

CONSTRUCTION MANAGEMENT AGREEMENT

BY AND BETWEEN

ALEXANDRIA CITY SCHOOL BOARD

AND

TURNER CONSTRUCTION COMPANY

FOR

**A NEW PREK-8 SCHOOL TO REPLACE THE EXISTING K-5 JEFFERSON-
HOUSTON ELEMENTARY SCHOOL**

CONSTRUCTION MANAGEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is dated June 21, 2012, and is entered into by and between the Alexandria City School Board ("ACSB"), located at 2000 N. Beauregard Street, Alexandria, Virginia 22311, and Turner Construction Company ("Construction Manager"), a Corporation duly organized under the laws of New York and with a place of business at 1110 Vermont Avenue, Suite 200, Washington, DC 20005.

WITNESSETH:

WHEREAS, ACSB has approved the construction of a new preK-8 school to replace the existing K-5 Jefferson-Houston Elementary School (the "Project");

WHEREAS, ACSB wishes to retain the Construction Manager to provide Construction Management Services for the Project, subject to the terms and conditions of the Contract Documents;

WHEREAS, the Construction Manager wishes to provide Construction Management Services for the Project, subject to the terms and conditions of the Contract Documents; and,

NOW, THEREFORE, ACSB and Construction Manager, for the consideration set forth herein, mutually agree as follows.

ARTICLE 1 DEFINITIONS

1.1 ACPS: The Alexandria City Public Schools, which is administering the Project on behalf of ACSB. Unless specifically stated otherwise, ACPS and ACSB are hereafter collectively referred to in this Agreement as ACPS.

1.2 Applicable Laws: All laws, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, or codes applicable to the Work.

1.3 Architect/Engineer: The principal firm under contract with ACPS to provide design and engineering services for the Project, as well as certain construction administration services.

1.4 Change Directive: A written direction signed and issued by ACPS ordering the Construction Manager either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information in accordance with this Agreement.

1.5 Change Event: Any condition, circumstance, occurrence, event, act, omission, delay, inefficiency, disruption, impact, hindrance, interference or breach, other than the issuance of a Change Directive, which the Construction Manager

believes entitles it to a change in the Guaranteed Maximum Price or any of the Completion Dates.

1.6 Change Order: A written document, executed by ACPS and the Construction Manager, setting forth the agreed terms upon which a change to the Contract Documents has been made.

1.7 Claim: Any claim or dispute between Construction Manager and ACPS that arises under or in any way relates to the Contract Documents, including, without limitation, requests, demands, submissions, disputes or claims for money, additional time or other relief, including, but not limited to, those based upon a Change Event.

1.8 Completion Dates: The Substantial Completion Date(s) and the Final Completion Date.

1.9 Construction Documents: The Drawings and Specifications issued by the Architect/Engineer for the construction of the Project, and all changes to the same pursuant to Change Directives or Change Orders executed by ACPS.

1.10 Contract Documents: The documents enumerated in Section 2.3 hereof.

1.11 Damages: Individually and collectively, as applicable, all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of

action, including without limitation administrative and legal costs and attorney's fees.

1.12 Day: Whether capitalized or not, a calendar day, including weekends and legal holidays, unless otherwise specifically designated as a work or business day.

1.13 Defective Work: Work by the Construction Manager, or for which it is responsible, that is unsatisfactory, faulty, omitted, incomplete, deficient or which otherwise does not conform to the Contract Documents or Applicable Laws.

1.14 Differing Soils Conditions: Subsurface conditions on or adjacent to the Site which differ materially from those indicated in geotechnical reports provided by ACPS. It shall be the responsibility of the Construction Manager to work with ACPS's consultants during the Preconstruction Phase to review the geotechnical reports provided by ACPS. The term Differing Soils Conditions shall also include unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents. During the Preconstruction Phase, the Construction Manager shall be required to conduct a thorough review of the Site and the surrounding area and shall document its findings. In the event the Construction Manager fails to undertake and document such a thorough review, the Construction Manager shall be deemed to have known of those conditions which a thorough review would have detected.

1.15 Drawings: The graphic and pictorial portion of the Construction Documents that show the design, locations and dimensions of the buildings and improvements for the Project, which generally include plans, elevations, sections, details, schedules and diagrams.

1.16 Final Completion: The point in time when all of the following have occurred: (1) all of the Work is Substantially Complete; (2) all punch list items have been completed; and, (3) all documents that the Construction Manager is required to deliver to ACPS as a condition to receiving Final Payment have been delivered to ACPS.

1.17 Final Completion Date: Sixty (60) Days after all of the Work is Substantially Complete. Notwithstanding the foregoing, Construction Manager shall complete the punchlist for each Phase

within sixty (60) Days after that Phase is Substantially Complete.

1.18 Fragnet: A contemporaneous, fragmentary scheduling network that graphically identifies the sequencing of all new activities and/or activity revisions affected by a Change Directive, Change Order or Change Event with logic ties to all affected existing activities noted in the updated Construction Schedule that is being used at the time of the Change Directive, Change Order or Change Event at issue, and which is inserted into that schedule to create a time impact analysis. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific delay in relation to past and/or other current delays and to provide a method for incorporating adjustments to the updated Construction Schedule.

1.19 Guaranteed Maximum Price or GMP: The maximum amount that will be paid to the Construction Manager for its complete and proper performance of all the Work except the Preconstruction Phase Services. The GMP may be modified only by Change Order or Change Directive in accordance with the Contract Documents.

1.20 Hazardous Material: Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products

1.21 Hazardous Materials Remediation Costs: The direct cost incurred by the Construction Manager in connection with the removal, remediation, passivation or encapsulation of Hazardous Materials.

1.22 Notice to Proceed: A written notice to proceed, signed by ACPS, directing the Construction Manager to proceed with the Construction Phase or a designated portion of it.

1.23 Phase or Phases: A portion of the Work, and collectively the portions of the Work, that are scheduled to be Substantially Complete at different times. Phasing options include, but are not limited to, the new school building, demolition of the

existing buildings, and landscaping and the balance of Site work. The Construction Manager shall evaluate phasing options for the Work as part of its preconstruction services. All Phases that are mutually agreed upon by ACPS and the Construction Manager shall be identified and set forth in the GMP Amendment.

1.24 Proposal: The written technical and cost proposals that Construction Manager submitted to ACPS in response to, and in accordance with, the RFP, together with any written supplements or addenda to such proposals. The Proposal does not include the GMP Proposal addressed in Article 4 hereof.

1.25 RFP: ACPS's Request for Proposal Number 11-12-010 for Construction Manager at Risk Services dated April 26, 2012, and all addenda to that Request for Proposal.

1.26 Self-Performed Work: Trade work performed by employees of (1) the Construction Manager; (2) any entity that is a partner or member of the entity comprising the Construction Manager; (3) any entity that controls, is controlled by, or is under common control with the Construction Manager; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Construction Manager. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Construction Manager or the entities of which the Construction Manager is comprised.

1.27 Separate Contractors: Contractors, subcontractors, suppliers or vendors under contract directly to ACPS (other than the Construction Manager) to provide services, materials, labor, equipment or other work for or in connection with the Project.

1.28 Shop Drawings: Drawings, diagrams, schedules and other data specifically prepared by the Construction Manager or any Subcontractors at all tiers to illustrate some portion of the Work.

1.29 Site: The land or premises on which the Project is located.

1.30 Specifications: The portion of the Construction Documents that consist of the written requirements for the materials, equipment, construction systems, standards and workmanship for the buildings and improvements for the Project, and the performance of related services.

1.31 Subcontractor: Any entity, natural or legal, to whom the Construction Manager delegates performance of any portion of the Work required by the Contract Documents. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Construction Manager. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Construction Manager, but also those performing Work pursuant to sub-subcontracts, sub-sub-subcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Construction Manager's employees and to whom the Construction Manager delegates any part of its responsibilities under the Contract Documents, except that references to "Trade Subcontractors" shall exclude design professionals.

1.32 Submittals: Shop drawings, samples, exemplars, product data and other similar information required to be submitted by the Construction Manager under the Contract Documents.

1.33 Substantial Completion or Substantially Complete: The point in time when all of the following have occurred with respect to all of the Work, or a Phase: (1) all demolition, improvements, and construction and installation activities have been completed with only minor punch list items remaining to be completed; (2) all permits, approvals and certificates that are required for ACPS to occupy or use the Project, or such Phase, have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract Documents have been delivered to ACPS; (4) all training sessions required by the Contract Documents for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract Documents has been completed; and, (6) the Project, or such Phase, is ready for ACPS to use for its intended purpose. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within sixty (60) Days without interfering with ACPS's normal use of the Project.

1.34 Substantial Completion Date, Substantial Completion Dates, or Substantial Completion Date(s): The respective dates by which the Construction Manager is required to Substantially Complete each Phase, or if there are not Phases then the date by which the Construction Manager is required to Substantially Complete all of the Work.

The Substantial Completion Date(s) will be set forth in the GMP Amendment and shall be consistent with ACPS fully occupying and using the new school building by the start of its 2014/2015 academic school year. The Substantial Completion Date(s) may be modified only by Change Order or Change Directive in accordance with the Contract Documents

1.35 Work: All labor, materials, supplies, equipment, services, supervision, administration and all other things necessary for the Construction Manager to (1) construct and complete all of the buildings and improvements depicted in the Construction Documents in accordance with the same and the requirements of the other Contract Documents, and (2) perform and fulfill all of the Construction Manager's other obligations under the Contract Documents.

ARTICLE 2 GENERAL PROVISIONS

2.1 Relationship of Parties. The Construction Manager accepts the relationship of trust and confidence established with ACPS by this Agreement, and agrees to cooperate with ACPS and the Architect/Engineer in furthering the interests of ACPS. The Construction Manager shall perform its duties under the Contract Documents with the professional care and skill ordinarily exercised by Construction Managers practicing in the same or similar locality, on projects similar to this Project, under the same or similar circumstances ("Standard of Care"). ACPS shall endeavor to promote harmony and cooperation amongst itself, the Architect/Engineer, the Construction Manager, and other persons or entities employed by ACPS for the Project.

2.2 Project Manager. ACPS has retained a Project Manager. The Project Manager shall, at all times, be acting for the sole benefit of ACPS. The Project Manager is identified in Section 2.7.3 hereof, and the role of the Project Manager is addressed in Section 6.2 hereof.

2.3 Contract Documents.

2.3.1 The Contract Documents are comprised of the following:

.1 All written modifications, amendments and Change Orders to the Contract Documents signed and issued by ACPS after the execution of this Agreement;

.2 This Agreement;

.3 The RFP;

.4 The Construction Documents; and

.5 The Proposal; provided, however, any term in the Proposal that contradicts a term in the RFP, that attempts to change, limit or exclude a term in the RFP, that in any way limits or diminishes any of ACPS's rights, or that in any way expands any of ACPS's duties or obligations, is expressly excluded from and is not a part of the Contract Documents.

2.3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. In the event inconsistencies, conflicts, or ambiguities exist between or among the Contract Documents, ACPS and Construction Manager shall attempt to resolve such ambiguity, conflict or inconsistency, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.3.1 hereof.

2.4 General Description of Construction Manager's Duties. The Construction Manager shall supply and furnish all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and properly perform its duties and responsibilities under the Contract Documents, except such items that ACPS in writing specifically agrees to supply or furnish to or for the use of Construction Manager. Any labor, materials, equipment, tools, services or supervision not specifically described in the Contract Documents, but which may be fairly implied as required thereby or necessary to properly complete the Project, shall be deemed within the scope of the Work and shall be provided by the Construction Manager. Construction Manager represents that it possess the requisite skill, expertise, and licensing to perform the Work.

2.5 Preconstruction Phase. The Preconstruction Phase shall commence when this Agreement is fully executed, and it shall end when ACPS and the Construction Manager execute the GMP Amendment. All aspects of the Work that are to be performed by the Construction Manager during the Preconstruction Phase are referred to as the "Preconstruction Phase Services."

2.6 Construction Phase. The Construction Phase shall commence when the GMP Amendment is executed by ACPS and the Construction Manager, and it shall end when the Construction Manager has completed all of its obligations under the Contract Documents. All aspects of the Work that are to be performed by the Construction Manager during the Construction Phase are referred to as the "Construction Phase Services."

2.7 Designated Representatives and Notices.

2.7.1 The name, address, phone number, facsimile number and email address of the Construction Manager's representative who has authority to bind the Construction Manager and to whom all notices required under the Contract Documents must be sent, is:

Susan B. W. Boggs, Vice President
Turner Construction Company
1110 Vermont Avenue, Suite 200
Washington, DC 20005
P: 202.715.2150
F: 202.898.2531
E: sboggs@tcco.com

2.7.2 The name, address, phone number, facsimile number and email address of the representative of ACPS to whom all documents and notices required under the Contract Documents must be sent, is:

Jay Brinson
Senior Project Manager
Brailsford and Dunlavey
1140 Connecticut Ave. NW, Suite 400,
Washington, DC 20036
P: 202.266.3412
F: 202.289.6461
E: jbrinson@programmanagers.com

2.7.3 ACPS has retained the following Project Manager:

Brailsford & Dunlavey
1140 Connecticut Ave. NW, Suite 400
Washington, DC 20036
Attn: James J. Brinson
P: 202.266.3412
F: 202.289.6461
E: jbrinson@programmanagers.com

2.7.4 All required notices, requests, demands, and other communications that one party is required to provide to the other shall be made in writing and shall be either personally delivered, mailed by certified or registered mail (postage prepaid, return

receipt requested), sent via nationally recognized overnight delivery service, emailed, or sent by facsimile, to the other party's representative at the physical address, email address or facsimile number provided in accordance with this Section 2.7, and shall be deemed to have been given on the date of actual delivery.

2.8 Rights Between the Parties. All of the duties and obligations that the Contract Documents impose upon the Construction Manager are owed by the Construction Manager to both ACSB and ACPS. All of the rights that the Construction Manager has under the Contract Documents are enforceable by the Construction Manager solely against ACSB. The Construction Manager shall have no Claims against ACPS. All express and implied references in this Agreement to Claims that the Construction Manager has against ACPS (including, but not limited to, Section 1.7 and Article 16) shall be deemed to mean Claims that the Construction Manager has against ACSB. The Construction Manager has no right to sue ACPS.

**ARTICLE 3
PRECONSTRUCTION PHASE SERVICES**

3.1 General. During the Preconstruction Phase, the Construction Manager shall perform and complete all of the Preconstruction Phase Services, including, but not limited to, scheduling and attending regular meetings with ACPS and the Architect/Engineer, performing value engineering and constructability reviews, and providing scheduling and cost estimating for the design with the goal of developing an acceptable GMP and Construction Schedule, all as more fully discussed in this Article 3. Without limiting the generality of the foregoing, the Construction Manager shall perform the following tasks:

.1 The Construction Manager shall produce construction cost estimates as provided in Section 3.3 hereof.

.2 The Construction Manager shall consult with ACPS and the Architect/Engineer regarding Site improvements, and the selection of materials, building systems and equipment with respect to such issues as, sustainability, maintainability and initial versus life-cycle costs.

.3 The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for

procurement, installation and construction completion; and factors related to construction costs including estimates of alternative designs or materials, preliminary budgets and possible economies.

3.2 Initial Construction Schedule.

3.2.1 Within sixty (60) Days after this Agreement is fully executed, the Construction Manager shall prepare and provide to the Architect/Engineer for its review, and to ACPS for its review and approval, a proposed construction schedule for the Project ("Construction Schedule"). The Construction Schedule shall be based on the Critical Path Method (CPM) and shall provide the timing of the various components of demolition and major construction activities to be undertaken in connection with the Project and the approximate timing for commencement and completion of such activities. The Construction Schedule shall be consistent with ACPS's schedule and the Architect/Engineer's schedule for the Project, which schedules ACPS will provide to the Construction Manager to the extent it has not already done so. The Construction Schedule shall also include, without limitation: proposed activity sequences and durations; proposed milestone dates for receipt and approval of pertinent information; delivery of materials or equipment requiring long-lead time procurement; ACPS's occupancy requirements and phasing for, at a minimum, construction of the new building, demolition of the existing buildings, and completion of site work landscaping; the Completion Dates; and, the anticipated date when the Construction Manager will submit the GMP Proposal (see Section 4.1 hereof). The Construction Schedule shall take into account: ACPS's academic calendar year with regard to Project phasing and work day hours; the fact that the Site is occupied, and, during school days, the Construction Manager shall not interfere with student drop off and pick up activities at the Site; the fact that for each workday, Construction Manager is not permitted to commence work at the Site before 8:00 a.m., EST.

3.2.2 During the Preconstruction Phase, the Construction Manager shall maintain and update the Construction Schedule and promptly notify ACPS of any delays to the activities on that schedule, regardless of their cause, the causes of such delays, and the Construction Manager's best projection of the affect of such delays on the Substantial Completion Date(s). ACPS's receipt of, and lack of objection to, any schedule update showing a delay to the Substantial Completion Date(s) shall not be regarded

as ACPS's agreement that those dates should be extended, or as a waiver of any of ACPS's rights, but merely as the Construction Manager's representation that, as a matter of fact, Substantial Completion of the Work or Phases may not be achieved by the Substantial Completion Date(s).

3.3 Construction Cost Estimates.

The Construction Manager shall prepare and provide ACPS with good faith construction cost estimates from the 100% Schematic Design Documents and the 100% Design Development Documents, or at such other intervals as reasonably requested by ACPS. Promptly following each of these estimates, Construction Manager shall organize and lead value engineering workshops with the Architect/Engineer, Project Manager and ACPS with the goal of bringing estimated costs within ACPS's budget. During these workshops, the Construction Manager shall provide value engineering ideas and make such other recommendations as may be appropriate to permit the Project to be constructed within an amount that is consistent with ACPS's budget for the construction of the Project. The Construction Manager shall take and distribute minutes of these workshops. Each of the Construction Manager's cost estimates shall include projections of construction costs both on a monthly basis and based on ACPS's fiscal year. ACPS is limited to specific capital allocations on a fiscal year basis, and Construction Manager shall coordinate the Project phasing and projected construction costs such that they are consistent with those allocations and funding.

3.4 Construction Bid Packages.

The Construction Manager shall review the design for constructability, clarity and completeness. The Construction Manager, in cooperation with the Architect/Engineer, shall separate construction work into appropriate bid packages. The Construction Manager shall prepare bid documents and forms to distribute to potential bidders.

3.5 Subcontractors and Suppliers.

The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to ACPS for ACPS's information a list of possible Subcontractors and material suppliers from whom proposals will be requested for each principal portion of the Work. ACPS will promptly reply in writing to the Construction Manager if it knows of any objection to such Subcontractor or supplier. The receipt of such list shall not require ACPS to investigate or determine the qualifications of proposed Subcontractors or suppliers, nor shall it

waive ACPS's right to later object or reject any proposed Subcontractor or supplier for cause.

3.6 Long-Lead Time Items. The Construction Manager shall recommend to ACPS a schedule for procurement of long-lead time items that will constitute part of the Work as required to meet the Construction Schedule. If ACPS so determines, it may direct the Construction Manager in writing to purchase such long-lead time items prior to commencement of the Construction Phase. Any such contracts or purchase orders shall be entered into by the Construction Manager as agent for ACPS, and shall be assigned by ACPS to the Construction Manager if they execute a GMP Amendment.

3.7 Conformance with Applicable Laws. It shall be the responsibility of the Construction Manager to perform its duties under the Contract Documents in conformance with all Applicable Laws; and it is the sole responsibility of the Construction Manager to identify the Applicable Laws. This Section 3.7 shall apply during both the Preconstruction Phase and the Construction Phase.

3.8 Warranties and Representations.

3.8.1 All disclosures, representations, warranties, and certifications the Construction Manager has made to ACPS prior to the execution of this Agreement shall remain binding and in effect throughout the term of this Agreement. The Construction Manager reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

3.8.2 If any disclosure, representation, warranty or certification the Construction Manager has made to ACPS, including, without limitation, representations concerning the Construction Manager's experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of this Agreement, entitling ACPS to all available remedies.

3.8.3 Sections 3.8.1 and 3.8.2 hereof shall apply during both the Preconstruction and Construction Phases.

3.9 Responsibility for Agents and Contractors. The Construction Manager shall be responsible to ACPS for any and all acts and omissions of the Construction Manager's agents, employees, Subcontractors at all tiers, material suppliers and laborers, and the agents and employees of the same, performing any functions in connection

with the Project. This Section 3.9 shall apply during both the Preconstruction and Construction Phases.

3.10 Site Conditions.

3.10.1 During the Preconstruction Phase, the Construction Manager shall carefully examine all information ACPS has provided concerning Site conditions, including, but not limited to, soils and subsurface conditions, and shall carry out any further examinations, investigations, tests, analyses and/or other studies of Site conditions (including, but not limited to, surface, water, subsurface and soils conditions) that the Construction Manager deems necessary.

3.10.2 The Construction Manager will be held to have satisfied itself as to transportation, facilities, the kind of facilities required before and during construction of the Project, access, working space and to have become acquainted with the labor conditions and the ecological and environmental conditions affecting the Work at the Site.

3.10.3 Except as expressly provided below in this Section 3.10.3, the Construction Manager assumes all risks arising from Site conditions, at or above the surface, foreseeable or unforeseeable, naturally occurring or man-made. The Construction Manager shall be entitled to an equitable adjustment for Hazardous Materials Remediation Costs in accordance with Section 12.3 hereof, and for Differing Soils Conditions, and all such Claims are subject to the requirements and procedures of Article 16 hereof. Except as regards Differing Soils Conditions and Hazardous Materials Remediation Costs, the Construction Manager shall not be entitled to adjustments to any of the Completion Dates or the GMP due to Site conditions of any kind, whether known or unknown at the time the GMP Amendment is entered into, and whether foreseeable at that time or not.

3.10.4 Construction Manager shall review the Specifications and other Contract Documents to ensure that they contain provisions for all temporary facilities necessary at the Site to enable those performing demolition and construction activities to perform their work, and provisions for all of the job Site facilities necessary to manage, inspect and supervise demolition and construction.

3.11 LEED Certification. One of the Project requirements is that the Project achieve LEED ® Silver Certification, and parties' responsibilities in connection with the same are set forth in the Green

Building Addendum attached hereto as **Exhibit A**. The Green Building Addendum, and the parties obligations and responsibilities set forth therein, apply during both the Preconstruction Phase and the Construction Phase.

ARTICLE 4
FORMATION OF GMP PROPOSAL

4.1 General. The Construction Manager shall provide ACPS with a proposed GMP for the Project (the "GMP Proposal"). The GMP Proposal shall be based upon a specific set of design documents that will be mutually agreed upon by the Construction Manager and ACPS (the "GMP Proposal Documents"). The Construction Manager shall provide the GMP Proposal to ACPS within twenty-one (21) Days of receiving the GMP Proposal Documents. The GMP Proposal shall be submitted in accordance with this Article 4. Ten (10) Days before submitting the GMP Proposal, Construction Manager shall organize and lead a value engineering workshop in the same manner and for the same purpose as described in Section 3.3.

4.2 Review of GMP Proposal Documents. ACPS has selected the Construction Manager because of its expertise with projects of this nature. Before submitting its GMP Proposal, the Construction Manager shall review the GMP Proposal Documents to verify that they are coordinated, constructible (taking into account the stage of the design), and free of ambiguities. To the extent the Construction Manager determines that the GMP Proposal Documents are not coordinated, constructible (taking into account the stage of the design), or free of ambiguities, it shall notify ACPS of such deficiencies in writing before it submits its GMP Proposal, and ACPS shall appropriately extend the time for submitting the GMP Proposal due to the same. To the extent that the Construction Manager either (i) discovers such a deficiency in the GMP Proposal Documents but does not provide ACPS with written notice of the same before it submits its GMP Proposal, or (ii) does not discover such a deficiency in the GMP Proposal Documents before it submits its GMP Proposal but such deficiency is one that another Construction Manager exercising the Standard of Care reasonably should have discovered within that time frame, such deficiency shall not be the basis for a change in the GMP or any of the Completion Dates. To the extent that the Construction Manager does not discover (and another Construction Manager exercising the Standard of Care reasonably should not have discovered) such a deficiency in the GMP Proposal Documents before the Construction

Manager submits its GMP Proposal, the Construction Manager shall be entitled to an appropriate equitable adjustment in the GMP and the affected Completion Dates, provided that the Construction Manager has complied with and satisfied the requirements for such relief and has taken all reasonable steps to mitigate the cost and delay due to such deficiency. All Claims arising under this Section 4.2 are subject to the requirements and procedures of Article 16 hereof.

4.3 Basis of GMP. The Construction Manager shall include with its GMP Proposal a written statement of its basis, which shall include:

.1 The proposed GMP, which shall be the sum of: the Cost of the Work as defined in Sections 8.3 and 8.4 hereof; the Construction Contingency as defined in Section 4.11 hereof; and, the Construction Fee as defined in Section 8.1 hereof.

.2 A list of the GMP Proposal Documents, including all addenda thereto, which were used in the preparation of the GMP Proposal.

.3 A list of allowances and a statement of their basis; provided, however, that only such allowances as are agreed to by ACPS shall be included. Under/over runs in allowances will result in a decrease/increase to the GMP as the case may be.

.4 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the GMP Proposal Documents. These clarifications will include specific reference to any exclusions from the building components, systems, and furniture, fixtures & equipment (FF&E) required under the GMP Proposal Documents. Such clarifications and assumptions must have been brought to the attention of the Architect/Engineer and ACPS prior to submission of the proposal in sufficient time for any discrepancies to be reconciled.

.5 The proposed Substantial Completion Date(s).

.6 An updated version of the Construction Schedule.

.7 The Phases.

.8 The proposed Liquidated Damages Rate(s) as described in Section 10.5.

4.4 ACPS's Review of GMP Proposal. The Construction Manager shall meet with ACPS to review the GMP Proposal and the written statement of its basis. In the event that ACPS discovers any inconsistencies or inaccuracies in the information presented, ACPS shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

4.5 ACPS's Acceptance of GMP Proposal. ACPS and the Construction Manager shall meet to negotiate the terms of the GMP Proposal. The Construction Manager shall keep its GMP Proposal open for sixty (60) Days from the date of its issuance to ACPS. Unless ACPS accepts the GMP Proposal in writing within such sixty (60) Days and so notifies the Construction Manager in writing, or if ACPS in its sole discretion affirmatively rejects the GMP Proposal in writing during that period, the GMP Proposal shall be deemed to be rejected by ACPS.

4.6 GMP Amendment. Upon acceptance by ACPS of the GMP Proposal, the GMP and its basis shall be set forth in a "GMP Amendment." If ACPS and the Construction Manager are unable to agree upon the GMP or the specific language of the GMP Amendment, then this Agreement will be terminated and ACPS will only be obligated to pay the Construction Manager for the Preconstruction Fee the Construction Manager has earned in accordance with Article 7 hereof, and such other costs, if any, that ACPS previously approved in writing. In the event this Agreement is terminated pursuant to this Section 4.6, ACPS shall be free to use any of the information developed by the Construction Manager through the time of such termination to retain another entity and to complete the Project.

4.7 Revisions to GMP Proposal Documents. ACPS shall authorize and cause the Architect/Engineer to revise the GMP Proposal Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised GMP Proposal Documents shall be furnished to the Construction Manager in accordance with schedules agreed to by ACPS, the Architect/Engineer, and the Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and ACPS if such revised GMP Proposal Documents are inconsistent with the agreed upon assumptions and clarifications.

4.8 Construction Schedule.

4.8.1 Submission. Within fifteen (15) Days after execution of the GMP Amendment, the Construction Manager shall prepare for ACPS's review and approval an updated and detailed Construction Schedule. ACPS shall have ten (10) Days to review this schedule and provide its comments to the Construction Manager.

4.8.2 Format. The Construction Schedule shall be prepared using Primavera P3, P6 or such other software approved by ACPS, utilizing a time-scaled bar chart showing continuous flow from left to right and activities that are critical to achieving milestones and all Completion Dates, identification of all "float" and a clearly highlighted critical path. Durations and specific calendar dates shall be clearly and legibly shown for the early and late start and finish of each activity. Activities shall be in sufficient detail to demonstrate a practical plan to complete all demolition and construction activities by the Completion Dates. All float in the Construction Schedule shall be for the use of the Project.

4.8.3 Sole Responsibility for Schedule. The Construction Manager shall remain solely responsible, notwithstanding ACPS's review or approval thereof, for the accuracy, suitability and feasibility of all elements of all schedules it prepares for the Project, including, without limitation, the Construction Schedule, "look ahead" schedules and all updates thereto. Failure of ACPS, or others acting on its behalf, to discover errors or omissions in schedules that it has reviewed, or to inform the Construction Manager that it or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve the Construction Manager from its sole responsibility to meet the Completion Dates and shall not be a cause for an adjustment to the same.

4.8.4 Performance and Monitoring. The Construction Manager shall plan, develop, supervise, control, and coordinate the performance of the Work so the progress, sequence and timing of the Work shall at all times conform to the then-current Construction Schedule approved by ACPS. The Construction Manager shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials and equipment, required Submittals, and the delivery of equipment; shall coordinate and integrate such information and data into the updated Construction Schedule and Record Documents; and shall monitor the progress of the Work and the delivery of equipment.

4.8.5 Separate Contractors. The Construction Manager shall cooperate with and coordinate the Construction Schedule with work of ACPS and ACPS's Separate Contractors. However, the Construction Manager cannot direct ACPS's Separate Contractors and will not be responsible for ACPS's Separate Contractors' performance with meeting schedule obligations.

4.9 Certification. By submitting a GMP Proposal, the Construction Manager shall be deemed to have certified that (1) the GMP Proposal Documents are sufficiently complete to have enabled the Construction Manager to accurately estimate construction costs in order to enter into the GMP Amendment and to enable the Construction Manager to agree to construct all of the Work depicted in the GMP Proposal Documents, and reasonably inferable therefrom, and otherwise to fulfill all of its obligations under the Contract Documents (other than the Preconstruction Phase Services) for the GMP, and (2) the Construction Manager has visited the Site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and has carefully examined all design documents provided to it.

4.10 Schedule of Values.

4.10.1 Submission. Within fifteen (15) Days after execution of the GMP Amendment, the Construction Manager shall prepare for ACPS's review and approval a "Schedule of Values" for all of the Work (other than the Preconstruction Phase Services). The Schedule of Values shall subdivide the Work (other than the Preconstruction Phase Services) into its respective parts, include values for all items comprising the Work (other than the Preconstruction Phase Services), and serve as the basis for monthly progress payments made to the Construction Manager throughout the course of the Construction Phase Services.

4.10.2 Review and Approval. ACPS shall timely review, comment upon and approve the Schedule of Values. ACPS and Construction Manager shall timely resolve any differences concerning the Schedule of Values.

4.11 Construction Contingency.

4.11.1 The GMP includes a Construction Contingency, which shall be set forth in the GMP Amendment. The Construction Contingency is a subset of the GMP; it is not in addition to the GMP. The Construction Contingency initially shall be set at

five percent (5%) of the Cost of the Work identified in the GMP Amendment. Thereafter, the Construction Contingency shall be increased or decreased to reflect net savings or net losses, as the case may be, resulting from the Construction Manager's award of subcontract and supply agreements. The amount of the adjustment to the Construction Contingency shall be determined by subtracting the amount of each subcontract and supply agreement at the time the Construction Manager enters into such agreement from the amount allocated in the Schedule of Values for the Work or materials to be performed or provided by such Subcontractor or supplier. If the resulting product is a positive number, the Construction Contingency shall be increased by such amount, and if the resulting product is a negative number, the Construction Contingency shall be decreased by such amount. The Construction Contingency shall be closed once it reaches zero Dollars (\$0.00).

4.11.2 The Construction Contingency is for the use of the Construction Manager, not ACPS. Accordingly, ACPS shall not use the Construction Contingency to fund Change Orders or other items for which the Construction Manager is entitled to an increase of the GMP. The Construction Contingency shall only be used for costs that constitute a Cost of the Work.

4.11.3 Use of the Construction Contingency shall be effectuated on a case by case basis by ACPS transferring funds from the Construction Contingency to the line item(s) in the Schedule of Values that corresponds to the Cost of the Work that is being funded from the Construction Contingency. Once funds have been transferred in this manner, the Construction Manager can bill against them as provided in Article 8 hereof. When the Construction Manager would like funds from the Construction Contingency to be used for a Cost of the Work, it shall submit a written transfer request to ACPS identifying the amount requested, the Cost of the Work for which the funds are being requested, and the line item(s) in the Schedule of Values to which the requested amount should be transferred. All such requests shall be accompanied by a transaction summary of all previous transfers from the Construction Contingency, all pending transfer requests, and the Construction Contingency balance prior to the request. ACPS shall reasonably consider all such requests from the Construction Manager, and if ACPS denies such a request, it shall explain why.

4.11.4 If the Construction Fee is a lump-sum amount, then it shall not be adjusted on account of

any funds that are transferred from the Construction Contingency and used for the Cost of the Work.

ARTICLE 5 CONSTRUCTION PHASE SERVICES

5.1 General. The Construction Phase Services consist of all aspects of the Work except the Preconstruction Phase Services. During the Construction Phase, the Construction Manager shall perform and complete all of the Construction Phase Services in accordance with the requirements of the Contract Documents. The Work shall be carried out in a good and workmanlike, first-class manner, and in a timely fashion. The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. Construction Manager shall be solely responsible for, and shall have complete control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

5.2 Subcontracting and Administration.

5.2.1 All, or substantially all, of the construction of the Project shall be carried out by Trade Subcontractors, procured by competitive sealed bidding or competitive negotiations, as no more than 10% of the construction work (measured by the Cost of the Work) shall be performed by the Construction Manager with its own forces. The Trade Subcontractors will be under written contract with the Construction Manager. All subcontracts and agreements for the supply of equipment or materials awarded for the Project shall be fixed-price contracts unless otherwise expressly authorized by ACPS in writing. Other than as identified in its accepted GMP Proposal, and subject to the 10% cap stated above in this Section 5.2.1, the Construction Manager and its affiliates may not carry out trade work with their own forces without ACPS's written permission, which permission may be withheld or conditioned by ACPS in its sole and absolute judgment. The Construction Manager shall structure the bidding process and award subcontracts in a manner that is most advantageous to the Project taking into account all relevant factors. The bidding for construction, equipment and materials must be conducted so as to achieve maximum competition among qualified bidders in order to obtain the most reasonable price, but only from responsive and responsible bidders that can ensure the successful completion of the Project.

5.2.2 The Construction Manager shall be responsible for dividing the Work into suitable bid packages, so that all of the bid packages taken

together provide for the complete performance of the Work, without omissions or gaps, and so that obtaining bids from suitable potential Trade Subcontractors and material suppliers is facilitated. The Construction Manager shall develop and discuss with ACPS lists of suitable bidders which should be invited to bid on each package; shall administer the solicitation of bids from potential Trade Subcontractors and suppliers in accordance with the Construction Schedule; and, unless ACPS agrees otherwise in writing, shall obtain bids from at least three (3) Subcontractors for trade subcontracts or supply agreements where the budgeted amount for the subcontract is in excess of One Hundred Thousand Dollars (\$100,000). In addition to the open book reporting requirements set forth in Section 5.9 hereof, the Construction Manager shall provide to ACPS a copy of all quotes, bids and proposals submitted by potential Subcontractors and suppliers.

5.2.3 The Construction Manager shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Construction Manager's evaluations of all bids, and the basis for the Construction Manager's recommendation as to which bidders should be chosen. ACPS shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Construction Manager's adherence to these requirements.

5.2.4 ACPS may, in its reasonable discretion, reject any or all quotes, bids and proposals received for any bid package, and may require the Construction Manager to obtain new or revised quotes, bids or proposals. ACPS must exercise this right within seven (7) Days of receiving the quote, bid or proposal.

5.2.5 ACPS may, in its sole discretion, direct the Construction Manager to accept a bid from a qualified bidder other than the bidder to whom the Construction Manager recommends award of a subcontract or supply agreement, provided, however, that the Construction Manager shall not be required to contract with any Subcontractor to which it has reasonable objection. If ACPS chooses this option, and if the bidder the Construction Manager recommended was qualified, ACPS shall issue a Change Order to the Construction Manager for any difference between the cost of the subcontract or supply agreement awarded and the bid price of the Subcontractor or supplier recommended by the

Construction Manager, but without an adjustment to the Construction Fee.

5.2.6 ACPS is entitled to approve all Subcontractors and suppliers. ACPS may elect to review the form of any subcontract or agreement with a material supplier to ensure that such contract incorporates the contractual provisions required by this Agreement.

5.2.7 The Construction Manager must contract for the provision of all services and materials (other than Self-Performed Work) via written subcontracts or written supply agreements. All subcontracts and supply agreements shall include the following provisions:

.1 that, to the extent of the Work within the agreement's scope, the Subcontractor or supplier is bound to the Construction Manager for the performance of all obligations which the Construction Manager owes ACPS under the Contract Documents;

.2 that the Subcontractor or supplier is not in privity with ACPS and shall not seek compensation directly from ACPS on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise;

.3 that ACPS is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

.4 that the Subcontractor or supplier consents to assignment of its agreement to ACPS, at ACPS's sole option, if the Construction Manager is terminated for default;

.5 that the Subcontractor or supplier shall comply immediately with a written order from ACPS to the Construction Manager to suspend or stop work;

.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, and requiring the Subcontractor or supplier to make those records available for review or audit by ACPS;

.7 that the Subcontractor and its subcontractors of all tiers have reviewed the

Construction Documents for accuracy, constructability and completeness and they brought all deficiencies they actually discovered to the attention of the Construction Manager before the Subcontractor entered into the subcontract with the Construction Manager;

.8 that the Subcontractor shall obtain and maintain, throughout the duration of the Project, workers' compensation insurance in accordance with the laws of the Commonwealth of Virginia (this provision is not applicable to supply agreements);

.9 that, if ACPS terminates this Agreement for convenience, the Construction Manager may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) Days written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such case, be entitled to recover from the Construction Manager only the costs set forth in the Termination for Convenience provisions of this Agreement;

.10 that ACPS shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Construction Manager files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

.11 that, if it comes to ACPS's attention that a Subcontractor or supplier has not been paid in a timely fashion (other than for disputed amounts or Work for which ACPS has not paid the Construction Manager), and if the Construction Manager fails to cure the problem within five (5) Days after ACPS provides it written notice of the problem, ACPS may make payments to the Subcontractor or supplier and Construction Manager by joint check;

.12 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

.13 provisions substantially similar to Sections 5.2.8 through 5.2.11 hereof, requiring that Subcontractors and suppliers promptly pay their subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or

suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;

.14 a provision requiring that all Subcontractors at all tiers comply with the provisions of Article 11 hereof; and

.15 a provision which allows the Construction Manager to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the subcontract.

5.2.8 For each Subcontractor and supplier, Construction Manager shall take one of the following two actions within seven (7) Days after it receives payment from ACPS under this Agreement:

(i) pay the Subcontractor or supplier its proportionate share of the total payment Construction Manager received from ACPS that is attributable to the Work performed and materials provided by the Subcontractor or supplier; or

(ii) notify ACPS and the Subcontractor or supplier, in writing, of the Construction Manager's intention to withhold all or a part of the Subcontractor's or supplier's payment with the reason for nonpayment.

5.2.9 For each Subcontractor and supplier, Construction Manager shall pay interest to the Subcontractor or supplier on all amounts Construction Manager owes the Subcontractor or supplier that remain unpaid after seven (7) Days following Construction Manager's receipt of payment from ACPS for Work performed or materials provided by the Subcontractor or supplier, except for amounts withheld from Subcontractor or supplier and for which written notice was provided to ACPS and the Subcontractor or supplier as provided in Section 5.2.8 hereof. Unless otherwise provided in this Agreement, interest shall accrue on said amounts at the rate of one percent per month.

5.2.10 Construction Manager shall furnish to ACPS the names of Subcontractors at all tiers and suppliers who are to perform any Work or provide any materials in connection with this Agreement. Construction Manager shall also furnish to ACPS the social security numbers or federal employer identification numbers of such entities.

5.2.11 Any interest paid to Subcontractors or suppliers because the Construction Manager has failed to pay them in a timely fashion shall not be reimbursable.

5.2.12 The Construction Manager shall not enter into any profit sharing, rebate, or similar arrangement with any Subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.

5.2.13 The Construction Manager shall not substitute or replace any Subcontractor or supplier approved by ACPS without ACPS's prior written consent, which consent shall not be unreasonably withheld.

5.2.14 ACPS has the right to contact Subcontractors or suppliers at all tiers directly to confirm amounts due and owing to them or amounts paid to them for Work, and to ascertain from such Subcontractors or suppliers their projections of the cost to complete their portion of the Work, or the existence of any claims or disputes. In doing so ACPS shall not issue any directions to Subcontractors or suppliers at any tier.

5.2.15 If it comes to ACPS's attention that a Subcontractor or supplier has not been paid in a timely fashion (other than for disputed amounts), and if the Construction Manager fails to cure the problem within five (5) Days after ACPS provides it written notice of the failure to pay, ACPS may make payments to the Subcontractor or supplier and Construction Manager by joint check.

5.2.16 ACPS is a public body and neither the Project, the Site, nor any improvement thereon is subject to a mechanic's lien. Nonetheless, if at any time a Subcontractor or supplier at any tier files a lien, claim, security interest or other encumbrance against ACPS, the Site or any portion thereof or interest therein, or any improvements on the Site, the Construction Manager shall, within five (5) Days of being notified of the same, remove and discharge the lien, claim, security interest or other encumbrance by paying the claimant, or by posting a bond or other instrument in accordance with applicable law. The Construction Manager further agrees to fully indemnify and hold harmless ACPS from and against any and all damages, costs and expenses (including, but not limited to, reasonable attorney's fees) resulting from such lien, claim, security interest or other encumbrance. ACPS may withhold from any amount due or to become due to the Construction Manager an amount sufficient to remove and discharge such encumbrance until the Construction Manager has removed and discharged such encumbrance as required by this Section 5.2.16. If the Construction Manager has not removed and discharged a lien, claim, security interest or other

encumbrance covered by this Section 5.2.16 within five (5) Days after being notified of the same, ACPS may cause the encumbrance to be removed and discharged, whereupon for purposes of this Agreement, all amounts paid to discharge the encumbrance and all amounts incurred by ACPS in connection with the encumbrance (including, but not limited to, reasonable attorney's fees) shall be deemed to have been paid by ACPS to the Construction Manager and will be reflected in all future Applications for Payment. If ACPS discharges a lien, claim, security interest or other encumbrance covered by this Section 5.2.16, and if the cost of doing so exceeds the balance ACPS owes the Construction Manager under this Agreement, the Construction Manager shall promptly pay ACPS the difference. Construction Manager's obligations and ACPS's rights under this Section 5.2.16 shall not apply if the lien, claim, security interest or other encumbrance is based upon an amount that ACPS owes Construction Manager and which ACPS has not paid Construction Manager.

5.2.17 The Construction Manager shall be responsible to ACPS for any and all acts and omissions of Subcontractors at all tiers and anyone else performing any aspect of the Work.

5.3 **Daily Reports.** At the end of each day that the Construction Manager or any of its Subcontractors at all tiers performs Work on the Site, the Construction Manager shall submit a daily report to ACPS (on a form approved by ACPS), that contains at least the following information:

.1 Labor - The number of workers, their classification and hours worked.

.2 Material - Describe and list quantities of materials used.

.3 Equipment - Show type of equipment, size, and hours of operation, including loading and transportation, if applicable.

.4 Areas of Work - State the areas of the Site on which Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the day.

.5 Accidents, Delays, Defective Work - Describe in detail any injuries to workers, accidents, delays, or Defective Work that were encountered.

.6 Weather – Identify the temperature and precipitation, if any.

5.4 **Weekly Meetings.** The Construction Manager shall schedule and conduct weekly progress meetings at which ACPS, the Project Manager, the Architect/Engineer, the Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to all attendees.

5.5 **Cost Control System.** The Construction Manager shall develop a system of cost control for the Work in a format consistent with the Specifications and approved by ACPS, which shall include, without limitation, regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to ACPS and the Project Manager at regular intervals.

5.6 **Monthly Reports.** On the first Monday of each month, from the commencement of the Construction Phase until Final Completion has occurred, the Construction Manager shall deliver to ACPS a written report including the following elements:

.1 **Schedule Update.** Each monthly update shall reflect actual conditions of construction progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Construction Manager's best projection of the actual date by which Substantial Completion of the Phases (or if there are no Phases then of the entire Work) and Final Completion will be achieved. Each monthly update shall include both a CPM Schedule update and a narrative statement in which the Construction Manager shall identify the causes of any potential delay and state what, in the Construction Manager's judgment, must be done to avoid or reduce that delay. The Construction Manager shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of Work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on any of the Completion Dates. All schedule

updates shall be in a form reasonably acceptable to ACPS. Submission of updates showing that Substantial Completion of the Phases (or if there are no Phases then of the entire Work) or Final Completion will be achieved later than the Completion Dates shall not constitute requests for extension of time and shall not operate to change those dates. ACPS's receipt of, and lack of objection to, any schedule update showing Substantial Completion of the Phases (or if there are not Phases then of the entire Work) or Final Completion later than the Completion Dates shall not be regarded as ACPS's agreement that the Construction Manager may have an extension of time, or as a waiver of any of ACPS's rights, but merely as the Construction Manager's representation that, as a matter of fact, Substantial Completion of the Phases (or if there are no Phases then of the entire Work) and/or Final Completion may not be achieved by the Completion Dates. Changes to the Completion Dates may be made only under the circumstances and only by the methods set forth in this Agreement.

.2 Cost Update. The monthly update shall reflect by GMP line item the original line item amount, approved, pending, and projected Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete. A clear distinction must be made between approved Change Orders and those merely requested or anticipated. The report shall explain all variances including "buy-outs" or final actual costs including those below their respective GMP line item. Under no circumstances will the submission of, or ACPS's failure to reject, an update reflecting that the projected cost to complete the Work will exceed the GMP operate to increase the same or waive ACPS's right to enforce the GMP. If the report reflects budget overruns, it must also include a recovery plan.

.3 Quality Control/Assurance Report. The monthly report shall include a detailed summary of all quality control and workmanship concerns that were previously raised by ACPS and the steps that were employed, or are being employed, by the Construction Manager to address the same.

5.7 Key Personnel. The Construction Manager shall provide the Key Personnel identified in its Proposal, or if such personnel were not identified in its Proposal, the Construction Manager shall submit a list of such personnel to ACPS within seven (7) Days after this Agreement is executed, which is subject to

ACPS's reasonable approval. The Construction Manager's obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Construction Manager shall not replace any of the Key Personnel without ACPS's prior written approval.

5.8 Qualified Personnel/Cooperation. The Construction Manager shall employ on the Project only those qualified employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Construction Manager shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the Site any person who is unfit for the Work or fails to conduct himself in a proper and cooperative manner. If ACPS requests removal of any person as unfit or as having behaved inappropriately, the Construction Manager shall promptly comply.

5.9 Open Book Reporting. Construction Manager shall retain all books, records, and other documents relative to the Contract Documents for five (5) years after its receipt of Final Payment under this Agreement, or until audited by the Commonwealth of Virginia, whichever is sooner. Such records shall include, but not be limited to: invoices; purchase orders; Change Order estimates; records for Self-Performed Work; paid vouchers; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; insurance documents; payroll documents; timesheets; memoranda; and, correspondence. ACPS, its authorized agents, and auditors of the Commonwealth of Virginia shall have full access to and the right to examine all such documents during said period. Records will be available on demand and with reasonable notice during normal working hours. Further, the Construction Manager will provide ACPS and its consultants with access to such documentation and information maintained by its Subcontractors and suppliers to the extent that (i) the Construction Manager's contract with its Subcontractor or supplier is a cost-reimbursable contract, or (ii) with respect to fixed-price contracts, it pertains to an issue for which the Subcontractor or supplier has requested an increase to its contract amount and ACPS has either agreed to provide reimbursement based on time and materials, or has not agreed upon the amount due, if any.

5.10 Submittals.

5.10.1 Not Contract Documents. Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, how the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents.

5.10.2 Submittal Schedule. Within seven (7) Days after ACPS approves the updated Construction Schedule referenced in Section 4.8.1 hereof, the Construction Manager shall prepare and submit to the Architect/Engineer for its review and approval a proposed submittal schedule for the construction of the Work ("Submittal Schedule"). The Submittal Schedule shall be coordinated with the Construction Schedule, shall identify the dates for the submission and return of all Submittals, and shall indicate the Submittal designation, description, Specification and Drawing reference. The Submittal Schedule shall afford the Architect/Engineer at least fourteen (14) Days to review and return each Submittal. The Construction Manager shall make allowance in the Submittal Schedule for mailing of Submittals unless the Construction Manager provides other means of delivery. Late or untimely Submittals shall not reduce the Architect/Engineer's review time.

5.10.3 Construction Manager Approval. The Construction Manager shall review, stamp "Reviewed," and submit to the Architect/Engineer, all Submittals required by the Contract Documents. Submittals that are not stamped "Reviewed" by the Construction Manager shall be returned, without further consideration, for resubmission in accordance with these requirements. Submittals shall be provided in accordance with the Submittal Schedule. Submittals made by the Construction Manager, which are not required by the Contract Documents, may be returned without action. Submission of Submittals to the Architect/Engineer must include a statement, in writing, identifying any deviations from the Drawings and Specifications. By stamping a Submittal "Reviewed" and submitting it to the Architect/Engineer, the Construction Manager represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittal with the requirements of the Contract Documents and with the Submittals for related Work.

5.10.4 Review by Architect/Engineer. No Work requiring a Submittal shall be performed by the

Construction Manager until the Submittal has been reviewed by the Architect/Engineer and the Architect/Engineer has either approved it or affirmatively stated in writing that no exceptions have been taken. Submittals shall be returned in accordance with the Submittal Schedule. To the extent a Submittal is not covered by the Submittal Schedule, the Construction Manager shall allow a maximum of fifteen (15) Days for review of Submittals, or longer for Submittals that are lengthy or complex.

5.10.5 Sole Responsibility. Review of Submittals by the Architect/Engineer or ACPS will be general and for conformance with design intent, and shall not relieve the Construction Manager from its sole responsibility for proper fitting and construction of the Work, nor from furnishing materials and Work required by the Construction Manager, which may not be indicated on the reviewed Submittals. The Construction Manager shall remain solely responsible, notwithstanding ACPS's or the Architect/Engineer's review or approval of Submittals, for deviations (including without limitation those arising from standard shop practice) from requirements of the Contract Documents, unless the Construction Manager has specifically informed the Architect/Engineer in writing of such deviation at the time of transmitting the Submittal and the Architect/Engineer has given specific written approval of such deviation. No adjustment in the GMP or any of the Completion Dates shall be permitted with respect to any such deviations that are noted in writing by the Construction Manager and as to which the Architect/Engineer takes no exception or approves. The Architect/Engineer's approval of a Submittal shall not constitute approval of safety precautions, means, methods, techniques, sequences or procedures. The Architect/Engineer's approval of a specific item shall not constitute approval of an assembly of which the item is a component.

5.10.6 Multiple Reviews. After reviewing the Construction Manager's Submittals, the Architect/Engineer will transmit to the Construction Manager the required number of sets. If the Submittals are found to be incomplete or incorrect, the Construction Manager shall resubmit them after corrective action has been taken. The Construction Manager shall reimburse ACPS, or ACPS may withhold from payments due the Construction Manager, sums owing by ACPS for any fees charged by the Architect/Engineer for more than two (2) reviews of a Submittal, or for accelerated review in a shorter time than set forth in the Submittal Schedule if caused by late Submittals by the Construction

Manager. The return of a Submittal for correction or additional information shall be considered a review.

5.10.7 Content. Submittals shall show in detail the size, sections, and dimensions of all members; the arrangement and construction of all connections and joints, and other pertinent details. When required by the Architect/Engineer, engineering computations shall be submitted. The Construction Manager shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

5.10.8 Copies at Site. The Construction Manager shall maintain at the Site, at all times a complete file of all Architect/Engineer-reviewed and/or approved Submittals.

5.11 Inspections and Permits.

5.11.1 Construction Manager Responsibility. Except as otherwise provided in the Contract Documents, all inspections, permits (including but not necessarily limited to the building permit), licenses and fees required by Applicable Laws, the Contract Documents or government agencies for the Work shall be scheduled, arranged, requested, coordinated, obtained, paid for and supervised by the Construction Manager. With the exception of third-party inspectors that may be retained by ACPS, the costs for such inspections, permits, licenses and fees charged by third-parties or government agencies shall be a Cost of the Work. When, in order to comply with the intent of the Contract Documents, inspections must be made at the plant or mill of the manufacturer or fabricator of material or equipment, the Construction Manager shall notify the persons concerned and the Architect/Engineer a sufficient length of time in advance to allow for arrangements to be made for such inspection and for any observations by the Architect/Engineer, ACPS or such others as they may designate.

5.11.2 Notice. The Construction Manager shall notify the Architect/Engineer in writing at least two (2) business days in advance of the permanent concealment of any materials or Work. If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to demonstrate to the satisfaction of the Architect/Engineer and ACPS that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by the Construction Manager at its own expense, and

shall not be reimbursable. The Construction Manager shall replace, at its own expense (and not as a Cost of the Work), any materials or Work damaged by exposure and any faulty materials or workmanship evidenced by such exposure or testing.

5.11.3 No Acceptance. Any inspection or approval by the Architect/Engineer or ACPS shall not be construed as acceptance of the Work and will not relieve the Construction Manager of its sole responsibility for incorporating into the Work only those items of Work which conform to the Contract Documents, and any Defective Work shall be removed from the Site whenever identified.

5.12 Safety.

5.12.1 Sole Responsibility. The Construction Manager shall have sole responsibility for safety precautions and programs in the performance of the Work. While the provisions of the Contract Documents may contemplate that Trade Subcontractors assume responsibility for the safety of persons or property in the performance of the Work, such provisions shall not be interpreted as relieving the Construction Manager of its sole responsibility to ACPS for creating and maintaining safe conditions for all persons and property at the Site.

5.12.2 Notices. The Construction Manager shall provide ACPS with copies of all safety-related notices required of the Construction Manager by Applicable Laws.

5.12.3 Unsafe Work. If ACPS reasonably deems any part of the Work or Site unsafe, ACPS may require the Construction Manager, without assuming responsibility for the Construction Manager's safety obligations, to immediately stop performance of the Work or take corrective measures. Neither ACPS's order, nor the Construction Manager's action in response thereto, shall be the basis for any adjustment to the GMP or any of the Completion Dates.

5.13 Use of the Site and Clean Up.

5.13.1 Operation, Site Restraints. The Construction Manager shall confine operations at the Site to areas permitted by Applicable Laws and the Contract Documents. The Construction Manager shall not encumber the Site with materials or equipment so that Separate Contractors' work is hindered or impeded due to such encumbrances. In connection therewith, the Construction Manager acknowledges that it is experienced in performing construction within limited and confined areas and

spaces, and it shall take all special measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary to adapt its performance to the restraints of the Site and Work area. Construction Manager shall be solely responsible for, and assumes the sole risk of loss, theft and damage, for all materials, supplies, equipment and other items that it or its Subcontractors at all tiers store or keep at the Site.

5.13.2 Occupied Site. Construction Manager understands that ACPS will occupy and use the Site during the construction of the Project. The Construction Manager shall take all reasonable measures to limit construction noise, dust and other construction related disturbances in order to maximize ACPS's use and enjoyment of the Site during the construction of the Project. The Construction Manager shall strictly observe all work hour and parking restrictions set forth in the Contract Documents. The Construction Manager's personnel and the personnel of Subcontractors at all tiers shall not be permitted to enter portions of the Site occupied by ACPS absent ACPS's written consent. Inappropriate conduct by the Construction Manager's personnel or the personnel of Subcontractors at all tiers directed toward ACPS or its students shall entitle ACPS to have such personnel permanently removed from the Project at the Construction Manager's sole cost and expense. Such inappropriate conduct includes, but is not limited to, any interaction with ACPS's teachers or students.

5.13.3 Continuous Cleanup. The Construction Manager shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by the Construction Manager or any Subcontractors at all tiers.

5.13.4 Final Completion. Upon achieving Final Completion, the Construction Manager shall remove from the Site all unincorporated construction facilities, appurtenances, tools, material and other articles. The entire area, including all fixed equipment, floors, and hardware shall be cleaned in accordance with the Contract Documents.

5.14 Construction by ACPS or Separate Contractors.

5.14.1 Award. ACPS reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project or Site, including portions of the Work which

have been deleted by Change Order. The Construction Manager shall cooperate with ACPS's forces and Separate Contractors.

5.14.2 Coordination. ACPS shall provide coordination of the activities of ACPS's forces and of each Separate Contractor with the Work of the Construction Manager. The Construction Manager shall participate with ACPS and Separate Contractors in joint reviews of construction schedules and Project requirements when directed to do so. The Construction Manager shall make necessary revisions to the Construction Schedule after such joint reviews.

5.14.3 Storage. The Construction Manager shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Construction Manager shall schedule and coordinate its construction and operations with the construction and operations of Separate Contractors.

5.14.4 Inspection. If a portion of the Work is dependent upon certain work performed by Separate Contractors, the Construction Manager shall perform a reasonable visual inspection of that work before proceeding with the Work. If the Construction Manager discovers any defects, deficiencies or other conditions in the Separate Contractors' work that will negatively impact the Work, then the Construction Manager will immediately provide ACPS with written notice of such defects, deficiencies or other conditions. Unless otherwise directed in writing by ACPS, the Construction Manager shall not proceed with the portion of the Work that is affected by such defects, deficiencies or other conditions until they have been corrected.

5.14.5 Damage. If the Construction Manager wrongfully causes damage to completed or partially completed construction or to property of ACPS or Separate Contractors, the Construction Manager shall promptly remedy, at its own expense and not reimbursed by ACPS, such damage.

5.14.6 Cutting, Patching. ACPS and each Separate Contractor shall, with respect to work they perform, have the same responsibilities for cutting and patching as are described for the Construction Manager in the Contract Documents.

5.15 Documents and Samples at the Site.

5.15.1 Record Documents. The Construction Manager shall maintain at the Site one (1) set of

Record Documents, which shall be kept up to date on a daily basis at all times during the performance of the Work. The Record Documents shall be in the form of a complete set of the Drawings and Specifications on which daily recordings are made by the Construction Manager showing in detail and dimension each variation to the Drawings and Specifications due to all performed changes, and all deletions of and additions to the Work. The Record Documents shall reflect the as-built condition of all Work, including, without limitation, the final and exact locations and dimensions of all mechanical, electrical, plumbing, HVAC and other portions of the Work that are shown diagrammatically in the Contract Documents. Upon, and as a condition precedent to, Final Payment, the Record Documents shall be signed and attested to by a representative of the Construction Manager as being complete and accurate.

5.15.2 Documents at Site. The Construction Manager shall, at all times during performance of the Work, maintain the following at the Site, which shall be made available to ACPS, the Project Manager and Architect/Engineer upon their request:

- .1 One (1) copy of the Record Documents.
- .2 The latest updated Construction Schedule that is approved by ACPS.
- .3 All required Submittals.

ARTICLE 6 **ACPS'S RESPONSIBILITIES**

6.1 Information and Services. During the Preconstruction Phase, ACPS shall promptly furnish the Construction Manager with the following at ACPS's expense:

- .1 Reports, surveys, drawings and tests concerning the conditions of the Site that are required by law.
- .2 Surveys describing physical characteristics, legal limitations and utility locations for the Site. The surveys and legal information shall include, as necessary, grades and lines of streets, pavements and adjoining property and structures; adjacent drainage, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and

information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

6.2 Project Manager. The Project Manager's function will be to assist ACPS with day-to-day matters concerning the Project. The Project Manager does not have any authority to make any changes to the Contract Documents or to otherwise cause an increase to the GMP or any of the Completion Dates. The Construction Manager shall provide the Project Manager, on behalf of ACPS, with all documents and notices that the Construction Manager is required to provide ACPS under the Contract Documents. Further, the Construction Manager shall provide the Project Manager with access to all materials to which ACPS has access and shall permit the Project Manager to attend all meetings to which ACPS is invited.

6.3 Decisions. ACPS and the Project Manager shall render decisions promptly and furnish information to the Construction Manager expeditiously, so as to avoid unreasonable delay in Construction Manager's performance of the Work. It shall be Construction Manager's responsibility to keep ACPS and its Project Manager informed of deadlines for any such decisions and to notify ACPS and its Project Manager in advance in writing of the possible impacts due to ACPS, thus allowing ACPS reasonable opportunity to avoid or mitigate any impacts.

ARTICLE 7 **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

7.1 Compensation. For the Construction Manager's proper and full performance of the Preconstruction Phase Services, ACPS shall pay the Construction Manager the lump-sum amount of Ninety-Nine Thousand, Six Hundred Dollars (\$ 99,600.00) (the "Preconstruction Fee"), which includes all taxes applicable to the Preconstruction Phase Services; provided, however, the Preconstruction Fee shall not include, and no charge will be allowed for, those sales and excise taxes for which ACPS is exempt by state law.

7.2 Invoicing. On or before the 10th day of each month during the performance of the Preconstruction Phase Services, Construction Manager shall submit an invoice to ACPS (or, if

directed by ACPS, to the Architect/Engineer or the Project Manager) that covers the entire preceding month, along with all substantiating data and information reasonably requested by ACPS, the Architect/Engineer or the Project Manager. The Preconstruction Fee shall be billed on a rolling, prorated basis calculated at the time each invoice is prepared as follows: (a) take the balance of the Preconstruction Fee that has not been billed, and (b) divide that amount by the number of months that remain until the Construction Manager submits the GMP Proposal, which shall be measured from the date of the invoice until submission of the GMP Proposal as shown on the approved Construction Schedule in effect at the time the invoice is prepared.

7.3 Payments. Payments are due and payable sixty (60) Days from the date of the Construction Manager's properly submitted and approved invoice. In no event will the aggregate of the Construction Manager's monthly invoices for Preconstruction Phase Services exceed the Preconstruction Fee.

7.4 Availability of Funds. Notwithstanding anything to the contrary in this Agreement or the other Contract Documents, it is expressly understood and agreed that all of ACPS's payment obligations to Construction Manager are limited by, and shall in no event exceed, the funds that have been made available to ACPS, or which may hereafter be made available to ACPS, for this Agreement. This limitation applies to the Preconstruction Phase and the Preconstruction Fee, as well as the Construction Phase and the Construction Price.

ARTICLE 8 COMPENSATION AND PAYMENTS FOR CONSTRUCTION PHASE SERVICES

8.1 Compensation. For the Construction Manager's proper and full performance of the Construction Phase Services, ACPS shall pay the Construction Manager the Construction Price. The Construction Price is the Cost of the Work as defined in Section 8.3 hereof plus the Construction Manager's fee for providing the Construction Phase Services (the "Construction Fee"). The Construction Fee shall be set forth in the GMP Amendment.

8.2 Guaranteed Maximum Price. The Construction Manager guarantees that the Construction Price shall not exceed the GMP, as it may be amended from time to time in accordance with this Agreement. To the extent the Cost of the Work plus the Construction Fee exceeds the GMP, the Construction Manager shall bear such costs and

amounts in excess of the GMP without reimbursement or additional compensation from ACPS.

8.3 Cost of the Work. The term "Cost of the Work" shall mean the following costs to the extent they are necessarily incurred by the Construction Manager in the proper performance of the Construction Phase Services:

.1 Payments made by the Construction Manager to Subcontractors and suppliers, but only in accordance with the subcontracts and supply agreements ("Subcontractor Costs").

.2 The Cost of General Conditions, as provided in Section 8.4 hereof.

.3 With respect to Self-Performed Work that ACPS has authorized in writing, the wages and salaries of construction workers directly employed by the Construction Manager to perform the construction of the Self-Performed Work.

.4 Labor Burden, which shall be the net costs paid or incurred by the Construction Manager for payroll taxes, worker's compensation insurance, unemployment insurance and other insurance mandated by federal or local laws, taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates and the like, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section 8.3.3 hereof. Labor Burden shall not include costs of comprehensive general liability insurance, auto insurance, auto expenses, or umbrella insurance.

.5 The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the Work, or to be incorporated into the Work and stored on Site, including, without limitation, costs of transportation and handling.

.6 The cost of materials, products, supplies and equipment not actually installed or incorporated into the Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Construction Manager's agreement to turn unused excess materials over to ACPS at the completion of the Project or, at ACPS's option, to sell the material

and pay the proceeds to ACPS or give ACPS a credit in the amount of the proceeds against the Cost of the Work.

.7 Royalty and license fees paid for the use of a design, process or product, if its use is required by the Contract Documents or has been approved in advance by ACPS.

.8 Fees for obtaining all approvals, permits and licenses required by Applicable Laws, the Contract Documents or government agencies.

.9 All fees and other costs necessarily incurred to carry out testing and inspection required by the Contract Documents or Applicable Laws, or otherwise to maintain proper quality assurance. The costs the Construction Manager incurs to schedule and coordinate any additional testing and inspections ACPS may decide to conduct itself shall be paid by ACPS unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy the requirements of the Contract Documents, in which case the Construction Manager shall pay the costs, without reimbursement.

.10 Costs incurred in repairing or correcting damaged, nonconforming or Defective Work, provided that such damaged, nonconforming or Defective Work was caused by ordinary inadvertence as opposed to the negligence of the Construction Manager or any of its Subcontractors at all tiers. To the extent such costs are recoverable from insurers or Subcontractors, the Construction Manager shall exercise its best efforts to recover such costs and ACPS shall be credited with amounts so recovered.

.11 Subject to ACPS's prior written approval, the cost, net of trade discounts, of all materials, products, supplies and equipment to be incorporated into the Work and suitably stored off Site at a mutually acceptable location.

8.4 Cost of General Conditions. Items included in the Cost of General Conditions are limited to the following items necessarily incurred by the Construction Manager in the proper performance of the Construction Phase Services:

.1 The wages and salaries paid to the Construction Manager's personnel providing supervisory or administrative support for the Project (only staff stationed at the Site are reimbursable; however, exceptions will be made for scheduling, safety, cost estimating and accounting services if

such functions are normally provided by the Construction Manager's regional and/or home office personnel).

.2 Labor Burden (as defined in Section 8.3.4 hereof) on the wages and salaries allowed under Section 8.4.1 hereof.

.3 Removal of debris and waste from the Site.

.4 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Construction Manager's Site office, including the cost of postage and express delivery charges, photocopying, facsimile transmissions, long-distance telephone calls, telephone service, and reasonable petty cash expenses.

.5 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work, which are purchased for the Project, and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

.6 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work.

.7 First aid facility.

.8 Progress photos.

.9 Consumption charges for utility service during construction.

.10 Premiums for insurance and bonds required by the Contract Documents.

.11 Other costs reasonably and properly incurred in the performance of the Construction Phase Services to the extent approved in writing by ACPS.

.12 Out of house consultants and Watchmen.

8.5 General Conditions Accounting. With each of its Payment Applications, the Construction Manager shall provide ACPS with a detailed spreadsheet that identifies the Cost of General Conditions that the Construction Manager incurred for that month and all previous months, broken out by the specific types of General Conditions.

8.6 Costs Not to Be Reimbursed. The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's home office or offices other than its Site office, except as specifically allowed under Section 8.4.1 hereof.

.2 Fees for any permits or licenses the Construction Manager requires to conduct its general business operations.

.3 Expenses of the Construction Manager's home office and offices other than its Site office.

.4 Overhead and general expenses, except as may be expressly included in Sections 8.3 or 8.4 hereof.

.5 Capital expenses and interest on capital employed for the Work.

.6 Sales or excise taxes, unless the Construction Manager establishes that ACPS was not exempt and applicable law required payment of such taxes.

.7 Any cost not specifically and expressly included in Sections 8.3 or 8.4 hereof.

.8 Costs that would cause the Guaranteed Maximum Price, as adjusted pursuant to this Agreement, to be exceeded.

.9 With the exception of the costs identified in Section 8.3.10 hereof, costs due to the Construction Manager's breach of, or failure to comply with, the Contract Documents.

.10 Any costs incurred in performing work of any kind before receiving a Notice to Proceed, unless specifically authorized in writing by ACPS.

8.7 Discounts, Rebates And Refunds. Cash discounts obtained on payments made by the Construction Manager shall accrue to ACPS if (i) before making the payment, the Construction Manager included the payment in an Application for Payment and received payment for the same from ACPS, or (ii) ACPS has deposited funds with the Construction Manager with which to make said payments; otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to ACPS, and the Construction Manager shall make provisions so that they can be secured. Amounts that accrue to ACPS in accordance with the provisions of this Section 8.7 shall be credited to ACPS as a payment against the Cost of the Work.

8.8 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. ACPS, its representatives, and ACPS's accountants shall be afforded access to the Construction Manager's records, books, correspondence, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Project.

8.9 Progress Payments.

8.9.1 General. Based upon Applications for Payment the Construction Manager submits to ACPS (or, if directed by ACPS, to the Architect/Engineer or the Project Manager) and approvals or Certificates for Payment issued by ACPS or the Architect/Engineer or the Project Manager, ACPS shall make progress payments to the Construction Manager on account of the Construction Price as provided below.

8.9.2 Timing and Form. On or before the 10th day of each month during the performance of the Construction Phase Services, Construction Manager shall submit an Application for Payment to ACPS (or, if directed by ACPS, to the Architect/Engineer or the Project Manager) that covers the entire preceding month. Each Application for Payment shall be certified as true and correct by the Construction Manager. Construction Manager shall use AIA Documents G702 and G703 for its Applications for Payment, or such other forms that are acceptable to ACPS.

8.9.3 Schedule of Values. Each Application for Payment shall be based upon the most recent Schedule of Values submitted by Construction

Manager and approved by ACPS. The Schedule of Values shall allocate the entire GMP among the various portions of the Work (other than the Preconstruction Phase Services), except that the Construction Fee and Construction Contingency shall each be shown as a separate line item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as ACPS may require.

8.9.4 Percentage of Completion. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by Construction Manager on account of that portion of the Work for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values. By submitting an Application for Payment, Construction Manager represents that all Work for which payment is requested is free of defects and otherwise conforms to the Contract Documents.

8.9.5 Required Documents. Construction Manager shall furnish with each Application for Payment the following:

.1 Payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by ACPS to demonstrate that cash disbursements already made by Construction Manager on account of the Cost of the Work equal or exceed (i) progress payments already received by Construction Manager; less (ii) that portion of those payments attributable to the Construction Fee; plus (iii) payrolls for the period covered by the present Application for Payment.

.2 An updated Schedule of Values showing all committed contracts and expenses to date.

.3 A Construction Contingency usage report that identifies all amounts that have been transferred from the Construction Contingency through the previous Application for Payment, as well as the amount to be transferred for the current pay period, including a brief explanation of the reason for each transfer.

.4 An Interim Waiver and Release of Claims executed by the Construction Manager and all Subcontractors and suppliers who have supplied labor, material, or both, for which payment is requested. The forms that must be used for these waivers and releases is found at **Exhibit B**.

8.9.6 Computation. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work in accordance with Section 8.9.4 hereof by the share of the GMP allocated to that portion of the Work in the Schedule of Values.

.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, if approved in advance in writing by ACPS, suitably stored off Site.

.3 Add the Construction Fee. The amount to add for the Construction Fee shall be determined as follows: (i) if the Construction Fee is stated as a percentage of the Cost of the Work, then the amount that is derived by multiplying that percentage by the Cost of the Work, or (ii) if the Construction Fee is a lump-sum amount, then the amount that is derived by first dividing the Cost of the Work by a reasonable estimate of the probable Cost of the Work upon its completion, and then multiplying that percentage by the Construction Fee.

.4 Subtract retainage of five percent (5%) from the sum of the amounts derived in accordance with Sections 8.9.6.1 and 8.9.6.2 hereof.

.5 Subtract the aggregate of previous payments made by ACPS.

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 8.9.5.1 hereof to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by ACPS or its auditors in such documentation.

.7 Subtract amounts, if any, for which ACPS is entitled to withhold payment under this Agreement.

8.9.7 Construction Manager's Certification.

Each Application for Payment shall be accompanied by the Construction Manager's signed certification that all amounts paid to the Construction Manager on the previous Application for Payment that were attributable to Work performed by Subcontractors and suppliers has been paid to the same; that all amounts currently sought for Work performed by Subcontractors and suppliers is due and owing to the same; and that all Work for which payment is sought is, to the best of the Construction Manager's knowledge, free from defects and meets all of the requirements of the Contract Documents.

8.9.8 Warranty of Title. By submitting an Application for Payment, the Construction Manager warrants to ACPS that title to all Work for which payment is sought will pass to ACPS, without liens, Claims, or other encumbrances, upon the receipt of payment by the Construction Manager. ACPS may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Construction Manager until Substantial Completion of all the Work is achieved, unless otherwise agreed to by ACPS in writing.

8.9.9 Payment. Payments are due sixty (60) Days from the date of Construction Manager's properly submitted and approved Application for Payment.

8.9.10 Right to Withhold Payments. ACPS or the Architect/Engineer will notify the Construction Manager within fifteen (15) Days after receiving an Application for Payment of any defect in the Application for Payment or the Construction Manager's performance that ACPS or the Architect/Engineer discovers that may result in ACPS declining to pay all or a part of the requested amount. ACPS may withhold payment from the Construction Manager, in whole or part, as appropriate, if:

.1 the Work is defective and such defects have not been remedied, in which case the amount withheld shall be limited to the portion of the Application for Payment attributable to the defective Work; or

.2 ACPS has determined that the Construction Manager's progress has fallen behind the Construction Schedule, and the Construction Manager fails, within ten (10) Days of ACPS's written demand, to provide ACPS with a realistic and acceptable plan to recover the delays; or

.3 the Construction Manager has failed to provide the monthly report in full compliance with Section 5.6 hereof; or

.4 the Construction Manager has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

.5 ACPS has reasonable evidence that, for reasons attributable to the Construction Manager or those for whom it is responsible, Substantial Completion of the Phases (or if there are no Phases then of the entire Work) will not be achieved by the Substantial Completion Date(s), and that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

.6 ACPS has reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP; or

.7 the Construction Manager is otherwise in substantial breach of the Contract Documents.

If ACPS withholds payment due to one or more of the conditions enumerated above, it will make payment to the Construction Manager within five (5) Days of the Construction Manager eliminating, rectifying or otherwise curing such conditions.

8.9.11 Payment Not Acceptance. Neither payment of any progress payment or Final Payment, nor any Certificate for Payment, shall constitute acceptance of Work that is defective or otherwise fails to conform to the requirements of the Contract Documents, or a waiver of any rights or remedies ACPS may have with respect to Defective Work or nonconforming Work.

8.9.12 Substantial Completion and Partial Release of Retainage.

8.9.12.1 Each Phase is referred to as a Phase, and for purposes of this Section 8.9.12, if there are no Phases, then the entire Work is referred to as Phase. Construction Manager shall notify ACPS in writing when it believes a Phase is Substantially Complete. Along with such notice, Construction Manager shall provide ACPS with a punchlist of items that remain to be completed. Within seven (7) Days after ACPS receives Construction Manager's written notice and punchlist, ACPS and/or the Architect/Engineer shall

inspect such Phase to determine if it is Substantially Complete. If that Phase is Substantially Complete, ACPS or the Architect/Engineer shall promptly prepare and provide the Construction Manager with a Certificate of Substantial Completion as to that Phase. If that Phase is not Substantially Complete, ACPS or the Architect/Engineer shall provide Construction Manager with a written explanation as to why it is not Substantially Complete. The steps mentioned in this Section 8.9.12.1 shall then be repeated until Substantial Completion of that Phase is achieved.

8.9.12.2 Within seven (7) Days after ACPS or the Architect/Engineer provides the Construction Manager with a Certificate of Substantial Completion for a Phase, ACPS and/or the Architect/Engineer shall either supplement the Construction Manager's punchlist with additional items that they have discovered that remain to be completed for that Phase and provide the supplemented punchlist to Construction Manager, or notify the Construction Manager in writing that they have not discovered any other items to add to the punchlist. Neither the act of supplementing the punchlist, nor the failure to do so, shall relieve the Construction Manager of any of its obligations, or waive any of ACPS's rights, with respect to Defective Work, including, but not limited to, Defective Work not identified on the punchlist.

8.9.12.3 Within sixty (60) days after ACPS or the Architect/Engineer either provides the Construction Manager with the supplemented punchlist or notifies the Construction Manager that it will not be supplementing the punchlist for a Phase as described in Section 8.9.12.2 hereof, ACPS shall release to Construction Manager all retained amounts for the Work within that Phase less an amount equal to: (i) one and one-half times the reasonable value of all items on the punchlist or supplemented punchlist for that Phase, whichever is applicable; and (ii) all other amounts ACPS is entitled to withhold under this Agreement.

8.10 Final Payment.

8.10.1 Payment. When Final Completion has been achieved, the Construction Manager shall submit a final Application for Payment to ACPS (or, if directed by ACPS, to the Architect/Engineer or the Project Manager), and ACPS shall make Final Payment to the Construction Manager within sixty (60) Days of the date of Construction Manager's properly submitted and approved final Application for Payment.

8.10.2 Required Documents. In addition to the documents the Construction Manager is required to provide ACPS in order to achieve Substantial Completion, and without limiting any requirements set forth elsewhere in the Contract Documents, the Construction Manager must provide ACPS with the following documents to achieve Final Completion and the delivery of all such document to ACPS is a condition precedent to receiving Final Payment:

- .1 All Record Documents;
- .2 A written certification that all required systems testing has been completed;
- .3 A written certification that all required systems training has been completed;
- .4 All required manufacturer's warranties;
- .5 All required Operation and Maintenance Instruction manuals, including part listings, preventative maintenance schedules and equipment cut sheets for all equipment and building system(s) installed under the Contract Documents;
- .6 Data collection forms for maintenance information for all equipment and building system(s) installed under the Contract Documents;
- .7 Daily reports, testing and monitoring reports, and manifests for Hazardous Materials abated under the Contract Documents;
- .8 Copies of all final inspection reports/certificates by authorities with jurisdiction over the Project (including plumbing, mechanical, electrical, fire alarm, fire suppression, and building);
- .9 Fire alarm plan showing all devices with addresses;
- .10 Copy of the Certificate(s) of Substantial Completion;
- .11 A Final Waiver and Release of Claims executed by the Construction Manager and all Subcontractors and suppliers who have supplied labor, material, or both, for which payment is requested. The forms that must be used for these waivers and releases is found at **Exhibit C**; and

.12 Fully executed AIA Document G707 Consent of Surety to Final Payment.

8.11 Waiver. Construction Manager's acceptance of Final Payment shall constitute a waiver of all the Construction Manager's Claims except those that the Construction Manager previously made in writing and which it identified as being unsettled in a document it provided to ACPS when it submitted its final Application for Payment.

8.12 Shared Savings. If the sum of the Cost of the Work and the Construction Fee is less than the GMP when the Construction Manager has achieved Final Completion, the difference is referred to as "Savings." Savings shall be split fifty percent (50%) to ACPS and fifty percent (50%) to the Construction Manager; provided, however, (1) the Construction Manager's share of Savings is capped at \$400,000 and under no circumstances shall Construction Manager be entitled to be paid more than \$400,000 for its share of Savings, and (2) Construction Manager must achieve Substantial Completion of the Phases (or if there are no Phases then of the entire Work) by the Substantial Completion Date(s) in order to earn its share of Savings. Savings, and the amount to be shared with the Construction Manager, shall be calculated and paid as part of the Final Payment under Section 8.10 hereof.

8.13 Partial Occupancy. ACPS, at its option, may use a Phase or other portion of the Work that is Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for that portion of the Work, (ii) Construction Manager and ACPS have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) ACPS and Construction Manager agree that ACPS's use or occupancy will not interfere with Construction Manager's completion of the remaining Work, or, if it does, then Construction Manager shall be entitled to a Change Order for its increased costs and additional time, if any, made necessary by ACPS's partial use or occupancy of the Work. ACPS's partial occupancy or use of the Work shall not constitute acceptance of Defective Work.

ARTICLE 9 **CHANGES**

9.1 Changes Authorized. ACPS may, without invalidating this Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any

such change must be conveyed by ACPS to the Construction Manager through a Change Directive or Change Order.

9.2 Change Directive or Change Order Required.

9.2.1 A Change Directive or Change Order is the only means by which changes may be made to the Completion Dates, the GMP, or both.

9.2.2 If ACPS wishes to make a change in the Work, it will issue a Change Directive to the Construction Manager, either directing the Construction Manager to proceed at once with the changed Work or directing it to not proceed, but to inform ACPS, in writing, of the amount, if any, that the Construction Manager believes the Completion Dates and the GMP should be adjusted due to the changed Work. With its issuance of a Change Directive, ACPS shall provide the Construction Manager with drawings, sketches, specifications, narratives and other similar documents that describe the changed Work to the extent it has received them from the Architect/Engineer.

9.2.3 Within fifteen (15) Days of receiving a Change Directive, the Construction Manager shall provide ACPS with a written statement of all changes to the Completion Dates and the GMP to which it believes it is entitled as a result of the Change Directive. A request for additional time must be supported by a time impact analysis created by inserting a Fragnet into the updated Construction Schedule that is being used at the time of the Change Directive. The schedule analysis must also include a written narrative explanation. If a change in the GMP is sought (or if ACPS has requested a deduct change), the statement shall include a breakdown, by line item, of the estimated cost attributable to the proposed change. ACPS may request, and the Construction Manager shall provide, further cost breakdowns, clarifications, documentation or back-up if ACPS reasonably believes such additional information is needed to understand and evaluate the request.

9.2.4 If ACPS did not direct the Construction Manager to proceed with the changed Work described in the Change Directive prior to Construction Manager's submission of the documents described in Section 9.2.3 hereof, and if ACPS wants the Construction Manager to so proceed, it shall direct the Construction Manager to do so in writing, and the Construction Manager shall immediately proceed with the changed Work and, ACPS and the

Construction Manager shall use good faith efforts to reach an agreement upon the modifications to the Completion Dates and the GMP that are justified by the Change Directive. If they reach agreement, the agreement shall be set forth in a Change Order.

9.2.5 If the parties fail to reach an agreement within thirty (30) Days after ACPS receives the documents described in Section 9.2.3 hereof, and such other documentation as ACPS may request, and if ACPS has directed the Construction Manager in writing to proceed with the changed Work, the Construction Manager may assert a Claim. In those circumstances, compensation for the changed Work shall be limited to the additional Cost of the Work in performing the changed Work plus a markup of three and one-half percent (3.5%) on such additional cost for overhead and profit. All Claims under this Article 9 are subject to the requirements and procedures of Article 16 hereof.

9.3 Deductive Changes. ACPS may issue deductive Change Directives reducing the Work and the GMP or the Completion Dates, or both, on account of the same. If the Construction Manager disputes the reduction to the GMP or the Completion Dates, or both, set forth in a deductive Change Directive, it may assert a Claim. All such Claims are subject to the requirements and procedures of Article 16 hereof.

9.4 Change Orders Final. The Construction Manager agrees that a Change Order constitutes the full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, and other consequences arising from the change that is the subject of the Change Order, as well as the cumulative effect of all changes that have been made up through the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to such change or cumulative effect.

9.5 Minor Changes in the Work. "Minor Changes in the Work" are written changes that are consistent with the intent of the Contract Documents, that do not materially or adversely affect the Work, and which do not involve an adjustment of the Completion Dates or the GMP. The Architect/Engineer is authorized to make Minor Changes in the Work. There shall be no adjustment to the Completion Dates or the GMP as the result of Minor Changes in the Work.

ARTICLE 10
TIME

10.1 Time is of the essence of this Agreement.

10.2 The Construction Manager will perform the Work so that it achieves Substantial Completion of the Phases (or if there are no Phases then of the entire Work) by the Substantial Completion Date(s) and Final Completion by the Final Completion Date. Unless the failure to achieve Substantial Completion of the Phases (or if there are no Phases then of the entire Work) by the Substantial Completion Date(s) and Final Completion by the Final Completion Date is the result of an Excusable Delay, as defined in Section 10.3 hereof, the delay shall be deemed Non-Excusable and the Construction Manager shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Construction Manager to an extension of time:

.1 Delays due to job-Site labor disputes, work stoppages, or suspensions of Work, except those caused by ACPS or its Separate Contractors;

.2 Delays due to adverse weather, unless the Construction Manager establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, for the Project locale for the ten (10) years preceding the date of this Agreement;

.3 Delays due to the failure of the Construction Manager, any Subcontractors at all tiers, or material suppliers at any tier to perform in a timely or proper fashion, without regard to concepts of negligence or fault; and

.4 Delays due to Site conditions whether known or unknown as of the date of this Agreement, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

10.3 The term “Excusable Delay” shall mean:

.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay in Section 10.2 hereof;

.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Construction Manager; provided, however, that in no event shall a Non-Excusable delay or the actions of the Construction Manager, or any of its employees, agents, Subcontractors at all tiers or material suppliers be deemed an Excusable Delay;

.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation; or

.4 Delays caused by ACPS, Separate Contractors or the Architect/Engineer (subject to the limitations set forth in Section 4.2 hereof).

In addition to the forgoing, the delays described in this Section 10.3 shall be deemed to be an Excusable Delay only to the extent that such delay (i) has not been caused by the Construction Manager or any of its employees, agents, Subcontractors at all tiers or material suppliers; and, (ii) is on the Project’s critical path when it occurs.

10.4 An Excusable Delay is a Change Event, and provided the Construction Manager has complied with all of the requirements set forth in Article 16 hereof, it shall (subject to the limitations set forth in Section 4.2 hereof) be entitled to: (1) an adjustment to the Completion Dates affected by the Excusable Delay; and, (2) an adjustment to the GMP for the additional Cost of General Conditions that the Construction Manager incurred, if any, due to the Excusable Delay, but only if (i) the Excusable Delay was caused solely by ACPS, the Architect/Engineer (subject to the limitations set forth in Section 4.2 hereof) or ACPS’s Separate Contractors, and (ii) that Excusable Delay is not concurrent with another delay that was not caused solely by ACPS, the Architect/Engineer (subject to the limitations set forth in Section 4.2 hereof) or ACPS’s Separate Contractors. Further, any such extension to the Completion Dates or adjustment of the GMP must be supported by a time impact analysis created by the Construction Manager by inserting a Fragnet into the updated Construction Schedule that is being used at the time the Excusable Delay occurred.

10.5 Liquidated Damages. If Substantial Completion of a Phase is not achieved by the Substantial Completion Date for that Phase, or if there are no Phases then if Substantial Completion of the entire Work is not achieved by the Substantial Completion Date, ACPS will suffer damages that are difficult to determine and accurately specify. Accordingly, (1) if Substantial Completion of a Phase is not achieved by the Substantial Completion Date for that Phase, then Construction Manager shall pay ACPS the Liquidated Damages Rate for such Phase as liquidated damages, and not as a penalty, for each day that the attainment of Substantial Completion of that Phase extends beyond the Substantial Completion Date for that Phase, and (2) if there are no Phases, and if Substantial Completion of the entire Work is not achieved by the Substantial Completion Date, then Construction Manager shall pay ACPS the Liquidated Damages Rate as liquidated damages, and not as a penalty, for each day that the attainment of Substantial Completion of the entire Work extends beyond the Substantial Completion Date. The Liquidated Damages Rates for the Phases (or if there are no Phases then the Liquidated Damages Rate for the entire Work) shall be set forth in the GMP Amendment. The liquidated damages assessed pursuant to this Section 10.5 shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, and any other damages, whether special or consequential, and of whatsoever nature, incurred by ACPS due to any delay in achieving (1) Substantial Completion of a Phase by the Substantial Completion Date for that Phase, or (2) if there are no Phases, then Substantial Completion of the entire Work by the Substantial Completion Date.

ARTICLE 11
HIRING REQUIREMENTS

11.1 Equal Opportunity.

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

11.1.2 Among other laws, during the performance of the Work, Construction Manager shall follow and abide by Section 11-51 of the Code of Virginia:

.1 Construction Manager shall 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 law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Construction Manager. Construction Manager shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

.2 Construction Manager, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, will state that Construction Manager is an equal opportunity employer.

.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 11.1.2.

.4 Construction Manager shall include the provisions of this Section 11.1.2 in every contract over \$10,000 that it issues under this Agreement so that the provisions will be binding upon those entities with whom it contracts.

11.2 Drug Free Workplace. During the performance of the Work, the Construction Manager shall: (1) provide a drug-free workplace for the Construction Manager's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Construction Manager's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; and, (3) state, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, that the Construction Manager maintains a drug-free workplace.

11.3 Unauthorized Aliens. Construction Manager does not, and shall not during the performance of the Work, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

11.4 Crimes. Construction Manager certifies that neither it, nor any of its employees, workers or suppliers, have been convicted of: (i) a felony or any offense involving the sexual molestation or physical

or sexual abuse or rape of a child; or (ii) a crime of moral turpitude.

ARTICLE 12 **UNSAFE AND HAZARDOUS MATERIALS**

12.1 The Construction Manager shall not bring, spill or release onto the Site asbestos, PCBs, or any other Hazardous Material, and shall bring to ACPS's attention any specification of such Hazardous Materials in the Construction Documents that it discovers. If the Construction Manager believes that anything in the Contract Documents would require that it use or bring onto the Site asbestos, PCBs, or any Hazardous Material, it shall immediately inform ACPS and seek direction before proceeding.

12.2 If the Construction Manager reasonably believes that it has discovered Hazardous Materials on the Site, it shall immediately notify ACPS in writing and promptly make arrangements for appropriate and lawful removal, treatment, encapsulation, passivation, and/or disposal of the Hazardous Materials by employees or Subcontractors who are fully qualified and licensed to perform such Work. If any notices to governmental authorities are required, the Construction Manager shall also give those notices at the appropriate times. The Construction Manager shall comply with all Applicable Laws, including, without limitation, all laws relating to safety, health, welfare, and protection of the environment in removing, treating, encapsulating, passivating, and/or disposing of Hazardous Materials.

12.3 With the exception of Hazardous Materials that the Construction Manager introduces (or those for whom it is responsible introduce) to the Site, the Construction Manager shall be entitled to a Change Order increasing the GMP in an amount equal to the actual direct cost that the Construction Manager incurs to remove, treat, encapsulate, passivate and/or dispose of the Hazardous Materials, plus a reasonable markup on such cost for overhead and profit.

12.4 The Construction Manager shall keep detailed records documenting Work done in connection with removal, treatment, encapsulation, passivation, and/or disposal of Hazardous Materials, so that ACPS may independently verify compliance with all laws, and the costs incurred to perform such Work.

ARTICLE 13
UNCOVERING AND CORRECTION OF
WORK

13.1 Uncovering of Work.

13.1.1 Uncovering. If a portion of the Work is covered contrary to ACPS's request or direction, or contrary to the requirements of the Contract Documents, it must, if required by ACPS, be uncovered for ACPS's observation and be replaced at the Construction Manager's own expense and not reimbursed by ACPS.

13.1.2 Inspection. If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to it being covered and which ACPS has not specifically requested to observe prior to it being covered, ACPS may request to see such Work and it shall be uncovered and replaced by the Construction Manager. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the GMP by Change Order and if the uncovering and replacing of the Work extends any of the Completion Dates, an appropriate adjustment of the same shall be made by Change Order. If such Work is not in accordance with the Contract Documents, the Construction Manager shall pay all such costs at its own expense, which shall not be reimbursed by ACPS, and there shall be no adjustment to the Completion Dates.

13.2 Warranty, Correction of Defective Work and Repair Period.

13.2.1 Warranty. Construction Manager warrants to ACPS that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. All regularly manufactured stock electrical items must bear the label of the Underwriters Laboratories, Inc. Any Work that does not conform to these requirements shall be considered Defective Work. This warranty excludes defects caused by abuse, alterations, or lack of maintenance by ACPS. Nothing in this warranty is intended to limit any manufacturer's warranty which provides ACPS with greater warranty rights than set forth in this Section 13.2.1 or the other Contract Documents. The Architect/Engineer has authority to reject Defective Work. This authority shall not create any duty owed

from the Architect/Engineer to the Construction Manager.

13.2.2 Repair Period. The term "Repair Period" means a period of one (1) year, unless a longer period of time is specified, commencing as follows:

.1 For space beneficially occupied by ACPS prior to the Substantial Completion of the entire Work, from the date such Work is Substantially Complete.

.2 For all Work other than that within Section 13.2.2.1 hereof, from the date the entire Work is Substantially Complete.

13.2.3 Repairs. The Construction Manager shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Repair Period and (2) replace, repair, or restore to ACPS's reasonable satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. ACPS shall give notice of observed Defective Work with reasonable promptness, and the Construction Manager shall promptly commence such correction, replacement, repair, or restoration upon notice from ACPS, but in no case later than five (5) Days after receipt of such notice; and the Construction Manager shall diligently and continuously prosecute such correction to completion. The Construction Manager shall reimburse ACPS for all costs ACPS incurs in connection with Defective Work, including additional testing and inspection. The Construction Manager shall perform corrective work at such times that are reasonably acceptable to ACPS and in such a manner as to avoid, to the extent reasonably practicable, disruption to ACPS's activities. The Construction Manager shall notify ACPS upon completion of repairs.

13.2.4 Dangerous Conditions. If Defective Work creates a dangerous condition or requires immediate correction to prevent either further loss to ACPS or the interruption of its operations, ACPS will provide notice of such Defective Work to the Construction Manager as soon as reasonably possible. If the Construction Manager cannot be contacted or does not comply with ACPS's request to immediately correct the Defective Work, ACPS may correct such Defective Work or have it corrected by others and the cost of such correction shall be charged to the Construction Manager. Such action by ACPS will not relieve the Construction Manager of the guarantees or warranties provided in this Article 13

or elsewhere in the Contract Documents. The Construction Manager shall replace, repair, or restore to ACPS's reasonable satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

13.2.5 Removal. At its own expense and not reimbursed by ACPS, the Construction Manager shall promptly remove from the Site those portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Construction Manager nor approved in writing by ACPS.

13.2.6 Failure to Correct. If the Construction Manager fails to commence correction of Defective Work as required by this Section 13.2 or fails diligently to prosecute such correction to completion, ACPS may correct or remove such Defective Work at the Construction Manager's expense.

13.2.7 No Limitation. The Construction Manager's obligations under this Article 13 are in addition to and not in limitation of any other obligation or warranty of the Construction Manager under the Contract Documents. Enforcement of the Construction Manager's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies ACPS may have under the Contract Documents, at law or in equity. Nothing contained in this Article 13 shall be construed to establish a period of limitation with respect to other rights ACPS has with respect to Defective Work. The "Repair Period" and the Construction Manager's obligation to correct Defective Work during the Repair Period relate only to the specific obligation of the Construction Manager to correct Defective Work and in no way limit either the Construction Manager's liability for Defective Work or the time within which ACPS must commence proceedings to enforce any of its rights under the Contract Documents, at law or in equity.

13.3 Acceptance of Defective Work. Notwithstanding the provisions of Section 13.2 hereof, ACPS shall have the option, at its sole discretion and by written notice to the Construction Manager, to accept Defective Work instead of requiring its removal or correction, in which case the GMP shall be reduced by an equitable amount to account for such Defective Work. Such option shall be exercised solely by ACPS's written notice to the Construction Manager and shall not be implied from any act or omission by ACPS. If there are no

remaining payments of the Construction Price to be made to the Construction Manager or if the remaining payments and retention are insufficient to cover the amount of the reduction of the GMP, the Construction Manager shall promptly pay to ACPS the amount of any such deficiency.

ARTICLE 14 **TERMINATION OR SUSPENSION**

14.1 Termination for Failure to Agree Upon a GMP. This Agreement will be terminated, as provided in Section 4.6 hereof, in the event that ACPS and the Construction Manager are unable to agree upon a GMP or the specific language for the GMP Amendment. In the event this Agreement is so terminated, ACPS shall pay the Construction Manager as provided in Section 4.6 hereof, and ACPS shall have the rights set forth in that Section.

14.2 ACPS's Termination for Default.

14.2.1 ACPS may terminate this Agreement for default if the Construction Manager fails materially to perform any of its duties or obligations under the Contract Documents. In particular, but without limitation, ACPS may terminate this Agreement for default if:

.1 the Construction Manager fails to prosecute the Work diligently in accordance with the Construction Schedule or otherwise fails to make such progress as is necessary to satisfy the Completion Dates; or

.2 the Construction Manager fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by ACPS; or

.3 the Construction Manager has abandoned the Work or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

.4 the Construction Manager becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved.

14.2.2 If ACPS wants to terminate this Agreement under this Section 14.2, then ACPS must provide the

Construction Manager with written notice of its intent to terminate this Agreement for default, identify the grounds for the termination in the notice, and provide the Construction Manager seven (7) Days to cure those deficiencies. If the Construction Manager does not cure the deficiencies identified in the notice within such seven-day cure period, then ACPS may issue the Construction Manager a second written notice stating that this Agreement has been terminated for default.

14.2.3 If ACPS terminates this Agreement for default, ACPS will have the right to take over the Work, to accept assignment of some or all of the Construction Manager's subcontracts or agreements with material suppliers, to take possession of the Site, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Work by whatever method it deems expedient. Further, if the Construction Manager is in default and ACPS terminates this Agreement for default, the Construction Manager shall be liable to ACPS for all Damages it incurs as a result of the Construction Manager's default including, but not limited to, excess reprourement costs.

14.2.4 ACPS's termination of this Agreement for default may result in the removal of the Construction Manager's name from ACPS's mailing list for future projects for an indeterminate period.

14.3 ACPS's Termination for Convenience.

14.3.1 ACPS may, upon ten (10) Days written notice to the Construction Manager, terminate this Agreement for its convenience and without cause.

14.3.2 After receiving ACPS's notice of termination for convenience, the Construction Manager shall (1) stop all Work as of the effective date of the termination and stop placing subcontracts or supply agreements; (2) consult with ACPS regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to ACPS; (3) consult with ACPS to decide what actions should be taken to protect Work in place and equipment that has been delivered and not yet installed, and to render the Site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Construction Manager's possession in which ACPS has or may acquire an interest and, as directed by the termination notice or other order from ACPS, deliver the property to ACPS; and (5) promptly deliver to ACPS all

documents it has prepared relating to the Project. The Construction Manager shall also promptly notify ACPS in writing if it becomes aware of any legal proceeding arising from any subcontract or supply agreement related to the termination, and, in consultation with ACPS, settle outstanding liabilities arising out of the termination on the best terms reasonably possible.

14.3.3 In the event of a termination for ACPS's convenience, the Construction Manager shall be entitled to receive only the following: (1) the Cost of the Work incurred by the Construction Manager up to the time of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; and (3) a proportionate share of the Construction Fee attributable to the Work actually performed up to the time of termination. The Construction Manager shall not be entitled to recover any Construction Fee or overhead or profit on unperformed portions of the Work. With the exception of demobilization costs, under no circumstances shall the Construction Manager be entitled to receive an amount in settlement for termination for convenience that exceeds the percentage of the Work actually completed in accordance with the Contract Documents, multiplied by the GMP, and reduced by all payments ACPS previously made to the Construction Manager and all Damages, liquidated or otherwise, that the Construction Manager owes ACPS. Payment in accordance with this Section 14.3.3 shall be the Construction Manager's sole remedy for termination for convenience.

14.3.4 The Construction Manager shall, within thirty (30) Days after termination, submit a proposal for settlement of the amounts it believes it is owed as a result of the termination for convenience. The proposal shall be consistent with the requirements of Sections 14.3.2 and 14.3.3 hereof, and shall be accompanied by such supporting documentation as ACPS reasonably requires.

14.4 Effect of Wrongful Termination for Default. If it is determined that ACPS improperly terminated this Agreement for default, such termination shall automatically be converted to a termination for convenience, and the Construction Manager's remedy shall be as set forth in Section 14.3.3 hereof.

14.5 Continued Responsibility After Termination. If ACPS terminates this Agreement, either for default or convenience, the Construction

Manager shall remain responsible for all Defective Work.

14.6 ACPS's Suspension of the Work.

14.6.1 Suspension at the Convenience of ACPS. ACPS may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as ACPS elects by giving the Construction Manager written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until ACPS terminates such suspension, delay or interruption by written notice to the Construction Manager. No such suspension, delay, interruption or reduction by ACPS shall constitute a breach or default by ACPS under the Contract Documents. The Construction Manager shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

14.6.2 Payment Upon Suspension For Convenience. In the event of suspension, delay, reduction or interruption for convenience by ACPS, ACPS shall pay the Construction Manager and the GMP shall be increased (subject to the payment and related requirements of the Contract Documents) for the following costs:

.1 Additional Costs of the Work, if any, incurred by the Construction Manager and its Subcontractors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at ACPS's written request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment supplies and Work in progress.

.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted Work caused solely by such suspension, delay or interruption ordered by ACPS for convenience.

.3 Notwithstanding the foregoing, no adjustment shall be made to the GMP to the extent that the Construction Manager's performance was otherwise subject to suspension, delay or interruption by another cause for which ACPS was not responsible.

14.7 Suspension and Termination by Construction Manager.

14.7.1 Failure of ACPS to make payments to the Construction Manager in accordance with this Agreement that are properly due shall be considered substantial nonperformance and cause for the Construction Manager to suspend the Work or terminate this Agreement upon written notice to ACPS that it has failed to pay such amounts, but only if ACPS then fails to cure its breach within thirty (30) Days after its receipt of such notice. Further, if Construction Manager properly suspends the Work pursuant to this Section 14.7.1, then it shall not be required to resume the Work until it has been paid the overdue amount set forth in such notice.

14.7.2 If ACPS suspends the Project for more than one hundred twenty (120) cumulative Days for reasons other than the fault of the Construction Manager, then the Construction Manager may terminate this Agreement by giving not less than thirty (30) Days written notice to ACPS.

14.7.3 If Construction Manager properly terminates this Agreement in accordance with this Section 14.7, then its sole remedy shall be payment in accordance with the terms of Section 14.3.3 hereof.

14.8 Claims. All Claims arising under this Article 14 are subject to the requirements and procedures of Article 16 hereof.

ARTICLE 15
INSURANCE, BONDS AND
INDEMNIFICATION

15.1 Insurance.

15.1.1 Types and Amounts of Insurance. The Construction Manager shall purchase and maintain the following types and minimum amounts of insurance:

.1 **Workers Compensation / Employers Liability Insurance** – Workers compensation insurance shall comply with the applicable statutory requirements. Employers liability insurance shall have limits of not less than \$1,000,000 and shall include a Waiver of Right to Recover From Others endorsement (NCCI form WC 000313) naming the Indemnitees defined in Section 15.4 hereof.

.2 Commercial General Liability Insurance – Commercial general liability insurance, on a per occurrence basis, including (a) broad form property damage; (b) contractual liability insurance insuring the Construction Manager’s liabilities assumed under the Contract Documents, including the indemnification obligations set forth herein; and (c) personal injury and advertising injury in the following minimum amounts: (1) \$1,000,000 EACH OCCURRENCE (combined single limit for bodily injury and property damage); (2) \$5,000 MEDICAL EXPENSE; (3) \$1,000,000 PERSONAL AND ADVERTISING INJURY (each offense combined single limit); (4) \$2,000,000 GENERAL AGGREGATE; and (5) \$50,000 DAMAGE TO PREMISES RENTED TO YOU.

.3 Automobile Liability Insurance – with limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage coverage. Such coverage shall include all automobiles owned, leased, hired or non-owned. In addition, the Construction Manager’s automobile liability insurance policy shall include coverage for automobile contractual liability.

.4 Excess or Umbrella Liability Insurance – with limits of liability of not less than: \$5,000,000 each occurrence and annual aggregate excess of primary insurance, and a maximum \$10,000 self-insured retention or deductible per occurrence. This policy shall apply on a “following form” basis to the underlying commercial general liability and automobile liability policies.

15.1.2 Terms, Conditions and Endorsements. All of the insurance described in Section 15.1.1 hereof shall be subject to the following terms, conditions and endorsements.

.1 Insurer. The insurance shall be purchased from a company with an “A-:VII” or better rating from A.M. Best Company, which is both lawfully able to provide insurance in the Commonwealth of Virginia and reasonably acceptable to ACPS.

.2 Additional Insureds Endorsements. All insurance, except the workers compensation insurance, shall include ACSB, ACPS, and their respective directors, members, officers, employees and agents as additional insureds under ISO Form CG 20 37 10 01 (or its equivalent). A copy of the additional insured endorsement must be provided along with the insurance certificate. Subsequent, non-equivalent editions of this ISO Form

are not acceptable. The coverage provided to the additional insureds must be as broad as that provided to the Construction Manager and shall not contain any additional exclusionary language or limitations applicable to such additional insureds. These endorsements shall apply without regard to other provisions of the Contract Documents.

.3 Primary Insurance. The commercial general liability insurance under Section 15.1.1.2 hereof, the automobile liability insurance under Section 15.1.1.3 hereof, and the excess/umbrella liability insurance under Section 15.1.1.4 hereof, shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by ACPS. Any general liability, automobile liability, excess/umbrella liability or other insurance purchased by ACPS is, or has been, specifically purchased as excess over any general liability, automobile liability or excess/umbrella liability insurance purchased by the Construction Manager.

.4 Contractual Liability Insurance. ISO or other endorsements that restrict or modify the extent of the standard contractual liability coverage afforded by the commercial general liability and automobile liability insurance policies are not acceptable.

.5 Severability of Interest. The insurance shall include a severability of interest clause for all named insureds and additional insureds.

.6 Duration. Coverage shall be maintained, without interruption, from the date of commencement of the Work until the date of Final Payment for the Work. The insurance obligations shall survive the expiration or termination of this Agreement.

.7 Notice of Cancellation, Etc. Construction Manager must notify ACPS in writing at the address listed below by mail, hand-delivery or facsimile transmission, within 2 business days of any notices received from any insurance carriers providing insurance coverage that concern any proposed modification, cancellation, or termination of coverage:

Alexandria City Public Schools
Attn: Procurement Officer
2000 N. Beauregard Street
Alexandria, Virginia 22311
Facsimile No. (703) 824-0382

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

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

.9 Delivery of Certificates and Policies. Construction Manager shall provide ACPS with original certificates of insurance and all endorsements, in a form acceptable to ACPS, within fifteen (15) Days after this Agreement has been fully executed, and thereafter, with a certificate evidencing renewals or changes to required policies of insurance at least fifteen (15) Days prior to the expiration of previously provided certificates. The Certificate Holder box shall identify the name and address of ACPS. The Construction Manager shall submit copies of the policies or provide other policy related information within seven (7) Days following a request from ACPS.

.10 Subcontractors. Construction Manager shall cause each of its Subcontractors to provide, pay for, and maintain in full force and effect workers compensation/employers liability insurance, commercial general liability insurance, automobile liability insurance, and excess/umbrella liability insurance, with commercially reasonable limits and coverages based upon the aspects of the Work they are to perform.

.11 Non-Waiver. Permitting the Construction Manager to commence Work or releasing any payment prior to compliance with the requirements in this Section 15.1 shall not constitute a waiver thereof.

15.2 Independent Obligations. Any of the insurance required to be provided by the Construction Manager under this Article 15 is in addition to, and is separate and distinct from, any other obligation of the Construction Manager under any other provision of the Contract Documents.

15.3 Waivers of Subrogation. The Construction Manager and ACPS waive all rights of recovery against each other for any losses covered and paid by insurance.

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

15.5 Performance Bond and Payment Bond. The Construction Manager shall, before commencing its Construction Phase Services, provide ACPS with a performance bond and a payment bond, each in the amount of 100% of the GMP. Such bonds shall remain in full force and effect until the Construction Manager has completed all of its obligations under the Contract Documents. All bonds must be in a form acceptable to ACPS and must be issued by a surety authorized to do business in the Commonwealth of Virginia that is acceptable to ACPS. If the GMP is increased pursuant to the terms of the Contract Documents, ACPS may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Construction Manager shall promptly comply. The Construction Manager shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy of them.

ARTICLE 16 DISPUTE RESOLUTION

16.1 Any Claim that is not resolved by the mutual agreement of ACPS and the Construction Manager shall be decided by the Procurement Officer, who shall reduce its decision to writing and mail or otherwise forward a copy thereof to the Construction Manager within ninety (90) Days after receiving such Claim. For all Claims that Construction Manager has or wishes to pursue against ACPS, whether for money, additional time or other relief, Construction Manager shall: (1) provide ACPS with written notice

of Construction Manager's intention to file a Claim within ten (10) Days of when Construction Manager was aware, or reasonably should have been aware, of the act, omission or occurrence giving rise to the Claim, whichever is sooner; and (2) submit a fully documented and supported Claim to ACPS in writing no later than thirty (30) Days after notice of the Claim was due. Under no circumstances may Construction Manager submit a Claim to ACPS more than sixty (60) Days after it receives Final Payment from ACPS under this Agreement. All requirements stated in this Section 16.1 constitute express conditions precedent to Construction Manager's right to pursue a Claim and Construction Manager waives any and all Claims against ACPS to the extent it does not comply with such requirements.

16.2 The Construction Manager may not institute legal action prior to receipt of the final written decision of the Procurement Officer, unless the Procurement Officer fails to render a decision within ninety (90) Days of submission of the Claim. The decision of the Procurement Officer shall be final and conclusive unless the Construction Manager appeals the decision within six months of the date of the final decision by instituting legal action as provided in Section 16.3 hereof. Failure of the Procurement Officer to render a decision within ninety (90) Days shall not result in the Construction Manager being awarded the relief claimed and shall be deemed a denial of said Claim. The sole remedy for the Procurement Officer's failure to render a decision within ninety (90) Days shall be the Construction Manager's right to institute legal action on the Claim.

16.3 The Contract Documents, and all Claims arising under or related to the Contract Documents or the Project, whether framed in contract, tort or otherwise, shall be governed by the laws of the Commonwealth of Virginia, and shall be resolved by way of litigation in the Circuit Court for Alexandria City, Virginia.

16.4 ACPS and Construction Manager shall be required to continue to perform their respective obligations under the Contract Documents pending the resolution of any Claim.

16.5 ACPS's payment for Work performed or on a Claim by Construction Manager shall not preclude ACPS from making a Claim against Construction Manager for any Work found not to comply with the Contract Documents.

16.6 Remedies herein reserved to ACPS shall be cumulative and additional to any other remedies provided in law or equity.

ARTICLE 17 **MISCELLANEOUS PROVISIONS**

17.1 **Governing Law.** The Contract Documents shall be governed by the laws of the Commonwealth of Virginia, irrespective of its choice of law or conflicts of law principles.

17.2 **Successors and Assigns.** The Construction Manager binds itself, and its partners, successors, permitted assigns and legal representatives to ACPS with respect to all of the Construction Manager's obligations contained in the Contract Documents. The Construction Manager shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or any of its rights, title or interests therein, to any other entity without the previous written consent of ACPS. There are no third-party beneficiaries to the Contract Documents, and nothing contained in the Contract Documents creates a contractual relationship between a third-party and ACPS or provides a third-party with any rights or causes of action against ACPS.

17.3 **Survival.** All of Construction Manager's representations, warranties, guarantees, and indemnifications made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations under the Contract Documents, shall survive Final Payment under, termination of, and/or the completion of this Agreement.

17.4 **Construction.** Any rule of law wherein ambiguities are construed against the drafter of a document shall not apply to the Contract Documents and it is affirmatively waived by ACPS and Construction Manager with respect to the same.

17.5 **Headings/Captions.** The headings or captions used in the Contract Documents are for convenience only and shall not be used in interpreting the same.

17.6 **Final Agreement.** The Contract Documents represent the entire and integrated agreement between ACSB and the Construction Manager and supersede all prior negotiations, representations, or agreements, either written or oral, between them concerning the subject matter of the Contract Documents. The Contract Documents may be

amended only by a written instrument signed by ACPS.

17.7 Waiver. ACPS's failure to insist, in any one or more instances, on the performance of any of the Construction Manager's obligations under the Contract Documents, or ACPS's approval of alternatives, variances or substitutions to Construction Manager's obligations, shall not be construed as a waiver, modification, or relinquishment of such obligation or right with respect to future performance. Likewise, ACPS's actions or inactions shall not waive, modify or alter Construction Manager's responsibilities or liability under the Contract Documents.

17.8 Confidentiality. The Construction Manager shall maintain the confidentiality of documents designated as confidential by ACPS, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Construction Manager from establishing a claim or defense in an adjudicatory proceeding. The Construction Manager shall require of Subcontractors similar agreements to maintain the confidentiality of information specifically designated as confidential by ACPS.

17.9 Independent Contractor. With respect to its performance under the Contract Documents, the Construction Manager is at all times acting as an independent contractor, and not as an employee of ACPS.

17.10 Ownership And Use of Documents. The Drawings, Specifications and other documents prepared by the Architect/Engineer, and copies thereof furnished to the Construction Manager, are for use solely with respect to the Project, and they shall not to be used for other projects by the Construction Manager, Subcontractors at all tiers or suppliers without the specific written consent of ACPS.

17.11 Severability. In the event any one or more of the provisions contained in the Contract Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract Documents, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of the Contract Documents a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of the Contract Documents is intended to be severable.

EXHIBITS:

- Exhibit A:** Green Building Addendum
- Exhibit B:** Interim Waiver and Release of Claims.
- Exhibit C:** Final Waiver and Release of Claims.

IN WITNESS WHEREOF, ACSB and Construction Manager have caused this Agreement to be executed by their duly authorized representatives.

Alexandria City School Board

By: Dr. Morton Sherman, Ed. D

Title: Superintendent

Signature: _____

Date: _____

Turner Construction Company

By: Ken Jones _____

Title: Vice President & General Manager

Signature: 

Date: 06.22.2012