated or referenced in a daily field

inspection report for the day(s) affected. In every such written claim, the CMAR shall provide the following information:

4.2.6.1 Nature of the delay;

4.2.6.2 Date (or anticipated date) of commencement of delay;

4.2.6.3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

4.2.6.4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

4.2.6.5 Anticipated extent of the delay; and

4.2.6.6 Recommended action to avoid or minimize the delay.

4.2.7 If no schedule or agreement is made stating the dates upon which written interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until twenty (20) days after request is made for them, and not then unless such claim is reasonable.

4.2.8 No claim by the CMAR for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article. All claims not filed in accordance with this Paragraph shall be waived by the CMAR.

ARTICLE 5

CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

5.1 Changes - Preconstruction Basic Services

5.1.1 The Owner, without invalidating this Agreement, may make changes in the CMAR's Basic Services specified in Paragraphs 3.2, 3.3 and 3.4 of this Agreement. The CMAR shall promptly notify the Owner of changes, which increase or decrease the CMAR's compensation, the duration of the CMAR's Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

The CMAR shall be entitled to receive additional compensation and additional time when the scope of Paragraphs 3.2, 3.3 and 3.4 is increased or extended through no fault of the CMAR. If the scope of these Basic Services is increased, the duration of these Basic Services is extended, or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CMAR shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. The CMAR shall give a written request for additional compensation to the Owner within ten (10) business days of the occurrence of the event-giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CMAR's cost, a customary and reasonable adjustment in the CMAR's fixed or lump sum fee consistent with the provisions of this

Agreement, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CMAR's Basic Services

Changes in the CMAR's Basic Services in Paragraphs 3.2, 3.3 and 3.4 and entitlement to additional compensation shall be made by a written change order to this Agreement executed by the Owner and the CMAR. The Owner and CMAR prior to the CMAR performing the services required by the change order shall execute the change order. The CMAR shall proceed to perform the services required by the change order only after receiving notice directing the CMAR to proceed. The CMAR shall not be entitled to compensation for work performed without a written change order.

5.1.4 Payment of Additional Compensation

The CMAR shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

5.2 Changes to the Work or Construction Phase Basic Services

The Owner may, at any time, by written order designated or indicated to be a change order, make any change or modification in the work or add to the work within the general scope of the contract, including, but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the work; (3) in the Owner-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the work.

The parties agree that notwithstanding any language to the contrary in Paragraphs 5.2.1 through 5.2.4, the CMAR's fee on any additional work and the fee reduction for any work or allowances removed from the scope of work shall be based on the same percentage fee specified in Paragraph 7.4.1, unless the CMAR performs the work with its own forces as allowed in this Agreement. The parties agree that Paragraphs 5.2.1.1 through 5.2.1.3 are intended to govern payment to the contractors and their subcontractors for performing work associated with a change, unless the CMAR performs the work with its own forces as allowed in this Agreement. If the CMAR performs the work with its own forces, the term "contractor" in Paragraphs 5.2.1.1 through 5.2.1.3 shall also refer to the CMAR. The parties specifically agree that any adjustment to the amount that could be reimbursed for general conditions, if any, shall be negotiated in good faith between the parties based upon the additional work actually required to be performed by the CMAR because of the change.

5.2.1 Owner Directed Changes to the Work Requiring an Increase in GMP

If the change in or addition to the work will result in an increase in the Guaranteed Maximum Price, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such change in the work).

5.2.1.1 If the Owner elects to have the change in the work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the CMAR to the Owner within ten (10) business days of the CMAR's receipt of a request therefor (but

the Owner's request for a lump sum proposal shall not be deemed an election by the Owner to have the change in the work performed on a lump sum basis). The CMAR's proposal shall be itemized using "DGS-30.200, DGS-30-204, DGS-30-208 and if needed the DGS Estimate Continuation Sheet". Segregated by labor and materials for the various components of the change in or addition to the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any contractors who will perform any portion of the change in, or addition to, the work and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the CMAR's estimate of the time required to perform said changes or additional work.

5.2.1.1.1 The portion of the proposal relating to labor, by the forces of any of the contractors, may include: reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the change in the work (for such time as they will be so involved), plus premium costs of overtime time, if overtime is anticipated; a maximum labor burden of thirty nine percent (39%) of the actual cost of labor by any such contractor in connection with such labor; and up to fifteen percent (15%) of such anticipated gross wages, as overhead and profit for any such contractor, as applicable (said overhead and profit to include all extended general conditions and supervision, of 10% for sub and sub-subcontractors and 5% for the CMAR with 3.25% for Bonds and Insurance but it shall not include the labor burden).

5.2.1.1.2 The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the contractor or to any of its subcontractors of materials to be purchased for incorporation in the change in the work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the contractor or any of its subcontractors (said overhead and profit to include all small tools), and may further include the contractor's and any of its subcontractor's reasonably anticipated rental costs in connection with the change in the work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for any of the contractors, as applicable (said overhead and profit to include all extended general conditions and supervision, except it shall not be applied to any sales tax paid for any purpose or shipping costs incurred by the contractor or any subcontractor). If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the Owner may, if it requires the change in the work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

5.2.1.1.3 The CMAR shall provide any documentation that may be requested by the Owner to support the change proposal including payroll records, insurance rates, material quotes or rental quotes. The CMAR shall also provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses.

5.2.1.1.4 The lump sum proposal may include up to eight percent (8%) of the amount which the contractor will pay to any of its subcontractors for the change in the work as a

commission to the contractor. The change proposal form attached to this Agreement as Appendix D-1 shall be used to submit the change proposal to the Owner.

5.2.1.1.5 In the event that the CMAR fails to submit his proposal within the designated period, the Owner may order the CMAR to proceed with the change or addition to the work and the CMAR shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the work in question, which determination shall be final and binding upon the CMAR.

5.2.1.1.6 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the work based upon the CMAR's proposal and the Owner does not elect to have the change in the work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the change in the work, based upon their own estimates, the CMAR's submission or a combination thereof, except for a change order initially establishing the GMP for the Project or initially establishing a partial GMP for a portion of the work included in the original Project scope. A change order shall be issued in this case for the amounts of cost and time determined by the Owner and shall become binding upon the CMAR unless the CMAR submits its protest in writing to the Owner within thirty (30) calendar days of the issuance of the change order. The owner has the right to direct in writing the CMAR to perform the change in the work which is the subject of such change order. Failure of the parties to reach agreement regarding the cost and time of performing the change in the work and/or any pending protest, shall not relieve the CMAR from performing the change in the work promptly and expeditiously.

5.2.1.1.7 The Owner reserves the right to reject the CMAR's proposal for a change in the work and to elect to perform said work using a separate contractor. Under such circumstances, the CMAR shall coordinate the performance of the work.

5.2.1.2 If the Owner elects to have the change in the work performed on a time and material basis, the same shall be performed, by the forces of any of the contractors, at actual cost to the entity performing the change in the work. The change proposal form attached as Appendix D-2 shall be used to submit the initial change proposal to the Owner for approval to proceed. The CMAR shall maintain records to submit to the Owner such as daily time and material tickets, to include the identification number assigned to the change in the work, the location and description of the change in the work, the classification of labor employed (and names and employee numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the CMAR to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the CMAR of any claim for the cost of that portion of the change in the work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the change in the work.

The change proposal form attached as Appendix D-1 shall be used to submit the final change proposal to the Owner after the work is complete. The final change proposal shall document all costs and expenses. Appendix D-1 shall be filled out in accordance with the instructions in Paragraph 5.2.1.1, and its subparagraphs.

5.2.1.3 Changes in the work to be completed on a unit price basis shall be quantified by the Design Consultant or an independent third party and shall be completed at an all-inclusive rate established in the bid proposal, unless a mutually agreed upon price is established by the Owner and CMAR. The unit prices include the cost of all materials, taxes, shipping and delivery charges, labor and labor burden, insurance, supervision, overhead and profit. Time to complete any work done on a unit price basis for quantities within the base bid allowance amount is included in the base bid. The unit price does not include bonds. Procedures for quantifying units of measure shall be proposed by the Design Consultant and agreed to by the CMAR and Owner prior to the commencement of the work to be completed on a unit base price. Work performed without such agreement in place shall be deemed to have been done at the sole risk and expense of the CMAR. Time for quantities exceeding the base bid allowance will be evaluated based on the effect of the change in the work on the critical path of the Project.

5.2.1.3.1 No overhead and profit will be paid by the Owner because of a change in the work except as specifically provided in this section. Overhead and profit, as allowed in this section, shall be deemed to include all costs and expenses which the CMAR or any of the contractors may incur in the performance of a change in the work and which are not otherwise specifically recoverable by them pursuant to this section.

5.2.1.4 The Owner may direct in writing the CMAR to begin changes in the work prior to the issuance of a formal change order. The CMAR shall promptly perform the changes in the work directed by the Owner in a manner that shall result in minimum impact on the critical path.

5.2.2 **CMAR Notice of Change**

If the CMAR or any of the contractors asserts that any event or occurrence has caused a change in or addition to the work which change causes an increase or decrease in the GMP or the time required for the performance of any part of the work under the contract, including work not affected directly by the change, the CMAR shall, within ten (10) days of such event unless such event was not discovered in the exercise of reasonable diligence, in which event the ten (10) day notice period shall commence upon discovery or when the CMAR should have discovered such event, give the Owner written notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the CMAR's best estimate of the cost and time involved.

If the CMAR intends to assert a claim under this section, he must, within ten (10) days after the furnishing of a written notice as outlined above, submit to the Owner a written statement setting forth the specific nature and anticipated cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice required above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the CMAR's estimate of the schedule impact of the change, if any. The CMAR and the contractors shall not be entitled to reimbursement or an increase in the GMP for any claims that are not filed in strict conformance with this

section. The CMAR shall indemnify and hold the Owner harmless against any claims by the contractors that are waived because they are not filed in strict conformance with this section.

If the parties are unable to agree to the reasonable cost and time to perform the change or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination as described in this section. The CMAR shall proceed with the work pursuant to the provisions of this section.

5.2.3 General Provisions Related to Changes

The CMAR shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the CMAR, the contractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this section, unless the delay is caused solely by the Owner or Design Consultant. It is understood and agreed that the CMAR's and the contractors' sole and exclusive remedy in such event shall be recovery of direct costs as compensable hereunder and an extension of the contract time, but only in accordance with the provisions of the contract documents. No claim by the CMAR hereunder shall be allowed if asserted after final payment for the construction or the Project under this Agreement. No claim relating to or flowing from a particular change shall be allowed after execution of the change order relating to that change or commencement of the change by the CMAR, except as specifically provided in this section.

If any dispute should arise between the parties with respect to an increase or decrease in the GMP or an expansion or contraction in the contract time as a result of a change in the work, the CMAR shall not suspend performance of a change in the work or the work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the CMAR up to the Owner's reasonable estimated value of the change in the work, regardless of the dispute, if said change in the work results in an increase in the contract sum; and the Owner shall have the right to decrease the contract sum up to the Owner's reasonable estimated value of the change in the work, regardless of the dispute, if said change in the work results in a decrease in the contract sum. The CMAR's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CMAR may have for additional compensation or time. However, any claim the CMAR may have shall be filed in strict conformance with the contract documents.

5.2.4.1 If the change in the work will result in a decrease in the contract sum, the CMAR shall provide a quotation detailing the proposed amount of such decrease. The portion of the proposal relating to labor, whether by the CMAR's forces or the forces of any of the contractors, shall include reasonably anticipated gross wages of job site labor, including foremen, who would have been directly involved in the work that has been deleted from the contract (for such time as they would have been so involved), plus payroll costs (including premium costs of overtime time, if overtime was anticipated, social security, federal or state unemployment insurance taxes and fringe benefits required by collective bargaining Agreements entered into by the contractor or any subcontractor in connection

with such labor) and seven percent (7%) of such anticipated gross wages, but not payroll costs, as overhead and profit not incurred or earned by the contractor or any subcontractor, as applicable (said overhead and profit to include all supervision except foremen). If applicable, the fee percentage to be applied to the CMAR's forces shall be the percentage stated in section 7.4.1.

5.2.4.2 The portion of the proposal relating to materials shall include the reasonably anticipated direct costs which would have been incurred by the contractor or to any subcontractors for materials which would have been purchased or incorporation in the work but which has been deleted from the contract, plus transportation and applicable sales and use taxes which will be avoided, and seven percent (7%) of said direct material costs incurred by the contractor or subcontractor (excluding transportation and sales and use taxes) as overhead and profit not incurred or earned by the contractor or any subcontractor (said overhead and profit to include all small tools), and shall further include the contractor's and subcontractor's reasonably anticipated rental costs which will be avoided (either actual or discounted local published rates), plus five percent (5%) thereof as overhead and profit not incurred or earned by the contractor or subcontractor, as applicable. If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the Owner may elect to use these unit prices in determining the amount of reduction to the GMP as a result of a deletion of work from the contract. No overhead and profit shall be applied to any unit prices for purposes of calculation such reduction in the contract sum. The lump sum proposal for work which would have been performed by any subcontractors shall include four percent (4%) of that amount as an estimate of the contractor's overhead and profit that will not be earned by contractor due to the decrease in the contract sum. In the event the construction work would have been performed by the CMAR in the limited circumstances allowed in this contract, the fee percentages stated in this section shall apply to the work that would have been performed by the CMAR as the contractor and its subcontractors.

5.2.4.3 The CMAR's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in a change order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the contract documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the work, as determined by the Owner in its reasonable judgment, plus overhead and profit as stated above the CMAR's acceptance of payment following a unilateral decision by the Owner shall not constitute a waiver of any claim the CMAR may have for additional compensation. However, any claim the CMAR may have shall be filed in strict conformance with the contract documents.

5.2.5. Minor Changes in the Work

The Owner shall have authority to order minor changes in the work not involving an adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the contract documents. Such changes shall be affected by written order and shall be binding on the Owner and the CMAR. The CMAR shall carry out such written orders promptly.

The CMAR shall not perform any changes in the work unless authorized in writing by the Design Consultant or Owner. The CMAR's performance of minor changes pursuant to this Section shall not constitute a waiver of any claim the CMAR may have for additional compensation or time. However, any claim the CMAR may have shall be filed in strict conformance with the contract documents.

5.2.6 Differing Site Conditions

Should the CMAR encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of costs resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the Owner nor the Design Consultant shall be liable or responsible for additional work, costs or changes to the work that could have been reasonably determined from any geotechnical, soils and other reports, surveys and analyses made available for the CMAR's review or that could of been discovered by the CMAR through the performance of its obligations pursuant to this Agreement.

5.3 General Provisions Regarding Changes in Contractor Work. In the event the work included in the original contract issued to a contractor is changed, or new contracts are issued, the CMAR shall notify the Owner of the change or the new contract, including the nature and reason for the change or new contract and the associated cost. Regardless of whether the change or new contract is believed to result in an increase or decrease in the GMP. The Owner and CMAR shall review all changes or new contracts that were not incorporated into a change order between the Owner and CMAR or resulted in the use of either of the CMAR's contingencies at the conclusion of the Project in order to determine whether the Owner is entitled to a reduction in the cost of work portion of the GMP as it is defined in Paragraph 7.4.1.

ARTICLE 6

OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide to the CMAR complete information regarding the Owner's requirements for the Project.

6.2 The Owner shall examine information submitted by the CMAR and shall render decisions thereto promptly.

6.3 The Owner shall contract a Design Consultant to furnish design-counseling services as may be necessary for the Project.

6.4 The Owner shall furnish insurance for the Project only as specified in Article 8.

6.5 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CMAR.

6.6 The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CMAR, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CMAR.

6.7 The Owner shall retain a Design Consultant whose services, duties and responsibilities shall be described in a written Agreement between the Owner and Design Consultant. The services, duties, and responsibilities of the Design Consultant set out in the agreement between the Owner and Design Consultant shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Design Consultant, require that the Design Consultant perform its services in cooperation with the CMAR, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner and documented by the CMAR.

6.8 The Owner shall approve the Project and Construction Budget, and any subsequent revisions as provided in Paragraph 3.2.3.2 of this Agreement.

6.9 If the Owner contracts separately with any other parties, the Owner shall cause all such Agreements to be compatible and consistent with this Agreement.

6.10 At the request of the CMAR, four (4) copies of interim and bidding drawings, specifications and contract documents shall be furnished to the CMAR. Additional copies will be printed by the CMAR at their expense. The CMAR shall be solely responsible for the cost of any drawings, specifications and contract documents required after bidding for the Project.

6.11 The Owner or Design Consultant shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

6.12 The Owner shall furnish evidence satisfactory to the CMAR that sufficient funds are available and committed for the entire cost of the Project. The Owner may authorize the CMAR to proceed with the work on the Project in discrete phases if not all of the funds required for the entire Project are identified at the time this Agreement is executed by the parties.

6.13 The Owner, its representatives and consultants, including Design Consultants, shall endeavor to communicate with the Contractors only through the CMAR.

6.14 The Owner shall send to the CMAR and shall require the Design Consultant to send the CMAR copies of all notices and communications sent to or received by the Owner or Design Consultant relating to the Project.

6.15 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. This representative shall be available during working hours and as often as may be required to render decisions and furnish information so as not to delay the Project. The CMAR acknowledges that some changes in the scope of the Project may require approval by the Board of Education. The CMAR shall notify the Owner in writing of any deadlines for responses and how the Owner's failure to respond by the stated deadline will affect the Project schedule.

6.16 The Owner shall make payments to the CMAR based on the Contractors' payment applications that are certified by the CMAR and based on the CMAR's invoices for its services performed. Prior to payment by the Owner, the Owner's Project Management Team and the Design Consultant shall review and approve the contractors' pay applications in accordance with Paragraphs 3.5.3.5 and 3.5.3.6.

ARTICLE 7

COMPENSATION FOR CMAR SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

7.1.1 The Owner and CMAR agree that the Guaranteed Maximum Price shall be **TBD** dollars (**\$ TBD**) for this Project. The parties further agree that in the event the bids received by the CMAR for the work, including, all of the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work. The CMAR shall be solely responsible for the additional cost of the work, unless this Agreement is terminated by the CMAR pursuant to Paragraph 7.1.1.1. In the event that the bids received by the CMAR for the work, including all alternatives accepted by the Owner, are less than the line item in the GMP for the cost of the work, the remaining funds shall be added to the Owner's contingency. The scope of work included in the bid documents, including any alternatives accepted by the Owner, shall form the basis of the work to be performed by the CMAR. The CMAR and Owner agree that the line items in the GMP shall consist of the cost of the work, CMAR's contingency and general conditions, and CMAR's fee. The CMAR and Owner further agree that the dollar values for the line items in the GMP stated above consist of the cost of the work (**\$**), CMAR construction contingency (**\$**), general conditions (**\$**), and CMAR's fee (**\$** for preconstruction services and **\$** for construction and post-construction services).

7.1.1.1 The parties agree that in the event the bids received by the CMAR for the work, including all the alternates accepted by the Owner, pursuant to Article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, then the CMAR shall have the right to terminate this Agreement. The CMAR shall provide the Owner with notice of intent to terminate pursuant to this provision within fifteen (15) calendar days of the CMAR's receipt of bids for the Project. Prior to a termination pursuant to this provision

becoming effective, the Owner and CMAR will review the list of alternates, other modifications, or value engineering requests in order to determine whether an agreement can be reached between the Owner and CMAR regarding a modified scope of work or an adjustment to the GMP. In the event an Agreement regarding the modified scope of the work and/or a revision to the GMP cannot be reached within fifteen (15) business days of the Owner's receipt of notice of intent to terminate pursuant to this section, then the termination shall become immediately effective.

7.1.1.2 The parties specifically agree that none of the provisions in Article 10 shall apply to any termination of this Agreement pursuant to section 7.1.1.1. But, the CMAR, shall be entitled to payment for work performed through the procurement phase (section 3.4) pursuant to the compensation set forth in Paragraph 7.4.1; however, CMAR shall not be compensated for any services provided after the date of termination. In the event the parties agree upon a modified scope of work and/or a revision to the GMP, the modified scope shall form the basis of the work to be performed by the CMAR for the established GMP. The CMAR construction contingency, general conditions, and/or CMAR's construction fee may be reduced by mutual consent of both parties to provide funding for the Project. The CMAR and Owner shall document any changes to the GMP, scope of work, cost of the work, general conditions, CMAR fee, or CMAR contingency prior to the Owner issuing notice to proceed with the work. Any reduction in the cost of the work because of a modification of the Project scope shall be added to the Owner's contingency

7.1.1.3 In the event the Owner does not request the CMAR to establish a Guaranteed Maximum Price or does not accept the CMAR's Guaranteed Maximum Price, then this Agreement may be terminated by the Owner with seven (7) days written notice. In the event this Agreement is terminated pursuant to this provision, the CMAR shall only be entitled to receive compensation for services as outlined in Article 10.

7.1.1.4. In the event that the Guaranteed Maximum Price is accepted by the Owner, a change order shall be completed and executed by both parties to this Agreement and the CMAR shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CMAR's basic services.

7.1.1.5 Construction contracts for the Work required for the Project shall be between the CMAR and Contractors. The CMAR shall request and receive bids for each contract and shall solicit and award the contracts in accordance with N.C. Gen. Stat. § 128.1, 143-128.2 to -128.4 and 143-135.8. The contractor and CMAR shall comply in all respects with the Owner's MBE policies, rules and regulations. The CMAR shall enter into contracts with the lowest responsible and responsive bidders within sixty (60) calendar days after notice of approval of the GMP by the Owner. However, the CMAR shall not be entitled to additional time to complete the Project due to any delay in entering into contracts with a bidder unless the delay is due solely to the actions or inactions of the Owner.

7.1.1.6 The CMAR may perform a portion of the work only if (1) bidding produces no responsible, responsive bidder for that portion of the work. The lowest, responsive, responsible bidder will not execute a contract for the bid portion of the work, or a contractor default and a pre-qualified replacement cannot be obtained in a timely manner, and (2) the Owner approves of the CMAR's self-performing of the work. In the event the CMAR self-performs a portion of the work pursuant to either method noted above, it shall be paid for the direct cost of the work with no reimbursement for office overhead or for any other work otherwise included in the general conditions. The fee for the work will be at the same

CMAR fee percentage stated in 7.4.1. This paragraph shall not govern compensation for work self-performed by the CMAR pursuant to Paragraph 5.2.

7.1.1.7 The Guaranteed Maximum Price is the total cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CMAR as part of the Guaranteed Maximum Price documentation and incorporated into the change order establishing the GMP. If the Owner directs the CMAR to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contingency shall not be changed.

The GMP shall include the cost of the work, CMAR's general conditions, and bonds/insurance, the CMAR's fee for construction and post-construction phase basic services. The GMP shall also include a CMAR construction contingency fund. The CMAR construction contingency fund and the Owner's contingency fund shall only be utilized as outlined in Paragraphs 7.1.1.7.1, and 7.1.1.7.2. The CMAR's fee shall be paid pursuant to Section 7.4. The general conditions shall be reimbursed as described in 7.1.1.7.3.

7.1.1.7.1 Unless otherwise agreed in writing, the CMARs construction contingency may be used to mitigate the effects of inclement weather, to address Contractor scope gaps; to correct certain coordination problems; to repair work in place, or for expediting the work when on-time completion is in jeopardy. All of the aforementioned uses are provided that the Contractor(s) responsible for the issue cannot be reasonably identified and charged with the above costs. In the event of a default by a Contractor, including default that does not result in termination of the Contractor, the CMAR shall not use the construction contingency. Instead, the CMAR shall seek reimbursement from the Contractor or through its Sub guard or similar program. The CMARs use of the CMAR construction contingency fund shall be documented in writing by the CMAR and approved by the Owner in writing before the CMAR proceeds with the work. The Owner may deny any costs incurred without prior approval.

7.1.1.7.2 Unless otherwise agreed in writing, the Owner's contingency fund shall be used to correct any design issues that could not have been discovered by the CMAR during the performance of its obligations during the design and bidding phases, and any changes requested by the Owner. The Owner's contingency fund's use shall be documented in writing by the CMAR and approved by the Owner before the CMAR billing for the work.

7.1.1.7.3 The General Conditions shall be paid an amount that shall not exceed the amount identified in Section 7.7. The Owner and CMAR agree that the items to be included as General Conditions are indicated in Appendix E. The General Conditions for all items except bonds and insurance shall be the lump sum amount identified in Section 7.7. The bonds and insurance required per Article 8 will be a fixed percentage identified in Section

7.7. If sub guard or other similar program for bonded contractors is used, the rate will be 1.25% of the actual cost of work for the subcontractors and will be added to the amounts above.

7.1.1.8 The Guaranteed Maximum Price shall include those taxes applicable to the Project. Any sales tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not reduce the cost of the Project or impact the Guaranteed Maximum Price.

7.1.1.9 The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.1.10 In the event that the cost of the Project exceeds the Guaranteed Maximum Price. Any adjustments therein (such as allowances, architectural errors, or Owner requested changes) as may be due pursuant to the terms hereof, the CMAR shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and attachments hereto, is complete and achieves final completion. The CMAR shall be responsible for paying all costs and expenses, in accordance with the terms of this Agreement, that may be necessary to complete the Project, even if such amounts are in excess of the Guaranteed Maximum Price.

7.1.2 Cost of the Project

The term "cost of the Project" shall include all amounts paid by the Owner to the CMAR for construction and post-construction phase basic services provided by the CMAR in Paragraphs 3.5 and 3.6 and payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items.

7.1.2.1 The cost of the Project shall not include the following:

7.1.2.1.1 The CMAR's fee for Basic Services;

7.1.2.1.2 All professional fees paid by the Owner to the Design Consultant or other consultants retained directly by the Owner;

7.1.2.1.3 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

7.1.2.1.4 All Additional Services costs as defined herein; or

7.1.2.1.5 All other costs identified as being not within the Guaranteed Maximum Price.

7.1.2.2 The cost of the Project may be further defined in the change order identifying the scope of the work and the final Guaranteed Maximum Price. If the requirements of this Paragraph 7.1.2 and the documentation required by the change order establishing the Guaranteed Maximum Price differ, then the CMAR shall identify and explain the difference, but the documentation provided in accordance with change order establishing the final Guaranteed Maximum Price shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.1.3 Adjustments to the Guaranteed Maximum Price

The CMAR understands, confirms, and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based on incomplete design

documents and in those instances where the drawings and specifications are not complete when it is established. The CMAR shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price based on the quality of construction, materials, and finishes that can be inferred from the design documents or other specified sources. The CMAR shall determine unit prices and the cost of the Project and shall make those assumptions regarding the Project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CMAR shall use the most recently approved Project scope in determining whether the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) calendar days from the date of a written request for an adjustment.

7.1.3.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

7.1.3.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data; or

7.1.3.1.2 By unit prices defined and listed in the GMP documentation; or

7.1.3.1.3 If neither of the methods set forth in 7.1.3.1.1 or the Owner agrees upon 7.1.3.1.2, the CMAR provided it receives a written order signed by the Owner shall promptly proceed with the work involved. The cost of such work shall then be determined on a time and material basis pursuant to Article 5. Choice of this method shall not restrict the Owner or the CMAR from disputing the justification or right of the CMAR to an increase in the Guaranteed Maximum Price due to such work. In such case, the CMAR shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

7.1.3.2 If the unit prices are stated and if the quantities originally contemplated by the CMAR are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CMAR. The applicable unit prices and Guaranteed Maximum Price shall be adjusted.

7.1.3.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, the Guaranteed Maximum Price may be adjusted by change order in accordance with Paragraph 5.2.2.

7.1.3.4 The Design Consultant shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CMAR prior to the work being performed.

7.1.3.5 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the GMP shall be reduced dollar for dollar to reflect the savings. The parties agree that solely the Owner shall retain any savings based upon the receipt of bids.

7.1.4 Unused Funds

7.1.4.1 In the event that there are any funds remaining in any contingency, those funds shall be retained solely by the Owner.

7.1.4.2 General Conditions shall be Lump Sum (reference 7.1.1.7.3).

7.1.4.3 In the event that there are unused allowances or other cost of work funds, all of those funds, plus the associated CMAR fee, shall be retained by the Owner.

7.1.4.4 In the event that the bids for the construction of the Project are less than the line item(s) in the GMP for the construction of the Project, the Owner's contingency shall be increased dollar for dollar to reflect the savings. The parties agree that solely the Owner shall retain any savings based upon the receipt of bids

7.4 Lump Sum

The Owner shall compensate the CMAR for Basic Services based on a Lump Sum in accordance with the terms and conditions of this Agreement as follows:

7.4.1 Compensation for Basic Services

The CMAR shall be compensated for performing Basic Services described in the pre-design phase (Paragraph 3.2), design phase (Paragraph 3.3) and the procurement phase (Paragraph 3.4) for a total lump sum in the amount of _____ dollars (\$_____) that shall be divided by the number of months scheduled for the basic services in Paragraphs 3.2, 3.3 and 3.4 and paid in equal monthly installments as the services are performed. The CMAR shall be compensated for performing basic services described in the construction phase (Paragraph 3.5) and post-construction phase (Paragraph 3.6) for a total lump sum in the amount of _____ dollars (\$_____). In the event there are changes in the work that require an adjustment in the CMAR's construction/post-construction fee, the fee adjustment shall be based upon _____ percentage of the cost of the work added or deleted from the Project. The fee for these phases shall be paid in proportion to the percentage of the actual cost of the work paid by the Owner. The cost of the work as used in this section shall be the total dollar amount of the construction contracts awarded by the CMAR to contractors for the performance of the work, minus any unused allowances or other deductive change orders. The CMAR's contingency shall not be included in the calculation or payment of the CMAR's fee. Progress payments for the work performed by the contractors shall be paid as the work is performed and approved in accordance with this Agreement. The CMAR acknowledges that the Owner only has funds for the basic services in Paragraphs 3.2, 3.3, and 3.4 at the time this Agreement is being executed and that the CMAR is not authorized to perform any services in Paragraphs 3.5 and 3.6 or any other provisions of this Agreement without the express written permission of the Owner.

7.4.2 Payments – Progress Payments

Contractor shall submit to the School Board on the twentieth (20th) day of each month a Payment Application for Work performed during the immediately prior month in

accordance with the Project Schedule and the Schedule of Values prepared in accordance with Section 3. Each Payment Application shall bear a certification. That, to the best of Contractor's knowledge and belief, (1) all Work during the pay period was carried out in accordance with the Contract Documents and any applicable laws and permits, (2) all subcontractors and materialmen required to be paid previously during the course of the Contract have been paid, and (3) Contractor is legally entitled to payment. All Payment Applications shall be submitted to the School Board's Authorized Representative at the following address:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, VA 24541

Payments to the CMAR shall be made monthly, not later than forty-five (45) days after receipt of the CMAR's Invoice by the Owner.

7.4.2.2 Payments due to the CMAR that are unpaid for more than forty-five (45) days from the due date of the CMAR's invoice shall not bear interest from the due date.

7.4.3 Compensation for Additional Services

The CMAR shall be compensated, and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and CMAR.

7.4.4 Auditing Rights

The CMAR shall keep all records and supporting documentation, which concern or relate to the work, general conditions, or other monies paid hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the Project achieves completion. The CMAR shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. The Owner, and any duly authorized agents or representatives of the Owner, shall be provided access to all such records and supporting documentation during normal business hours upon reasonable request by the Owner. Further, the Owner, and any duly authorized agents or representatives of the Owner, shall have the right to audit, inspect and copy all of the CMAR's and any contractor's Project records and documentation. The access, inspection, copying and auditing rights shall survive the termination of this Agreement.

7.5 Adjustments to the CMAR's Compensation

The CMAR shall notify the Owner as specified in this Agreement when material changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the Owner or Design Consultant are expected to increase or extend the Project's critical path or the scope or duration of the CMAR's services. If the change results in a delay to the Project's critical path or a material increase in the Project's scope, the CMAR shall be entitled to receive an increase in the duration of this Agreement and/or additional compensation for the change in accordance with this Agreement.

7.6 Liquidated Damages

7.6.1 Should the CMAR fail to complete the Project or phase on or before the date stipulated for substantial completion of the Project (or such later date as may result from extension of time granted by Owner). The CMAR shall pay, or the Owner may retain from the funds otherwise to be paid to the CMAR the sum of \$1,500.00 liquidated damages for each consecutive calendar day beyond the date established in this Agreement. That CMAR fails to achieve substantial completion as defined in this Agreement, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the CMAR to complete work within the time as stipulated. It being recognized by the Owner and the CMAR that the injury to the Owner. Which could result from a failure of the CMAR to complete on schedule and is uncertain and cannot be computed exactly. This amount is the minimum measure of damages the Owner will sustain due to delay in the completion of the work, which shall include but not be limited to the loss of use of the facilities, the relocation of students and services, the cost of Owner's time and resources, damage to Owner's reputation, and storage of furniture and other materials. The inability of the Owner to quantify actual damages shall not prevent the recovery of liquidated damages.

7.6.2 For each consecutive calendar day that the work remains incomplete after the date established for final completion of the Project, the CMAR shall pay, or Owner will retain from the compensation otherwise to be paid to the CMAR the sum of \$2,500.00 as final completion liquidated damages. This amount is agreed upon as a reasonable and proper for damages the Owner will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of Owner's time and resources, damage to Owner's reputation, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for substantial completion.

7.6.3 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are defined above. This provision of liquidated damages does not bar Owner's right to enforce other rights and remedies against CMAR, including specific performance or injunctive relief. In no way shall costs for liquidated damages be construed as a penalty to the CMAR.

7.6.4 Notwithstanding any other provisions of the Agreement, if there is concurrent delay in the completion of the work, the CMAR shall be liable for liquidated damages as specified in this Agreement during such period of concurrent delay. For the purpose of this section 7.6, concurrent delay means (a) a delay event caused in part by the Owner or its agent and in part by the CMAR or its contractors, subcontractors, sub-subcontractors, or (b) one or more delay event caused solely by the Owner, its agents, or the Design Consultant, and one or more delay event caused in part by the CMAR, subcontractors, sub-subcontractors or agents, each of which would have resulted in a delay without the other and which delays run concurrently, or at the same time. In the event that the foregoing provision making the CMAR liable for liquidated damages during a period of concurrent delay is found to be unenforceable, then the parties agree that in the event of a concurrent delay, the extent of the delay will be apportioned between the Owner and the CMAR, and the CMAR will be responsible for liquidated damages as set forth in the section 7.6 for those portions of the delay which are apportioned to the CMAR, its subcontractors, sub-subcontractors, agents

or material suppliers.

7.6.5 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinabove shall not include additional legal or design professional costs that may result from the CMAR's default. If such legal or design professional costs are incurred by the Owner, the CMAR shall be liable to the Owner for those costs in addition to the liquidated damages amount set forth hereinabove and in 7.7 Summary of Monetary Amounts.

7.7 The following summary is intended to provide a single location for all relevant monetary amounts included in this Agreement as of the date of execution of the Agreement. The following list shall take precedence over any inconsistencies in the amounts otherwise incorporated into this Agreement. The amounts in this Agreement shall only be revised by written agreement between the parties. The monetary amounts follow:

GMP	\$ _____
Cost of Work	\$ _____
CMAR Preconstruction Fee	\$ _____
CMAR Construction Fee	\$ _____
CMAR Construction Contingency	\$ _____
Owner Contingency	\$ _____
General Conditions	\$ _____
Liquidated Damages-Substantial	\$ _____/Day
Liquidated Damages – Final	\$ _____/Day

ARTICLE 8

INSURANCE AND MUTUAL INDEMNITY

8.1 **INSURANCE:** The CMAR shall, at its sole expense, obtain and maintain during the life of the contract insurance policies of the type, in the amount, and subject to the terms required by DPS, including without limitation.

- i. Commercial general liability insurance with minimum limits of liability of \$5,000,000 combined single limit for any one occurrence.
- ii. Broad form contractual liability insurance, which shall include the indemnification obligations set forth in this agreement.
- iii. Workers' compensation and employer's liability insurance covering the selected offeror's statutory obligation under the laws of the Commonwealth of Virginia.

- iv. Automobile liability insurance with at least a \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this contract;
- v. Professional liability and errors and omissions insurance with minimum limits of \$2,000,000 per claim and \$5,000,000 policy aggregate (professional liability insurance coverage shall be maintained for five years after completion of the project).

8.1.1 Any required insurance policies shall be effective prior to the beginning of any work under the contract. All insurance except professional liability shall be written on an occurrence basis. In addition,

- i. The offeror shall furnish DPS a certificate or certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies.
- ii. The required certificates or insurance, excluding those for workers' compensation and professional liability, shall name DPS and its officers, trustees, directors, volunteers, employees, and agents as additional insureds.
- iii. The required certificate or certificates of insurance shall require 30 days advance, written notice to DPS before being cancelled.
- iv. Any insurance company providing coverage under the contract shall be authorized to do business in the Commonwealth of Virginia.

8.1.2 The CMAR shall not allow any contractor or subcontractor to commence work on its contract until all similar insurance required of the contractor or subcontractor has been obtained and a certificate of insurance has been filed with the CMAR. CMAR shall determine and approve the excess/umbrella liability insurance requirements and the term for certification of completed operations liability (following the date of completion) for all contractors and subcontractors. Approval of the insurance by the Owner shall not relieve or decrease the liability of the CMAR hereunder. Failure of the CMAR to provide all required certificates could delay the issuance of notice to proceed. Such delay shall not entitle the CMAR to an extension of any milestone or completion dates required by the master schedule.

8.2 Builder's Risk Insurance

8.2.1 The CMAR shall purchase and at all times maintain such insurance as will protect the CMAR, the Owner, Owner's representatives, agents, employees, Design Consultant, contractors and subcontractors. From loss or damage to work or property in the course of construction, including all machinery, materials, and supplies on the premises, in storage or in transit intended to become a part of the finished work until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property. To be covered by this insurance, whichever is sooner. This insurance shall be in the form of "builder's risk" policy insuring "risks of direct physical loss except those as specifically excluded by the policy", or equivalent. The policy shall not exclude the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, vandalism, theft, malicious mischief, riot, debris removal, flood, water damage, earthquake, earth movement, testing, architect's and engineering fees, mechanical or electrical breakdown,

collapse however caused, and/or damage resulting from defective design, workmanship or material. Limits shall be written for the value of the GMP and insure the full cost of replacement at the time of loss. Sub-limits for flood or earthquake are subject to approval by Owner. The CMAR shall cause such policy or policies of insurance required under this subparagraph to be endorsed to provide that the insurer or insurers waive any right of subrogation against the Owner. Notwithstanding any deductible provision, the CMAR shall remain solely liable for the full replacement cost of any item covered by such insurance, including any applicable deductible or co-insurance penalty. Prior to commencement of work, CMAR shall provide to Owner a copy of the builder's risk policy obtained in compliance with Section 8.1.1(iii)

8.2.2 All insurance companies providing the above insurance shall be properly licensed by the department of insurance of the State Virginia and rated "a" or better by a.m. best company.

8.2.3 Any loss insured under subparagraph 8.2.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of subparagraph 8.2.5. The CMAR shall pay each contractor and/or subcontractor a just share of any insurance moneys received by the CMAR, and by appropriate agreement, written where legally required for validity, shall require each contractor or subcontractor to make payments in similar manner.

8.2.4 The Owner and CMAR waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 8.2 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The CMAR shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Owner and the CMAR by contractors and subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, its consultants, employees, and agents and representatives. The CMAR waives as against any separate contractor all rights for damages caused by fire or other perils in the same manner as is provided above as against the Owner.

8.2.5 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. It shall deposit in a separate account any money so received, and it shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with a court order or award. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

8.2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) business days after the occurrence of loss. The Owner's exercise of this power, and if such objection is made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the orders of the court or as otherwise agreed by the parties in interest.

8.2.7 If the Owner finds it necessary to occupy or use a portion or portions of the work prior to substantial completion. Such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and CMAR and to which the insurance company or

companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled, lapsed because of such partial occupancy or use. Consent of the CMAR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

8.3 Indemnity

8.3.1 The CMAR shall indemnify, defend, and hold harmless DPS and its officers, agents, trustees, directors, employees, and affiliates from and against all liability, losses, damages, claims, causes of action, suits of any nature (including suits by DPS against the firm). Costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the firm's or its agent's, and/or subcontractor's errors, acts, or omissions in the performance of services under the contract or any subcontract or any breaches of the contract or any subcontract. This indemnity provision shall cover and include, without limitation, fines, and penalties for violations of federal, state or local laws or regulations (including health or alcoholic beverage violations); personal injury, wrongful death, or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind

8.3.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the CMAR, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 8.3.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CMAR or any contractor or subcontractor from any of the insurance coverage required in Section 8.1 herein.

8.4 Performance and Payment Bonds

8.4.1 Within 10 days of the establishment of the final GMP via change order, the CMAR shall provide a performance bond and payment bond each for GMP, minus the Owner's contingency if the Owner's contingency is included in the GMP. The amount of the performance and payment bonds may be adjusted if the Guaranteed Maximum Price is reduced after the bids are received.

8.4.2 All insurance companies providing the above bonds shall be properly licensed by the Department of Insurance of the State of Virginia and rated "A" or better by a.m. best company. The bonds shall be in the form approved by the Owner and attached hereto as Appendix ?.

ARTICLE 9

SUSPENSION

9.2 Suspension

9.2.1 The Owner may order, in writing, the CMAR to suspend all or any part of the CMAR's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CMAR. If the performance of all or any part of the services for the Project is suspended, the Owner and CMAR may negotiate an adjustment

in the CMAR's compensation for the CMAR's performance of this Agreement caused by such suspension and this Agreement may be modified in writing accordingly.

9.2.2 In the event the CMAR's services on the Project are suspended, the Owner shall reimburse the CMAR for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first seven (7) business days of such suspension. The CMAR shall reassign the staff for the remainder of the suspension period unless directed otherwise by the Owner in writing and if the Owner directs the CMAR to maintain all or part of its staff, the Owner shall reimburse the CMAR for all costs of staff remaining dedicated to the Project. Upon cessation of the suspension, the CMAR shall restore the construction site and home office staff to their former size.

9.2.3 Persons assigned to another Project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CMAR for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.2.4 If the Project is resumed after being suspended, the CMAR shall have the right to request that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10

TERMINATION

10.1 Termination by the CMAR

10.1.1 If the work is stopped for a period of one hundred eighty (180) days. Either by the Owner or under an order of any court or other public authority having jurisdiction, or as a result of an act of government. Such as a declaration of a national emergency making materials unavailable through no act or fault of the CMAR, a contractor or their agents, employees or any other persons performing any of the work under a contract with the CMAR, then the CMAR may, upon seven (7) additional days' written notice to the Owner, design consultant. Terminate the contract and recover from the Owner payment for all work executed. The CMAR shall not be entitled to collect and hereby expressly waives any profit on work not performed and any damages related to that portion of the contract which has been terminated.

10.2 Termination for Convenience of the Owner

10.2.1 The Owner may, at any time upon ten (10) calendar days after receipt of certified written notice to the CMAR and to the CMAR's surety, which notice shall specify that

portion of the work to be terminated. The date of termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The CMAR's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Paragraph 10.4. CMAR shall include termination clauses identical to Article 10 in each of its subcontracts.

10.3 Default Termination

10.3.1 The Owner may terminate within thirty (30) calendar days' after certified written notice is received by the CMAR and to the CMAR's surety (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the work) the employment of the CMAR and his right to proceed. Either as to the whole or any portion of the work required by the contract documents and may take possession of the work and complete the work by contract or otherwise in any one of the following circumstances:

1. If the CMAR or its surety refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the substantial or final completion of the work within the contract time or fails to complete the work or remedy a default within said period;
2. If the CMAR is in material default in carrying out any provisions of the contract for a cause within his control;
3. If the CMAR fails to supply a sufficient number of properly skilled workers or proper equipment or materials;
4. If the CMAR fails to make payment to the contractors or for materials or labor when due, unless he otherwise provides the Owner reasonable evidence that payment is not legally or contractually due;
5. If the CMAR disregards laws, permits, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or fails to follow the reasonable instructions of the Owner;
6. If the CMAR substantially violates any provisions of the contract documents;
or
7. If the CMAR refuses or fails to properly schedule, plan, coordinate and execute the work, as specified herein, so as to perform the work within the specified milestone and completion dates, or to provide scheduling or related information, revisions and updates as required by the contract documents.

10.3.2 The right of the CMAR to proceed shall not be so terminated under this Paragraph 10.3 if the delays in the completion of the work are due to causes beyond the control and without the fault or negligence of the CMAR or the contractors.

10.3.3 If, after the CMAR has been terminated for default per Paragraph 10.3, it is determined that none of the circumstances set forth in Paragraph 10.3.1 exist, then such termination shall be considered a termination for convenience per Paragraph 10.2. In such a case, the CMAR's sole remedy will be the costs permitted by Paragraph 10.4.

10.3.4 If the Owner terminates the employment of the CMAR, the CMAR shall not be entitled to receive any further payment until the work is finished. If, the unpaid balance of

the compensation to be paid to the CMAR for the actual work completed excluding, the CMAR's unused contingency, shall exceed the expense of so completing the work (including compensation for additional construction management, managerial, administrative, consultant, legal, design and inspection services and any damages for delay). Such excess shall be paid to the CMAR.

10.3.5 If such expenses exceed the unpaid balance, the CMAR and his sureties shall be liable to the Owner for such excess. If the right of the CMAR to proceed with the work is partially or fully terminated, the Owner may take possession of and utilize in completing the work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the work and necessary for the completion of the work. If the Owner does not fully terminate the right of the CMAR to proceed, the CMAR shall continue to perform the part of the work that is not terminated.

10.3.6 If the Owner terminates the whole or any part of the work pursuant to Paragraph 10.3, the Owner may procure, upon such terms as the Owner may deem appropriate, supplies or services similar to those so terminated, and the CMAR shall be liable to the Owner for any excess costs for such similar supplies or services. The CMAR shall continue the performance of the contract to the extent not terminated hereunder.

10.4 Allowable termination costs

10.4.1 If the Owner terminates the whole or any portion of the work pursuant to Paragraph 10.2. Then the Owner shall only be liable to the CMAR for those costs reimbursable in accordance with Paragraph 10.4.2, plus a markup of five (5%) percent for profit and overhead on the actual fully accounted costs paid under 10.4.2. Provided however, that if there is evidence that the CMAR would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder for the work performed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Under no circumstances shall the CMAR be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.1.1 After receipt of a notice of termination, the CMAR shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly, but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the CMAR made in writing within such thirty (30) day period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such thirty (30) day period or any extension thereof. Upon failure of the CMAR to submit his termination claim within the time allowed, the Owner may determine, based on information available to him, the amount, if any, due to the CMAR because of the termination.

10.4.2 If the Owner terminates the whole or any portion of the work pursuant to section 10.2, the Owner shall pay the CMAR an amount for supplies, services, or property accepted by the Owner, and which is in accordance with the contract documents, in an amount as if the Agreement had not been terminated. In addition, in such event, the Owner shall pay to

CMAR an amount representing CMAR's actual cost, excluding any overhead and profit for the items and things specified in subparagraph 10.5.1.6 and not heretofore paid for, appropriately adjusted for any saving of freight or other charges. Under no circumstances shall the CMAR be entitled to any loss profit or fee on the work terminated pursuant to section 10.2.

10.4.2.1 The CMAR agrees that neither the Owner nor the Design Consultant will be liable for payments to contractors or subcontractors pursuant to Paragraph 10.4.2 unless each contract or subcontract contains termination provisions identical to those set forth in this Article 10. The Owner and the design consultant will not be liable to the CMAR or any of the contractors or subcontractors for any costs associated with termination if the contract or subcontract of the party involved does not include the required termination language.

10.4.3 In arriving at any amount due the CMAR pursuant to Paragraph 10.4, there shall be deducted the following:

1. All unliquidated advance or other payments because theretofore made to the CMAR applicable to the terminated portion of the contract;
2. Any amount which the Owner reasonably believes the CMAR or any of the contractors owes to the Owner;
3. Such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and
4. The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the CMAR or sold, pursuant to the provisions of Paragraph 10.5.1.7, and not otherwise recovered by or credited to the Owner.

10.4.4 The total sum to be paid to the CMAR under Paragraph 10.4 shall not exceed the contract sum as reduced by the amount of payments otherwise made or to be made for work not terminated and as otherwise permitted by the contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the CMAR, as provided in Paragraph 10.4.2. The replacement cost of property, which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to the buyer pursuant to Paragraph 10.5.1.7.

10.5 General Termination Provisions

10.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 10.2 or 10.3, and except as otherwise directed by the Owner, the CMAR shall:

1. Stop work under the contract on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination:

4. At the option of the Owner at the time and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
6. Transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the CMAR for the performance of such portion of the work as had been terminated, the following:
 - (1) The fabricated or fabricated parts, work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed work, supplies and other material produced as part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
 - (2) The completed or partially completed plans, drawings, information, releases, manuals, and other property related to the work and which, if the contract had been completed, would have been required to be furnished to the Owner;
7. Use commercially reasonable efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Paragraph 10.5.1.6; provided, however, that the CMAR:
 - (1) Shall not be required to extend credit to any buyer, and
 - (2) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner. Provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the CMAR under the contract or shall otherwise be credited to the contract sum covered by the contract or paid in such other manner as the Owner may direct;
8. Complete performance of such part of the work as shall not have been terminated by the notice of termination; and
9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the contract which is in the possession of the CMAR and in which the Owner has or may acquire an interest.

10.5.2 The CMAR shall, from the effective date of termination until the expiration of three (3) years after final settlement under the contract. Preserve and make available to the Owner, during reasonable times, at the CMAR's office but, without direct charge to the Owner, all records and documents and other evidence bearing on the costs and expenses of the CMAR under the contract. Relating to the work terminated hereunder, or, to the extent approved by the Owner, all photographs, or other authentic reproductions thereof.

10.5.3 If the termination, pursuant to Paragraph 10.2, be partial. The CMAR may file with the Owner a claim for an equitable adjustment of prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the CMAR for an equitable adjustment under this Paragraph must be asserted within six (6) months from the effective date of the notice of termination.

10.5.4 The CMAR shall refund to the Owner any amounts paid by the Owner to the CMAR in excess of costs reimbursable under Paragraph 10.4.

10.5.5 The CMAR shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 10.

ARTICLE 11

ADDITIONAL PROVISIONS

11.1 Limitation and Assignment

11.1.1 The Owner and the CMAR each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

11.1.2 Neither the Owner nor the CMAR shall assign or transfer its rights or interest in this Agreement without the written consent of the other, except that the CMAR may assign accounts receivable to a commercial bank for securing loans without approval of the Owner. However, nothing contained in this paragraph can prevent the CMAR from employing contractors or such consultants, associates or subcontractors, as the CMAR may deem appropriate to assist in performance of the services and of the Work hereunder.

11.2 Governing Law

11.2.1 This Agreement shall be governed by the laws of the State of Virginia.

11.2.2 Criminal/Sexual Background Checks. The CMAR shall conduct or arrange to have conducted at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will be having access to the Owner's property or at a school-system sponsored event. Except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies. Due to the school's closure for renovation or school construction

sites. The checks shall include at a minimum check of the state sex offender and public protection registration program, the state sexually violent predator registration program, and the national sex offender registry (“the registries”). For the CMAR’s convenience only, all of the required registry checks may be completed at no cost by accessing the United States department of justice sex offender public website at <http://www.nsopw.gov/>. The CMAR shall provide certification that the registry checks were conducted on each of its contractual personnel access the Owner’s property prior to the commencement of work. The CMAR shall conduct a current initial check of the registries (a check done more than 30 calendar days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, CMAR agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. CMAR further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement if requested by the Owner. CMAR shall not assign any individual to access owner’s property pursuant to this Agreement if said individual appears on any of the listed registries. CMAR agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel and agrees to provide such records and documents to the Owner upon request. CMAR specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner’s sole discretion. Failure to comply with this provision's terms shall be deemed a material breach of the agreement. in addition, the Owner may conduct additional criminal records checks at the school system’s expense. If the Owner exercises this right to conduct additional criminal records checks, CMAR agrees to provide within seven (7) business days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. CMAR further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. Owner reserves the right to prohibit any contractual personnel of CMAR from delivering goods or providing services under this Agreement if Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

11.2.3 Anti-Nepotism.

11.2.3.1 The CMAR warrants to the Owner in writing, prior to the execution of the Agreement, to the best of their knowledge none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement. Are immediate family members to any of the Owner’s Board of Education, Central Office staff, administrator associated with this project. For purposes of this provision, “immediate family” means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should the CMAR become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, the CMAR shall immediately disclose the family relationship in writing to the superintendent. Unless, prior to the execution of the Agreement and formally waived by the Owner the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to the CMAR.

11.2.4 Sales Tax. Danville Public Schools is not exempt of all sales tax obligations imposed to the CMAR in the purchasing of materials or equipment used in the completion of this project.

11.2.5 The CMAR shall comply with the above listed and all applicable laws and regulations in providing services under this Agreement.

11.3 Extent of Agreement

11.3.1 This Agreement represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the Owner and the CMAR. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Consultant are not intended third party beneficiaries of this Agreement. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by the Owner. It being recognized that both parties and their respective counsel have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

A. **ANTI-DISCRIMINATION:** By submitting a proposal, the offeror represents and warrants to DPS that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans With Disabilities Act, Section 2.2-4311 of the Virginia Public Procurement Act (VPPA), and all other applicable federal, state and local anti-discrimination laws, codes, rules, and regulations. Without limiting the foregoing, during the performance of this contract, the offeror agrees as follows:

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

B. **DRUG-FREE WORKPLACE:** During the performance of the contract, the offeror agrees to (i) comply with the drug-free workplace provisions of Virginia

Code 2.2-4312; (ii) provide a drug-free workplace for the offeror's employees; (iii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the offeror's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all advertisements or solicitations for employees that the offeror maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this RFP, so that the provisions will be binding upon each subcontractor or vendor. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Firm in accordance with this chapter, 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.

C. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting its proposal, the offeror represents and warrants that it does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

D. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in a court of appropriate jurisdiction in the City of Danville, Virginia. The offeror shall comply with all applicable federal, state and local laws, codes, rules and regulations.

E. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, the offeror represents and warrants that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with their proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction 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. Furthermore, the provisions, requirements, and prohibitions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Code, pertaining to bidders, offerors, contracts, and subcontractors, are applicable to this RFP and any resulting contract, as are the provisions, requirements, and prohibitions contained in Sections 2.2-3100 through 2.2-3131 of the Virginia Code.

F. QUALIFICATIONS OF OFFEROR: DPS may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to provide the services/furnish the goods as required under this RFP, and the offeror shall furnish to the DPS all such information and data for this purpose as may be requested. DPS reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities.

DPS further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the DPS that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

G. DEBARMENT STATUS: By submitting its proposal, the offeror represents and warrants that it is not currently debarred by the Commonwealth of Virginia, or any city, county, town or political subdivision therein, from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently so debarred.

H. NONDISCRIMINATION TOWARDS OFFERORS: A bidder, offeror or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless DPS has made a written determination that employing ex-offenders on the specific contract is not in its best interest. **DPS DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.**

I. LICENSES, PERMITS and TAXES: The offeror shall procure at its own expense all necessary licenses and/or permits and shall conform to all laws, codes, regulations and ordinances applicable to the performance of the contract, and will pay all applicable federal and state taxes.

J. SCC REGISTRATION: Pursuant to Virginia Code § 2.2-4311.2, the offeror must be registered with the State Corporation Commission if so, required by Title 13.1 or Title 50 of the Virginia Code or otherwise required by law.

K. MINORITY CONTRACTING: It is the policy of DPS to maximize participation by minority and women owned businesses, small businesses, service-disabled veteran businesses, and employment services organizations in contracting opportunities.

L. PROPOSAL ACCEPTANCE PERIOD: Any offer in response to this solicitation shall be valid for ninety (90) days. At the end of the ninety days, the offer may be withdrawn at the written request of the offeror. If the offer is not promptly withdrawn (within 5 business days) at that time, it remains in effect until an award is made or the solicitation is canceled.

M. AVAILABILITY OF FUNDS: It is understood and agreed by the offeror that DPS shall be bound only to the extent of the funds available, or which may hereafter become available for the purpose of the Contract.

N. PERMITS AND REQUIRED INSPECTIONS: The offeror shall be responsible for obtaining all necessary and customary permits and inspections for

a project of this nature. Costs for permits and inspections shall be included as part of the project's total cost.

O. **PRICE ADJUSTMENTS:** In the event that DPS issues a change order reducing the amount of work to be performed by the offeror under the contract during the contract period, the contract price shall be reduced in a proportional amount. There shall not be any increase in the contract price under any circumstances unless such price increase is specifically approved in writing by the authorized DPS representative in advance of any work for which extra compensation is requested.

P. **SUBCONTRACTS:** Before any portion of the goods or services shall be subcontracted, the offeror shall furnish DPS with the names, qualifications and experience of their proposed subcontractor(s). DPS must be afforded the right to refuse any subcontractor that the offeror has selected. The offeror shall remain fully liable and responsible for all acts and omissions of subcontractors and for the goods or services supplied by its subcontractor(s) and shall assure compliance with all requirements of the contract. Any approved subcontract shall include any mandatory flow downs from the Virginia Public Procurement Act, including without limitation the requirements of Virginia Code § 2.2-4354.

Q. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions or other breach of any resulting contract by the offeror, DPS may terminate the contract and/or procure the goods and services from other sources and hold the offeror responsible for any resulting additional purchase and administrative costs. These remedies shall be in addition to any other remedies, which the DPS may have under the contract, at law, or in equity.

R. **CONTRACTUAL CLAIMS:** The procedure for reviewing and resolving contractual claims and resolving contractual disputes shall be the procedure set forth in Virginia Code § 2.2-4363. C.

S. **ASSIGNMENT OF CONTRACT:** The contract shall not be assignable by the offeror in whole or in part without the written consent of DPS.

T. **INDEPENDENT CONTRACTOR:** The offeror, if awarded a contract, shall not be an employee of the DPS but shall be an independent contractor. Nothing in the contract shall be construed as authority for the offeror to make commitments, which shall bind DPS or to otherwise act on behalf of DPS, except as DPS may expressly authorize in writing.

U. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in either of the following ways:

1. The parties may agree in writing to modify the product specifications or scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the contract.

2. DPS may order changes within the general scope of the contract at any time by written notice to the firm. The firm shall comply with the change order upon receipt.

V. **CANCELLATION OF CONTRACT:** DPS reserves the right to cancel and terminate any resulting contract(s), in part or in whole. According to Article 10 without penalty, upon thirty (30) calendar days of certified written notice to the offeror. Any contract cancellation notice shall not relieve the offeror of the obligation to deliver and/or perform on all outstanding items prior to the effective date of cancellation. Any contract cancellation notice shall not relieve DPS from its obligation to pay for work performed prior to the effective date of cancellation.

W. **CONTRACTOR'S AND SUBCONTRACTOR'S PERSONNEL:** (a) The firm shall be responsible for the errors, acts, and omissions of its employees and agents, and the employees and agents of any subcontractors, while on DPS premises or performing any work associated with the contract. (b) The firm's personnel will be required to comply with all rules and regulations governing the access to and use of DPS's premises. (c) The firm shall provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed under the contract. (d) It shall be the firm's responsibility to see that its employees use any equipment, materials, and supplies in a safe and orderly manner and in accordance with the manufacturer's instructions and guidelines and within all local, state, and federal regulations. It shall be the firm's responsibility to ensure its employees and its subcontractor's employees know and obey all OSHA, VOSA, EPA and other regulatory requirements. Compliance with all regulatory requirements is the sole responsibility of the firm and/or its subcontractors. The safety of the firm and subcontractor's employees is the sole responsibility of the firm and its subcontractors. (e) DPS reserves the right to request the removal of any of the firm's employees or agents or any of its subcontractor's employees or agents from the premises at any time for any reason. The firm or its subcontractor shall have such employee leave the premises upon receipt of such request.

X. **HAZARDOUS MATERIALS:** The firm shall not, during the term of the contract, transport, dispose of, or release, on DPS's property any hazardous substance, material, or waste. The firm shall comply with all federal, state, and local laws, rules, and regulations relating to the storage, transportation, use, and disposal of hazardous materials, substances, or waste.

Y. **INDEMNIFICATION:** The firm shall indemnify, defend, and hold harmless DPS and its officers, agents, trustees, directors, employees, and affiliates from and against any and all liability, losses, damages, claims, causes of action, suits of any nature (including suits by DPS against the firm), costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the firm's or its agent's, and/or subcontractor's errors, acts, or omissions in the performance of services under the contract or any subcontract or any breaches of the contract or any subcontract. This indemnity provision shall cover and include, without limitation, fines, and penalties for violations of federal, state or

local laws or regulations (including health or alcoholic beverage violations); personal injury, wrongful death, or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind.

Z. **FORCE MAJEURE:** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to an event outside the reasonable control and not the fault of the affected party (a “Force Majeure Event”). Examples of a Force Majeure Event include, but are not limited to, natural disasters, acts of God, terrorism, war, civil disorder, fire, flood, explosion, riot, labor disputes or strikes (labor disputes with the impacted party’s own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract), any act or order of any governmental authority, lockouts or work stoppages of any kind, theft, windstorm, water, vandalism, failure of power or utilities, or other similar causes, beyond the control of the parties which delays or prevents the performance of the agreement. It is understood that both parties should exercise due care and prudence to avoid a Force Majeure Event. A Force Majeure Event shall not constitute a breach of contract. If either party is prevented, wholly or in part, from performing its obligations under this contract as a result of a Force Majeure Event, then that party shall immediately give notice to the other party of the Force Majeure Event and take reasonable steps to mitigate the impact of Force Majeure Event on contract performance. Upon such notice, all obligations of the affected party under the contract, which are related to the Force Majeure Event, shall be suspended as long as the affected party takes reasonable steps to mitigate the impact of Force Majeure Event on contract performance until the Force Majeure Event no longer exists.

AA. **WAIVER; REJECTION:** DPS reserves the right to cancel this RFP, to reject any or all proposals, to reject the proposal of an offeror who is not in a position to perform the work or the contract, or to waive any informalities in any proposal, should rejection or cancellation be deemed in the best interest of DPS.

BB. **NON-EXCLUSIVENESS OF REMEDIES:** Any right or remedy on behalf of the DPS provided for in any part of the contract, including but not limited to, any remedy for the firm’s nonperformance or breach, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.

CC. **NON-WAIVER:** The failure of DPS to insist upon strict performance of any of the terms or provisions of the contract or to exercise any option, right or remedy contained in the contract shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy. The waiver by DPS of a breach of any provision hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

--End of Part II --

PART III: Submittals

RFP-22425-528

****Must be submitted with Bid****

You hereby certify and acknowledge that you agree that the laws of the Commonwealth of Virginia will govern the terms of this agreement and that the City of Danville is the proper jurisdiction and venue to settle any matters that may come in dispute over this contract or agreement.

Firm _____

Address _____

Name (print or type) _____

Signature _____ Date _____

Title _____

Telephone _____ Fax _____

****Required to be submitted with Proposal****

RFP-22425-528

ANTI-COLLUSION CERTIFICATION

The Offeror certifies that this proposal response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same product and that this proposal is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. The Offeror understands collusive bidding is a violation of Federal Law and that any false statement hereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages. The Offeror also understands that failure to sign this statement will make the proposal non-responsive and unqualified for award.

SIGNED: _____

DATE: _____

NAME OF COMPANY: _____

****Required to be submitted with Proposal****

RFP-22425-528

Background Certificate

I certify that the applicant firm complies with the *Code of Virginia § 22.1-296.1*, regarding providing certification from the company and any employee that will come in direct contact with students, for the provision of services under this contract.

I certify that the applicant firm and any of its employees, that will come in direct contact with students, have (I) never been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; nor (ii) convicted of a crime or moral turpitude.

SIGNATURE:

PRINTED NAME:

COMPANY:

BUSINESS ADDRESS:

DATE:

Employee Certifications (Employees that will come in direct contact with students)

I certify that I have never been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; nor (ii) convicted of a crime or moral turpitude.

Printed Name _____ Signature _____

****Required to be submitted with Proposal****

RFP-2425-528

**Small Business, Minority & Women-Owned Business, Service Disabled
Veteran Business and Employment Services Organizations
Certification Form**

The Proposer must complete the following information:

Is Proposer a qualified minority or women-owned business, small business, service-disabled veteran business, or employment services organization as defined in the Virginia Code § 2.2-4310 (collectively "Disadvantaged Businesses")?

Yes: _____ No: _____

Regardless of response to this question, Bidder shall complete the following:

Will Bidder be using subcontractors? Yes: _____ No: _____

In conjunction with the desire of the School Board of the City of Danville, VA's policy to utilize Disadvantaged Businesses wherever possible, the Bidder (Proposer) has solicited quotations for labor, material, and/or services from the following Disadvantaged Businesses: (Attach an additional sheet if necessary.)

<u>1. Name of Firm</u>	<u>Person(s) Contacted</u>	<u>Type of Labor, Service or Material Quoted</u>
<u>Date</u>		
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Of those Listed above, we intend to utilize the following Disadvantaged Businesses in completion of the work required by this contract. (Attach an additional sheet if necessary.)

<u>Name of Firm</u>	<u>Type of Labor, Service or Material Quoted</u>	<u>Amount of Contract Subcontract</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

The Bidder will utilize the indicated Disadvantaged Businesses firms in this project. If the Proposer determines not to use the indicated Disadvantaged Businesses, Bidder must

notify the School Board and provide a valid non-discriminatory business reason for not employing the Disadvantaged Businesses.

3. If the Disadvantaged Businesses shown in paragraph 1 will not be utilized, please state the reason for each firm. (Attach an additional sheet if necessary.)

<u>Name of Firm</u>	<u>Results of Contact</u>
_____	_____
_____	_____
_____	_____

4. If unable to contact Disadvantaged Businesses, please indicate efforts made: (Attach an additional sheet if necessary.)

5. This firm has made a good faith effort to utilize Disadvantaged Businesses whenever possible.

Offeror: _____
(Firm)

(Address)

_____ _____
(Telephone) (FAX)

(Ink Signature and title) _____ (Date)

(Seal and attest Seal if Proposal is by Corporation)

-End of Part III -

EXHIBIT A - CONSTRUCTION SCHEDULES AND REPORTS

These Terms and Conditions are incorporated into the RFP between the School Board of the City of Danville, Virginia and ?????????? for the additions and renovation of Forest Hills Elementary School.

1.01 GENERAL REQUIREMENTS

- A. The work under this contract shall be planned, scheduled, executed, and reported using the Critical Path Method (hereinafter referred to as: CPM), pursuant to the provisions of the RFP, including all Contract Documents, between Owner and ?????????? (hereinafter referred to as: Agreement).
- B. The primary objectives of the project scheduling program are to insure the adequate planning, scheduling and execution of the construction activities so they may be prosecuted in an orderly and expeditious manner, within the Contract Time and the milestones stipulated by the Contract, to provide optimum coordination between contractors, to establish the basis for measuring and monitoring individual contractor progress and overall project progress, to detect problems for the purpose of taking corrective action to maintain the scheduled program and to provide a mechanism or tool for determining and monitoring such corrective actions.
- C. Any schedules prepared for this project by the Owner are made available by the Owner solely as an aid to the ????????. The Owner's plan may not optimize, and it is not intended to optimize, ??????? costs or resources. It is intended that these schedules will reflect the milestones and completion dates established by the Owner. However, the services provided by the Owner, the existence of schedules, networks, or any other charts or services prepared or performed by the Owner shall in no way relieve ??????? of the responsibility of complying with all of the requirements of the Agreement, including but not limited to the responsibility of completing the Work within the Contract Time and GMP and the responsibility of planning, scheduling and coordinating the work. ??????? is required to comply with all control procedures specified herein and with any reasonable changes that may be necessary, in the opinion of the Owner during the contract duration.
- D. All milestones or specific dates listed in these specifications, or elsewhere in the Agreement, represent only the major items of construction/erection work or interface dates. The milestone completion dates indicated are considered essential to the satisfactory performance of this Agreement and to the coordination of all work on the project.
 1. The milestone dates listed are not intended to be a complete listing of all work under this Agreement or of all interfaces between project contractors.

2. The milestone dates listed represent the latest allowable completion dates. Earlier completion dates may be established by [REDACTED] and as agreed by the Owner.
- E. If [REDACTED] should desire or intend to complete the work earlier than any required Milestone or Completion date, the Owner shall not be liable to [REDACTED] for any costs or other damages should [REDACTED] be unable to complete the Work before such Milestone or Completion Dates. The duties, obligations, and warranties of the Owner to [REDACTED] shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the Agreement, unless the Owner and [REDACTED] otherwise agree in writing.

1.02 PRE-BID

In conjunction with the preparation of Construction Documents, [REDACTED] shall prepare a detailed milestone schedule which displays a construction plan to complete the Project in compliance with specific dates listed in the Agreement.

1.03 POST AWARD ACTIVITIES

- A. [REDACTED] and the Owner shall perform the following after receipt of the Notice to Proceed (NTP): The NTP will be issued under separate letterhead from the Owner after acceptance of the GMP, obtain building permit, and verification of financing (selling of Bonds), except the Owner reserves the right to issue NTP in two phases (Phase 1 – all work that can be performed prior to footing and foundations and any other work that does not require a building permit, and Phase 2 – all work requiring a building permit). Immediately following the receipt of the Notice to Proceed, [REDACTED] shall start the preparation of its Detailed Project Construction Schedule. [REDACTED] shall assemble, with the assistance and input from the Contractors, Subcontractors, and Suppliers, information regarding the project that includes but is not limited to:
1. A Detailed Project Construction Schedule that represents [REDACTED] best judgment in how it shall prosecute and complete the work in compliance with the Milestone Dates and any Specific Dates stipulated in the Agreement.
 2. The identity and duration of all activities to be included in this construction plan. Activities shall meet the following criteria:
 - a. Activity descriptions shall be clear and concise. The beginning and end of each activity shall be readily verifiable.
 - b. Responsibility for each activity shall be identified with a single performing organization. (i.e., Prime contractor)
 - c. An activity must be no more than 21 calendar days in duration unless approved in advance by the Owner and Design Consultant.

- d. Include relevant predecessors and successors for each activity and the type of relationships between, and any lag time required. All activities except the first activity (i.e., NTP) and last activity (i.e., Final Completion) shall have both predecessors and successors.
 - e. Listing of Project submittals, approvals, and material/equipment site deliveries dates.
 3. The identity of planned and reasonably anticipated Adverse Weather as defined in Section 9 of the Agreement.
 4. The identity of long lead items and delivery dates of all major pieces of equipment or materials.
- B. **??????** shall, within thirty (30) calendar days following NTP, submit to the Owner and Design Consultant a Computerized 90-Day, Detailed Project Construction Schedule in precedence format for its construction/erection work scope utilizing mutually agreeable scheduling software. Provide two (2) hard copies of the 90-Day Detailed Project Construction Schedule and one (1) electronic file copy utilizing the mutually agreeable scheduling software. This schedule shall provide complete details, as outlined in this section and related sections, of all activities included for the first 90 contractual days of work (from NTP), as well as, the proposed summary of work activities for the remaining contractual scope and divisions of work (utilizing summary activities) for the project beyond the first 90 days through final completion. The work beyond the first 90 days shall be broken down by subcontractor and division of work and shall show logic, sequencing, and responsibility. This initial schedule shall incorporate the work of all contractors, subcontractors, vendors, and outside agencies and contractors associated with this project's entire scope of work. The Detailed Project Construction Schedule shall show:

1. The order and interdependencies of the Contractors' activities and the major points of interface or interrelation with the activities of others, including specific dates for completion.
2. Conformance with and identification of the specified mandatory milestone dates specified in the Agreement.
3. Description and quantity of work by activity.
4. The time required for engineering, preparation and approval of shop drawings, manufacturing, and delivery of Contractor-furnished permanent materials.
5. The time required for procurement, delivery, and erection of the Contractor's permanent materials.
6. Delivery of Owner-furnished material and equipment.
7. Shop fabrication and delivery.
8. Clearly defined Critical Path (or Paths).
9. Erection and installation.
10. Testing of equipment and materials.
11. Technology Data Systems Installation.

12. Activity calendars, incorporating potential weather delays, or multi-work periods.
- C. The Detailed Project Construction Schedule shall indicate an early completion date for the project that is no later than the project's required completion date. All activity durations shall be given in calendar days. The Schedule shall also indicate each of the following:
1. Interfaces with the work of outside contractors, e.g., utilities, power, and with any separate contractor. (Delays caused by non-performance by owner's separate contractors that affect the critical path and substantial completion of the project will be an excusable and compensable delay to the Contractor.)
 2. Estimated duration time for each activity.
 3. Early start date for each activity.
 4. Late start date for each activity.
 5. Early finish date for each activity.
 6. Late finish date for each activity.
 7. Float available for each path of activities containing float.
 8. Identification of all critical path activities in the schedule analysis.
 9. The critical path for the project, with said path of activities being clearly and easily recognizable on the time-scaled network diagram. The relationship between all non-critical activities and activities on the critical path shall be clearly shown on the network diagram.
 10. The responsibility code for the Contractor or Subcontractor performing each activity or part thereof.
 11. The area of work (i.e., Gymnasium, Media Center, etc.) and the floor (i.e., 1st floor, 2nd floor, etc.).
- D. The Owner will review [REDACTED] Detailed Project Construction Schedule for compatibility with the Project Milestones, the Completion Schedule, and the requirements of the Agreement. If requested, a meeting will be held between the Owner and [REDACTED] to resolve any conflicts in [REDACTED] schedule. [REDACTED] shall revise its schedule as required by the Owner to ensure completion of the Project in accordance with the Project's Milestone and Completion Dates and shall submit its revised schedule to the Owner within seven (7) calendar days of this meeting.
- E. If [REDACTED] thereafter desires to make changes in its method of operating and scheduling, he shall follow the procedures set out in Paragraph 2.03, Network Revisions, of this Section.
- F. Approval by the Owner of [REDACTED] Detailed Project Construction Schedule is advisory only and shall not relieve the Contractors of the responsibility for accomplishing the Work within every Contract-required Milestone and Completion date. Omissions and errors in the approved Project Construction Schedule shall not excuse performance which is not in compliance with the contract. Approval by the Owner in no way makes the Owner an insurer of the Detailed Project Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The Owner hereby denies any

obligation or liability by reason of Owner approval of or acquiescence to the Detailed Project Construction Schedule

- G. [REDACTED] shall compile, organize, and present a fully integrated Computerized Detailed Project Construction Schedule to the Owner and Design Consultant within sixty (60) days of Notice to Proceed. This schedule shall include the 90-Day Construction Schedule and the detailed activities for that portion of the work beyond the first 90 days of the construction through final completion to create the complete project schedule. The details of this schedule shall follow the same requirements as those outlined above in this section for the 90-Day Schedule. The [REDACTED] shall provide two (2) hard copies of the Detailed Project Construction Schedule, and one electronic file copy utilizing Primavera P6 Software (compatible formats are not acceptable), the Schedule of Values and Computer Reports to the Owner for final review and approval. Approval shall be signified by [REDACTED] and Owner jointly signing the schedule agreement (Attachment at the end of this section). [REDACTED] shall use the approved Detailed Project Construction Schedule in planning, organizing, directing, coordinating, performing and executing the work (including all activities of Contractors, Subcontractors, equipment deliveries, vendors, and suppliers) and shall be the basis for evaluating the progress of the Work, subject to such revisions made in such schedule as provided for herein, in the Agreement, or in the Construction Documents.
- H. [REDACTED] will develop and maintain the overall Detailed Project Construction Schedule. This schedule will be in precedence format, computer generated and updated, and the controlling schedule document used for managing project construction.

1.04 COMPUTER COST AND SCHEDULE REPORTS

- A. Every month, [REDACTED] will generate all monthly progress documents from the Detailed Project Construction Schedule, based on the Progress Reports received from the Contractors. These Reports will reflect the progress of the project.
- B. Report Content:
1. The initial and subsequent computer-generated Schedule Reports shall include the following minimum information for each activity:
 - a. activity number,
 - b. activity description,
 - c. original and remaining duration in days,
 - d. early and late start dates,
 - e. early and late finish dates,
 - f. actual start dates for activities which have begun,
 - g. actual finish dates for activities which have completed,
 - h. percentage of activity completed as of each report,
 - i. total float for each activity, and
 - j. responsibility for activity.
 2. [REDACTED] will produce four (4) schedule reports each month. The reports are:

- a. All activities on the Project Construction Schedule sorted by early start and then by total float.
- b. All activities sorted by Contractor, and further sorted by activity number.
- c. All activities sorted by total float.
- d. All activities sorted by late start.

2.00 **??????** ORGANIZATION

?????? shall maintain, as part of its organization, a staff/or consultant of sufficient knowledge in the use and application of CPM utilizing the mutually agreeable scheduling software and whose responsibility will be to prepare input information for the Detailed Project Construction Schedule, monitor progress, provide input for updating and revise logic diagrams when necessary.

2.01 RECOVERY SCHEDULE

Pursuant to paragraph 3.5.2.5 of the Agreement, should any conditions exist such that any of the mandatory specific or milestone dates or completion dates on **??????** approved Detailed Project Construction Schedule fall behind by 14 calendar days or more, **??????** shall be required to, at no extra cost to the Owner, prepare and submit to the Owner, within 14 calendar days of notification, a supplementary Recovery Schedule, in a form and detail appropriate to the need, to explain and display how they intend to reschedule those activities to regain compliance with the Detailed Project Construction Schedule during the immediate subsequent pay period.

2.02 NETWORK REVISIONS

- A. Should **??????**, after approval of the Detailed Project Construction Schedule, desire to change its plan of construction, **???????** shall submit its requested revisions to the Owner along with a written statement of the revisions including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and Specific Dates and the reasons for the revisions. **??????** shall revise its schedule to include the effect of Changes, acts of God, or other conditions or events which have affected the network. If the requested changes are acceptable to the Owner, and they do not adversely impact any Milestone or Completion Dates, they will be incorporated into a revised Approved Detailed Project Construction Schedule, to be compiled and produced by **??????** in the next reporting period. The resultant cost, if any, to the Owner shall be paid for by **???????**.
- B. When the Owner orders changes by Change Order which could impact the Construction milestones or Specific Dates stipulated in the Agreement, a Revised Network will be prepared by **??????** and provided to the Owner for concurrence or revision. After the revised network has been mutually agreed upon, it will be incorporated into a revised Detailed Project Construction Schedule, to be compiled and produced by **??????**. Change Order logic will affect only those activities and performance dates directly concerned. The revised network will reflect potential schedule impacts until actual impacts can be fully implemented into the network.

- C. Any change to the approved Detailed Project Construction Schedule must be approved in writing by the Owner and [REDACTED].
- D. Neither the updating or revision of the approved Detailed Project Construction Schedule nor the submission, updating, change or revision of any report or schedule submitted to the Owner by [REDACTED] under this Section nor the Owner's review or non-objection of any such report or schedule shall have the effect of amending or modifying, in any way, the Contract Time, any Contract Completion Date, or Contract Milestone Dates or of modifying or limiting in any way [REDACTED] obligations under this Contract.

2.03 FLOAT TIME

- A. Float or slack time is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date of a chain of activities on the Detailed Construction Network. Floating or slack time is not for the exclusive use or benefit of either [REDACTED] or the Owner. [REDACTED] work shall proceed according to early start dates, and the Owner and Design Consultant shall have the right to reserve and apportion float time according to the needs of the project. [REDACTED] acknowledges and agrees that actual delays affecting paths of activities containing float time, will not have any affect upon contract completion times, providing that the actual delay does not exceed the float time associated with those activities.
- B. Extensions of time for performance as described in the Agreement will be granted only to the extent that the time adjustment for the activity or activities affected by any condition or event which entitles [REDACTED] to a time extension exceeds the total float or slack along the path of activities affected at the time of the owner's authorization to proceed with the Change Order or the commencement of any delay or condition for which an adjustment is warranted under the Agreement. Impact to float will be finally determined at Owner's Authorization to Proceed and not before.

2.04 REQUESTED TIME ADJUSTMENT SCHEDULE:

- A. The updated approved Detailed Project Construction Schedule submitted by [REDACTED] shall not show a completion date later than the Agreement, subject to any time extensions approved by the Owner. If [REDACTED] believes it is entitled to an extension of the Contract Time under the Agreement, [REDACTED] shall submit to the Owner and Design Consultant, a separate schedule analysis (entitled "Requested Time Adjustment Schedule") indicating suggested adjustments in the Contract Time which should, in the opinion of [REDACTED], be made in accordance with the Agreement by time extension, due to changes, delays or conditions occurring during the past month or previously, or which are expected or contemplated by [REDACTED] (whether such conditions are excusable under the Agreement or are alleged to be due to fault of [REDACTED] or Owner). This separate schedule, if submitted, shall be time-scaled utilizing a computer generated and computer-drawn network

analysis schedule, unless otherwise approved by the Owner, and shall be accompanied or preceded by a formal time extension request as required by the Agreement and a detailed narrative justifying the time extension requested. All time extension requests must be submitted, in writing, to the Owner within twenty-one (21) days of the event causing the potential delay or extension to be accepted for review and consideration by the owner. Actual Delays related to the time extension requested will be submitted after the delay condition is completed.

- B. The Owner shall have any obligation to consider any time extension request unless the requirements of the Agreement are complied with. The Owner shall not be responsible or liable to [REDACTED] for any constructive acceleration due to failure of the Owner to grant time extensions under the Agreement should [REDACTED] fail to comply with the submission requirements and the justification requirements of this Agreement for time extension requests. [REDACTED] failure to perform in accordance with the approved Detailed Project Construction Schedule shall not be excused, nor be chargeable to the Owner, because [REDACTED] has submitted time extension requests or a "Requested Time Adjustment Schedule."

2.05 COORDINATION

- A. [REDACTED] shall coordinate its work and that of the Contractors and shall cooperate fully with the Owner in maintaining orderly progress toward completion of the work as scheduled. [REDACTED] decisions regarding priority between the work of the contractors at the site shall be final. If [REDACTED] critical path work is delayed by the Owner, [REDACTED] shall submit any required time extension requests to the Owner per the Agreement.
- B. The milestone dates referred to in the Agreement for delivery of Owner-furnished equipment and materials and interface activities of other Contractors on the site are based on dates set forth in separate contracts with the Owner.
- C. Failure of Owner-furnished equipment and materials to arrive as scheduled, or failure of other construction contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner a delay in [REDACTED] critical path work, in which case the provisions of the Agreement regarding extensions of time and extra work shall apply.
- D. [REDACTED] shall keep itself, and its contractors and subcontractors, always advised during the Work on delivery status of Owner-furnished equipment and materials and of the progress of construction work being performed under separate contracts.
- E. The Owner will, upon written request by [REDACTED], provide delivery information available to the Owner.

2.06 SCHEDULE OF OFF-SITE ACTIVITIES

- A. [REDACTED] shall include in its Detailed Project Construction Schedule all procurement related activities which lead to the delivery of materials to the site in a prompt manner. Upon written approval by the Owner, these activities may be submitted as a separate Off-Site Activities Schedule, properly correlated to the Detailed

Construction Project Schedule. The schedule of off-site activities shall include, but is not limited to, the following:

1. Dates for submittals, ordering, manufacturing, or fabricating, and delivery of equipment and materials. Long lead items requiring more than one month between ordering and delivery to site shall be clearly noted;
 2. All significant activities to be performed by or for [REDACTED] during the fabrication and erection/installation in a plant or on a job site, including materials/equipment purchasing, delivery; and
 3. Contractor's drawings and submittals to be prepared and submitted to the [REDACTED] Design Consultant.
- B. [REDACTED] shall be solely responsible for expediting the delivery of all material to be furnished by [REDACTED] so that the construction progress shall be maintained according to the approved Detailed Project Construction Schedule for the Work as approved by the Owner.
- C. The Owner shall be advised in writing by [REDACTED] whenever it is expected by [REDACTED] that the delivery date of any material and/or equipment will be later than the delivery date shown on the schedule, subject to schedule updates.
- D. Submittals, equipment orders and equivalent items are to be treated as scheduled activities.
- E. [REDACTED], in developing its Off-Site and Procurement Schedules, will ensure that off-site activities do not control the critical path of on-site activities.

2.07 [REDACTED] COVENANTS AND GUARANTEES

- A. [REDACTED] covenants and guarantees that it will not:
1. Misrepresent to the Owner its planning, scheduling, or execution of the Work;
 2. Utilize schedules materially different from those made available by [REDACTED] to the Owner or any Subcontractor or separate Contractors for the direction, execution, and coordination of the Work, or which are not possible or realistic.
 3. Prepare schedules, updates, revisions, or reports for the work which do not accurately reflect the actual intent or reasonable and actual expectations of [REDACTED] and its Contractors and Subcontractors as to:
 - a. The sequences of activities,
 - b. The duration of activities,
 - c. The responsibility of activities,
 - d. Resources availability,
 - e. Labor availability or efficiency,
 - f. Foreseeable weather conditions,
 - g. The percentage complete of any activity,
 - h. Completion of any item of work or activity,
 - i. Project milestone completion,

- j. Delays, slippages, or problems encountered or expected,
- k. Subcontractor requests for time extensions or delay claims of subcontractors,
- l. Float time