



## REQUEST FOR PROPOSALS - TITLE PAGE - ONE

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**Arlington Public Schools  
Purchasing Office**

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### **REQUEST FOR CONCEPTUAL PROPOSALS 01FY18**

**RFP TITLE:** Solar Photovoltaic Rooftop System Installation and Sale of Generated Electricity

**RFP NUMBER:** 01FY18

**RFP ISSUE DATE:** December 1, 2017

**PROPOSAL DUE DATE AND TIME:** March 19, 2018, Prior to 2:00 PM (Local Prevailing Time)

**OWNER NAME:** Arlington Public Schools

**PROJECT LOCATION:** Multiple School Building or Administrative Building Sites in Arlington County, Virginia

**OWNER CONTACT INFORMATION:** David J. Webb, C.P.M.  
Purchasing Director  
Purchasing Office, 4<sup>th</sup> Floor  
1426 N. Quincy Street  
Arlington, Virginia 22207  
(O): (703) 228-6127  
(C): (703) 328-5591  
Email: david.webb@apsva.us

For all defined terms used in this Request for Conceptual Proposals, see the text where the term is used or the Definitions appearing at Section I.

This is Arlington Public Schools, Request for Proposals #01FY18 issued December 1, 2017, for **Conceptual Proposals for the Installation of Solar Photovoltaic Rooftop Systems (“SPRS”) to be hosted on Arlington Public Schools Facilities, with the SPRS to be maintained and operated by the successful Offeror under a Power Purchase Agreement which will serve as a long term Lease for each Facility, with sale to Arlington Public Schools of electricity generated by these SPRS.** This procurement is pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as

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amended (Va. Code Ann. § 56.575.1, *et seq.*), and the APS PPEA Guidelines. The Responsible Public Entity for this Project is the Arlington County School Board, operating as Arlington Public Schools.

The term “Proposal” as used in these solicitation documents shall mean either “Conceptual Proposal” or “Detailed Proposal” as the context may require.

Sealed Conceptual Proposals must be received and time stamped, or signed in, prior to the Proposal Due Date and Time shown above (collectively the “**Proposal Due Date**”). Offerors are responsible for ensuring that the Purchasing Office receives their Conceptual Proposal submission prior to expiration of the Proposal Due Date. The time a Conceptual Proposal is received shall be determined by the time stamped on the Proposal receipt by the time clock in the Purchasing Office. The APS Purchasing Office is located on the fourth floor of the Arlington Public Schools Education Center, 1426 N. Quincy Street, Arlington, VA 22207. **The APS Education Center is a secure facility and Offerors may enter only through Door # 1 on the 1<sup>st</sup> Floor near the David M. Brown Planetarium. Offerors may be asked to sign in with the receptionist before being allowed to the 4<sup>th</sup> Floor. Offerors must allow sufficient time to clear the sign-in process to complete the Conceptual Proposal submission process prior to the Proposal Due Date.** Delivery to, or receipt by, any office other than the APS Purchasing Office shall not be deemed receipt by the APS Purchasing Office until received in the APS Purchasing Office. The Offeror assumes all risk of delivery to the correct office.

In the event this time clock is not functioning, the time shall be determined by time displayed on the wall mounted clock located between rooms 405 and 406. The time on the wall mounted clock will be written on the Proposal receipt by hand, by Purchasing Office personnel. Proposals received after the Proposal Due Date shall not be considered. If the APS Education Center is closed for any reason on the Proposal Due Date, the Proposal Due Date will be extended to 2:00 PM on the next business day the APS Education Center is open.

### **RFP DOCUMENTS:**

The as-built information for Jefferson Middle School, Kenmore Middle School, Tuckahoe Elementary school, and Washington Middle School, the construction Drawings for Fleet Elementary School, the electrical riser diagrams for each facility, and the structural capacity feasibility study for each facility for this Project will be available electronically as PDF file format on the Owner’s representative’s FTP site. Login and password information for the FTP site will be emailed to all interested Offerors upon request. Please contact Cathy Lin at [cathy.lin@apsva.us](mailto:cathy.lin@apsva.us)

### **PRE-PROPOSAL CONFERENCE:**

A **mandatory pre-Proposal conference** will be held for this procurement on Friday, January 12, 2018 at 10:00 A.M. (Local Prevailing Time). The pre-Proposal conference will take place at the APS Education Center, Room 101 A/B, 1426 N. Quincy Street, Arlington, VA 22207. Attendance at the pre-Proposal conference is mandatory, and no Conceptual Proposal will be accepted from any Offeror who or which did not attend the pre-Proposal conference. Arrival more than five (5) minutes after the scheduled beginning of the pre-Proposal conference shall be deemed failure to attend. Minutes of the pre-Proposal conference, including but not limited to questions and answers, will be prepared by the Purchasing Office and distributed in the same manner as Addenda.

### **QUESTIONS/ REQUESTS FOR INFORMATION:**

All questions/requests for information, other than those asked at the pre-Proposal conference, must be submitted by email, addressed to David J. Webb, Purchasing Director, at [david.webb@apsva.us](mailto:david.webb@apsva.us), with a copy to Cathy Lin, at [cathy.lin@apsva.us](mailto:cathy.lin@apsva.us), who is designated as the Arlington Public Schools contact person for this solicitation, and to be assured consideration, must be received prior to 12:00 P.M., January 19, 2018. APS Purchasing Office will issue written responses to questions/requests submitted in the same manner as Addenda, and if the Purchasing Office deems any response to require an Addendum, will issue an Addendum in the manner provided below. Changes to this RFP will be made only by written Addendum issued by the Purchasing Office and designated as “Addendum No.\_\_\_\_.”

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### **AVAILABILITY OF LOCATIONS FOR INSPECTION:**

It is anticipated that SRPS will be installed on the following Facilities:

Facility Name	Facility Address
KENMORE MIDDLE SCHOOL (EXISTING)	200 S. Carlin Springs Rd. Arlington, VA 22204
TUCKAHOE ELEMENTARY SCHOOL (EXISTING)	6550 N. 26 <sup>th</sup> St. Arlington, VA 22213 -
WASHINGTON-LEE HIGH SCHOOL (EXISTING)	1301 N. Stafford St. Arlington, VA 22201 -
JEFFERSON MIDDLE SCHOOL (EXISTING)	125 S. Old Glebe Rd. Arlington, VA 22204 -
FLEET ELEMENTARY SCHOOL (IN CONSTRUCTION)	125 S. Old Glebe Rd. Arlington, VA 22204 -

Inspection of any one or more of the identified Facilities prior to submitting a Conceptual Proposal may be arranged through the APS contact person identified above. APS will make available for review all structural information it has, but no warranty or representation of any kind is made by APS as to the accuracy or completeness of such information. No destructive or invasive testing will be permitted. The Conceptual Proposal shall include a proposed schedule for the initial installations on the Facilities identified above, with all installations to be completed within two (2) years of award of any Contract. At the sole discretion of Arlington Public Schools, additional Facilities may be added for SPRS installations, APS may elect to re-solicit for installations on additional Facilities, or APS may decide not to proceed with installations on additional Facilities. Any additional Facilities added will be subject to the terms and conditions set forth in the Contract, with rates to be negotiated at that time.

### **PROPOSAL SUBMISSION ADDRESS:**

Conceptual Proposals are to be submitted by mail, hand delivered or express carrier in compliance with the Proposal submittal information set forth in Section IV, Instructions to Offerors, to:

Arlington Public Schools,  
Purchasing Office, 4<sup>th</sup> Floor,  
Attn: David J. Webb, C.P.M  
Purchasing Director  
1426 N. Quincy Street,  
Arlington, VA 22207

**Refer to Section IV for additional instructions and requirements.**

### **ADDENDA:**

Addenda will be issued only in writing by the APS Purchasing Office. No other form of communication shall modify this RFP. All Addenda will be posted on the APS website at <https://www.apsva.us/purchasing-office/current-solicitations> and on the eVA website at [www.eva.virginia.gov](http://www.eva.virginia.gov).

Offerors shall ascertain prior to submitting a Proposal that all Addenda issued have been received and shall acknowledge receipt and inclusion of all Addenda by marking here:

Addendum #. \_\_\_\_ Date: \_\_\_\_\_ Addendum #. \_\_\_\_ Date: \_\_\_\_\_  
Addendum #. \_\_\_\_ Date: \_\_\_\_\_ (add additional spaces if there have been more than three Addenda)

It is the responsibility of an Offeror to discover all Addenda prior to submitting a Proposal, and no Proposal may be supplemented to address Addenda omitted.

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### **TRADE SECRETS OR PROPRIETARY INFORMATION:**

Offerors shall confirm whether their Proposal contains any information the Offeror deems proprietary or a trade secret. Information considered to be proprietary or a trade secret is to be included in the Proposal response at Tab 7. See Section IV. Instructions to Offerors, C.1, Trade Secrets or Proprietary Information, for additional information.

Please mark one:

- ( ) Yes, my Proposal contains information deemed to be proprietary or a trade secret. The information deemed to be proprietary or a trade secret can be located under Tab #7
- ( ) No, my Proposal does not contain information deemed to be proprietary or a trade secret.

### **INTERIM AGREEMENT AND COMPREHENSIVE AGREEMENT:**

Any Interim Agreement or Comprehensive Agreement which may result from the Proposals will be awarded through principles of competitive negotiation as further set forth in Section IV, Instructions to Offerors. The Comprehensive Agreement may be preceded by an Interim Agreement, or there may be award only of an Interim Agreement which does not progress to a Comprehensive Agreement.

### **STATE CORPORATION COMMISSION (SCC) IDENTIFICATION NUMBER: MANDATORY REQUIREMENT:**

An Offeror is required to be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise by law. The Offeror shall include in its Proposal the identification number issued to it by the Virginia State Corporation Commission ("SCC"). If the Offeror is a joint venture which does not have a SCC identification number, then the name of the joint venture shall be provided, all members of the joint venture shall be identified by full name, and each member of the joint venture shall provide its SCC identification number or establish its exemption from such requirement. For more information on how the SCC can expedite a request for an identification number, please contact the SCC at ([www.scc.virginia.gov](http://www.scc.virginia.gov)) or the SCC Clerk's office at 1-804-371-9733.

Please complete the following by checking the appropriate option that applies and providing the requested information

1. \_\_\_ Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the SCC. The Offeror's identification number issued by the SCC is \_\_\_\_\_. *(The SCC number is NOT your federal tax Identification number nor your eVA registration number).*
2. \_\_\_ Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such Offeror's identification number issued to it by the SCC is \_\_\_\_\_.
3. \_\_\_ Offeror is a Virginia joint venture organized and authorized to transact business in Virginia by the SCC.
4. \_\_\_ Offeror is a joint venture which does not have an identification number issued to it by the SCC but each member of the joint venture is authorized to transact business in Virginia and the SCC identifications numbers issued to each member of the joint venture are: [list member name and SCC identification number for each member, or provide the asserted exemption information in subSection 5 below]

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5. \_\_\_ Offeror does not have an identification issued to it by the SCC and such Offeror is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

***If you check option 5 above, you must attach additional sheets to explain in further detail why such Offeror is not required to be authorized to transact business in Virginia. Proposals that fail to submit supporting details regarding option 3 above may be considered non-responsive by APS.***

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### **VIRGINIA CONTRACTOR'S LICENSE: MANDATORY REQUIREMENT**

An Offeror is required to hold a Class A Virginia Contractor's License. The Contractor's License must either include a minimum of an ELE specialty designation, or if the Offeror does not meet this specialty designation the subcontractor to be used by the Offeror to perform all electrical work must be identified herein, providing all licensing information required of an Offeror. If the Offeror is a joint venture, at least one member of the joint venture must satisfy this License and specialty designation requirement, and the Proposal must certify that all work requiring such License and specialty designation will be performed solely by that licensed and specialty designated member.

1. \_\_\_ Offeror holds a Class A Virginia Contractor's License which includes an ELE specialty designation, License Number \_\_\_\_\_, issued \_\_\_\_\_ and with an expiration date of \_\_\_\_\_.
  
2. \_\_\_ Offeror holds a Class A Virginia Contractor's License, Number \_\_\_\_\_, issued \_\_\_\_\_ and with an expiration date of \_\_\_\_\_, which does not include an ELE specialty designation. All electrical work to be performed under this Conceptual Proposal for which an ELE specialty designation is required will be performed by \_\_\_\_\_, which holds a Class A Virginia Contractor's License including an ELE specialty designation, Contractor's License Number \_\_\_\_\_, issued \_\_\_\_\_ and with an expiration date of \_\_\_\_\_.
  
3. \_\_\_ Offeror is a joint venture which does not hold a Class A Contractor's License, but \_\_\_\_\_, a member of the joint venture, holds a Class A Virginia Contractor's License, Number \_\_\_\_\_, issued \_\_\_\_\_ with an expiration date of \_\_\_\_\_, which includes an ELE specialty designation. By submitting a Proposal, all members of the joint venture certify that all Work requiring a Class A Virginia Contractor's License with a ELE specialty designation will be performed only by the joint venture member identified herein as holding the required License and specialty designation. All members of the joint venture further acknowledge that violation of this certification will be a material breach of the Contract justifying immediate termination.

### **DEBARMENT:**

If you answer yes to any of the following, on a separate attachment, state the person or entity against whom the debarment was entered, give the location and date of the debarment, describe the project involved, and explain the circumstances relating to the debarment, including the names, addresses and phone numbers of persons who might be contacted for additional information

1. Is your organization or any officer, director, member, project manager, procurement manager, chief financial officer, partner or owner currently debarred from doing federal, state or local government work for any reason?  
Yes \_\_\_ No \_\_\_
  
2. Has your organization or any current officer, director, member, project manager, procurement manager, chief financial officer, partner, or owner ever been debarred from doing federal, state or local government work for any reason?  
Yes \_\_\_ No \_\_\_

### **TYPE OF BUSINESS:**

Please check the following information relevant to your firm:

Minority Owned Business:	YES _____	NO _____
Small Business:	YES _____	NO _____
Woman Owned Business:	YES _____	NO _____
Service Disabled Veteran Owned Business:	YES _____	NO _____

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Employment Service Organization:  
None of the Above:

YES \_\_\_\_\_  
YES \_\_\_\_\_

NO \_\_\_\_\_  
NO \_\_\_\_\_

### **ETHICS IN PUBLIC CONTRACTING/CERTIFICATION OF NON-COLLUSION:**

Any Interim Agreement or Comprehensive Agreement awarded as a result of this RFP will incorporate by reference Article 9 of the APS Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 *et seq.*), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 *et seq.*, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 *et seq.*). The undersigned certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other person (as defined in Code of Virginia Section 59.1-68.6 *et seq.*) and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

In compliance with this RFP and all the conditions imposed therein, the undersigned offers and agrees to furnish the goods/services in accordance with the attached Conceptual Proposal or as mutually agreed upon by subsequent negotiations. By my/our signature(s) below, I/we certify that I/we am/are authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this RFP. Sign in blue ink and type or print requested information.

### **PROPOSAL SIGNATURE APPEARS ON THE NEXT PAGE**

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My/our signature(s) certifies/certify that this firm or individual has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to APS, and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or person that could be considered as a conflict of interest or a potential conflict of interest to APS, pertaining to any and all work or services to be performed as a result of this Conceptual Proposal and any resulting Contract with APS.

**THIS PROPOSAL IS SUBMITTED BY:**

Full Legal Name of Offeror: (to be used for Award): \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remittance Address (If Different):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tax Identification (FIN/SSN#): \_\_\_\_\_

Title: \_\_\_\_\_

Typed/Printed Name: \_\_\_\_\_

\*Signature: \_\_\_\_\_

Date: \_\_\_\_\_

(\*Person signing must be authorized to bind the Offeror in contractual matters. If the Offeror is a joint venture the Proposal must be signed by an authorized representative of each member of the joint venture. Add additional copies of this signature page if necessary.)

***A W-9 Form should be attached showing correct full legal name for award of Contract. If the Offeror is a joint venture which does not yet have a Federal Tax Identification Number, provide a W-9 Form for each member of the joint venture.***

***INCLUDE TITLE PAGES ONE – SEVEN OF THIS RFP AS THE FIRST 7 PAGES OF YOUR PROPOSAL RESPONSE UNDER TAB 1***

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**\* REFER TO PAGE 2, RFP DOCUMENTS, FOR INSTRUCTONS ON HOW TO OBTAIN ELECTRONIC COPIES OF THESE DOCUMENTS.**

## I. DEFINITIONS

As any of the following terms are used in any part of this Request for Proposals, the following definitions shall apply. If a defined term is not included below, the definition set forth in the Form Comprehensive Agreement shall apply.

**Addendum or Addenda:** Any modification to the RFP issued in writing by the APS Purchasing Office.

**APS or Arlington Public Schools:** Arlington Public Schools (“APS”) is the name under which Arlington County School Board conducts its procurement activities.

**APS Facilities:** See “Facilities.”

**APS PPEA Guidelines:** Guidelines adopted by APS pursuant to the requirements of the PPEA and included as a part of the APS Purchasing Resolution.

**APS Purchasing Resolution:** The Arlington Public Schools Purchasing Resolution as in effect at the time of this RFP.

**Board:** The Arlington County School Board.

**Change Order:** A written modification to the Comprehensive Agreement or any Lease, or both, agreed and signed by both the Contractor and by APS. The Comprehensive Agreement or any Lease may be modified only by Change Order.

**Comprehensive Agreement:** The written Comprehensive Agreement or Contract between the Private Entity and APS that is required prior to the development of a Qualifying Project.

**Conceptual Proposal:** The initial Proposal requested by this RFP and containing all information required by this RFP. A determination regarding award of a Contract may be made based on Conceptual Proposals, or further information in the form of Detailed Stage Proposals may be required.

**Conceptual Stage:** The initial stage of the evaluation process when Conceptual Proposals are considered and APS determines whether to proceed with award based on Conceptual Proposal information or to require Detailed Stage Proposals.

**Contract:** See “Comprehensive Agreement.”

**Contract Documents:** The Contract Documents consist of the Interim Agreement, if any, the Comprehensive Agreement, the Lease, the Drawings and Specifications, this Request for Proposals, any Change Orders, the Notice to Proceed, and any Addenda or Modifications to any of the foregoing.

**Contractor:** The Private Entity with which APS contracts to perform and provide the Project.

**Cost-Benefit Analysis:** An analysis that weighs expected costs against expected benefits in order to choose the best option. An example is comparing the costs and benefits of constructing a new building to those of renovating and maintaining an existing structure serving the same purpose in order to select the most financially advantageous option.

**Detailed Stage:** A second phase of the Proposal evaluation and decision making process in which more detailed information as requested by APS is submitted in the form of Detailed Stage Proposals in order to assist APS in making its determination regarding Contract award. Whether or not Detailed Stage Proposals are required prior to Contract award is at the sole discretion of APS.

**Detailed Stage Proposal:** The Proposal submitted by Offerors selected by APS for consideration at the Detailed Stage.

**Detailed Stage Proposal Due Date:** The date and time stated in the notice to those Offerors who are invited to submit Detailed Stage Proposals by when Detailed Stage Proposals are due.

**Develop or Development:** To plan, design, develop, finance, lease, acquire, install, construct, or expand.

**Drawings:** One or more pages or sheets or collection thereof which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Project. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedule, tables and/or pictures.

**Facility:** The APS building or structure on which the SPRS System is installed, and/or which is to receive power from the SPRS.

**FOIA:** The Virginia Freedom of Information Act, VA. CODE ANN. §§ 2.2-3700, *et seq.*

**Interim Agreement:** A written agreement between a Private Entity and APS that provides for phasing of the development or operation, or both, of a Qualifying Project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the Project that constitutes activity on any part of the Qualifying Project preceding a Comprehensive Agreement. An Interim Agreement prior to a Comprehensive Agreement is not a required step.

**kW:** Kilowatt

**kWh:** Kilowatt hours

**Lease:** The written agreement between the Contractor and APS providing the terms under which the Contractor shall maintain and operate a SPRS on a Facility, and establishing the power requirements and rates applicable to that Facility. There will be a separate Lease for each Facility, and all Leases will be subject to the terms of the Comprehensive Agreement. A Lease may also be referred to herein as a “Power Purchase Agreement.” The two terms shall have the same meaning.

**Lease Payment:** Any form of payment, including a land lease, by APS to the Private Entity for the use of a Qualifying Project.

**Life-Cycle Cost Analysis:** An analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one Proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

**Local Utility:** Dominion Energy Virginia

**Major Subcontractor:** A Private Entity responsible for 10% or more of the reasonably anticipated cost of the Proposed Project, and is proposed as part of the initial Project Team.

**Material Default:** Any default by the Private Entity in the performance of its duties under VA. CODE ANN. § 56-575.8.E, or in the performance of any other contract or legal duty, which jeopardizes adequate service to APS or to the public from a Qualifying Project.

**Notice to Proceed or NTP:** A written notice from the Owner to the Contractor, which gives consent for commencement of the Work. For Projects with phased work, a Notice to Proceed will be issued prior to the commencement of each phase, if a Notice to Proceed is required by the Contract Documents. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Project Schedules shall be based upon that date.

**Offeror:** A Private Entity submitting a Proposal in response to this RFP.

**Operate, Operation:** To finance, maintain, improve, equip, modify, repair, or operate.

**Operator:** The Private Entity responsible for operating the completed Qualifying Project.

**Opportunity Cost:** The cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

**Owner:** See APS.

**Power Purchase Agreement or PPA:** See “Lease.”

**PPEA:** The Public-Private Education Facilities and Infrastructure Act of 2002, VA. CODE ANN. §§ 56-575.1, *et seq.*, as may be amended by the General Assembly.

**Private Entity:** Any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

**Production Estimate:** . Estimated amount of power generated from a solar photovoltaic installation over a one-year period in kWh.

**Project or Proposed Project:** The project or improvement which is the subject of this procurement, which is the Installation of SPRS to be hosted on Arlington Public Schools Facilities, with the SPRS to be maintained and operated by the successful Offeror under long term Leases, with sale to Arlington Public Schools of electricity generated by these SPRS.

**Project Team:** The Private Entities assembled by the Offeror and identified in the Conceptual Proposal and, if applicable, the Detailed Stage Proposal, as the overall team to perform the Proposed Project

**Proposal Due Date:** The date and time by which Conceptual Proposals are required to be received by APS to be eligible for consideration.

**Purchasing Agent:** The employee of APS authorized to act on behalf of APS in contractual matters. The Purchasing Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. No Private Entity shall rely upon and APS shall not be bound by any statement or representation made on behalf of APS by any person not designated by the Purchasing Agent to the Private Entity in writing as authorized to so act on behalf of the Purchasing Agent. It shall be the responsibility of the Private Entity to establish the authority to act regarding any communication or action by any person other than the Purchasing Agent. Use of the term Purchasing Agent in any writing issued by APS related to any Proposed Project or Qualifying Project shall be deemed to include such properly authorized designee within the scope of that designee’s authorization.

**Purchasing Office:** The office of the Purchasing Agent and designated staff.

**Qualifying Project:** APS has determined that the Proposed Project is a Qualifying Project. A Qualifying Project is (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for APS; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by APS; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems,

and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of APS through the use of technology or other means; or (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools.

**Revenues:** All revenues, income, earnings, User Fees, or Lease Payments arising out of or in connection with supporting the Development or Operation of a Qualifying Project, including without limitation, money received as grants or otherwise from the United States of America, from any public body, agency or department, or from any agency or instrumentality of the foregoing in aid of such facility.

**RFP:** This Request for Proposals.

**Responsible Public Entity:** A public entity that has the power to develop or operate the Project. APS is the Responsible Public Entity for this Project.

**Solar Photovoltaic Rooftop System or SPRS:** A system installed on a rooftop for the collection of solar energy and conversion of that energy to electricity for use by APS. SPRS refers to a single system or multiple systems as the context may require.

**Team Member:** All members of the Project Team required to be identified in a Conceptual Proposal or a Detailed Stage Proposal if applicable, as set forth in this RFP.

**User Fees:** The rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Comprehensive Agreement.

**VPPA:** The Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, *et seq.*

**Work:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.

## **II. INTRODUCTION TO RFP 01FY18**

### **A. BACKGROUND:**

Arlington Public Schools consists of twenty-three (23) elementary schools, five (5) middle schools and four (4) high schools. An alternative 6-12 secondary program is available as well as a high school continuation program. APS also has administrative offices located at multiple locations. APS has the following Departments responsible for overseeing the operations of the school division: Administrative Services, School & Community Relations, Facilities and Operations, Finance and Management Services, Information Services, Human Resources, and Teaching and Learning. APS employs more than four thousand, two hundred (4,200) employees and serves twenty-six thousand, nine hundred twenty-seven (26,927) Pre-K to 12 students. Additional information about APS can be found at [www.apsva.us](http://www.apsva.us).

APS stresses energy efficiency and environmental sustainability in the design of all construction and maintenance projects. APS is aware of the energy and environmental advantages of solar power and has multiple buildings used as schools for all age groups and administrative offices which appear to have design characteristics which make them appropriate for the installation of SPRS which will produce electric power to meet, or contribute to meeting, the power needs of APS. The Arlington County School Board thus has declared that installation of SPRS on APS Facilities rooftops to generate electric power for APS use is a Qualifying Project under the requirements of the PPEA and the APS PPEA Guidelines, and has authorized the solicitation of Conceptual Proposals to implement such a program.

### **B. GENERAL INFORMATION:**

APS is soliciting Conceptual Proposals for the installation of SPRS on the rooftops of multiple Facilities used by APS as schools or administrative offices. SPRS located other than on rooftops are not contemplated by this RFP and should not be included in any Conceptual Proposal. This solicitation is issued pursuant to the PPEA. The Project will consist of installation of SPRS, with the long-term operation and maintenance of the systems by the Contractor under a Power Purchase Agreement in the form of a Lease with APS. Lease durations are anticipated to be no less than fifteen (15) years and no more than twenty-five (25) years. There will be a Comprehensive Agreement which will serve as a master agreement setting forth the terms to be included in a separate Lease for each Facility on which a SPRS is to be placed. The Contractor will be responsible for all costs associated with installation of the SPRS and for the operation and maintenance thereof, with the Contractor's revenue to be generated by sale to APS of electric power generated by the SPRS at agreed rates for an agreed term. The space for installation, operation and maintenance, and all access requirements, will be provided by a Lease with APS as lessor and the Contractor as lessee, with an annual rental of \$1.00 to be paid by the Contractor to APS. A proposed Form Lease is attached as Appendix I. The Offeror shall include in its Proposal a Production Estimate to APS for each Facility on an annual basis and the rates it proposes to charge and how those charges will be calculated.

### **C. MINIMUM QUALIFICATIONS/EXPERIENCE**

1. Offeror must have been the general or prime contractor for, and completed, the installation of, no less than five (5) SPRS. Each previous project identified must have had a capacity within +/- 50% of the total capacity of all five (5) Facilities included in this RFP. Solely by way of example, if the total capacity for all five (5) Facilities which are the subject of this solicitation were 3 MW, then each prior project must have had a capacity of at least 1.5 MW and no greater than 4.5 MW.
2. Offeror must have been or be engaged in the operation and maintenance of no less than five (5) SPRS, each capable of producing a minimum of 0.5 megawatts of electrical power and selling this electric power, in whole or in part, to the owner of the building or facility, or others as agreed by the owner, on which the SPRS is installed.
3. The Offeror must submit examples of any past experience delivering solar generation PPAs within the North Carolina, Virginia, Maryland, and Washington D.C. region.
4. Offeror must satisfy all applicable requirements set forth in the Request for Proposals Title Pages for qualification to do business in Virginia and for a Class A Virginia Contractor's License and ELE specialty designation.

### III. SCOPE OF WORK

**A. Any Interim Agreement or Comprehensive Agreement will require the Contractor to provide the following Work and services:**

1. Provide all design for the SPRS to be installed in accordance with the latest applicable local, state, and federal codes and the regulations and requirements of the Local Utility. Design shall include but not be limited to all load studies and structural modifications for each Facility necessary to accommodate the SPRS. No provision shall be included for sale of generated power to others.
2. Make as few roof penetrations as safety and the functional integrity of the proposed system will permit to reduce risk of leaks and damage to existing roof finishes. Ballasted SPRS are preferred; framed supports for multiple solar photovoltaic panels are acceptable; individually attached solar photovoltaic panels are not acceptable.
3. Obtain all federal, state, and local governmental permits and zoning approvals required for installation and subsequent operation of the SPRS.
4. Coordinate and obtain all required interconnection agreements with the Local Utility.
5. Prior to submission of any design to APS, the Contractor shall inspect the Facility and submit in writing to APS identification of any repairs to the roof or roof covering which the Contractor deems necessary to accommodate installation of a SPRS and for the roof to have a projected life at least as long as the term of the Lease for that Facility. APS shall be responsible for accomplishing all identified repairs APS agrees are necessary.
6. Coordinate with the obligors under any existing roof warranty or warranties such that the warranty or warranties will remain in effect.
7. Provide all materials, equipment, wiring and ancillary items necessary to install and make the SPRS ready for Operation in the intended manner.
8. Commission, Operate and maintain the SPRS for such durations as may be set forth in the Lease for each Facility.
9. Provide to APS the minimum kW of solar generated electric power specified for each Facility at the agreed rates and for the agreed duration as set forth in the Lease. See the following chart under B.1 Deliverables that indicates the minimum generation requirements.
10. Any interruption of electric power to the Facility required for installation or maintenance shall be of short duration, shall be scheduled to occur at night or on weekends, and shall be coordinated with APS officials in charge of functions and activities taking place in the Facility outside normal school hours or the office hours of an administrative Facility and equipment within the Facility which may be sensitive to loss of power.
11. The finished installation should minimize exposed fasteners, sharp edges, and design or placement which may be conducive to damage to the modules or support structure. Materials used should be corrosion resistant and durable, and galvanic corrosion shall be avoided. The use of ferrous metals, wood or plastic components will not be accepted.

**B. Deliverables**

1. The following table indicates a snapshot of the initial Facilities' estimated photovoltaic generation capacity, existing main gear electrical bussing capacity, recent annual demand that is collected from utility metering as well as a brief description of roof.

School Site	Switchboard Overcurrent Protection (Amps)	Switchboard Bus Size (Amps)	Approximate PV Target System Size (KW)	Peak Demand (KW)
Fleet Elementary (480V Service)	1600	1600	575	
Kenmore Middle School (480V Service)	3000	4000	750	919
TJ Middle School (208V Service)	3000	3000	650	863
Tuckahoe Elementary (208V Service)	3000	3000	450	246
Washington Lee High School (Service 1 -480V)	4000	4000	580	1323
Washington Lee High School (Service 2 - 480V)	3000	3000	580	592

2. All Facilities may not be made available at the same time. APS will issue Notices to Proceed on a Facility by Facility basis, in the order selected by APS, with the Work under each Notice to Proceed to be governed by the terms of this Comprehensive Agreement and the Lease for that Facility. The Offeror shall include in its Conceptual Proposal a suggested schedule for the installation and commencement of Operation of the SPRS for each of the Facilities listed above. The number of Facilities for which Notices to Proceed will be issued and the timing of such Notices to Proceed will be solely at the discretion of APS and will be dependent upon, among other things, the perceived needs of APS, market factors for electricity, and the Contractor’s performance. Upon execution of the Comprehensive Agreement, APS shall have two (2) years within which to issue any Notice to Proceed and Lease for any of the Facilities identified above.
3. Historic electrical consumption data for a period of three (3) years is available upon request for the four existing Facilities.
4. As-built information is available from Cathy.Lin, at [cathy.lin@apsva.us](mailto:cathy.lin@apsva.us) for the following Facilities: Tuckahoe Elementary School (PDF of drawings), Kenmore Middle School (PDF of Drawings), Washington-Lee High School (PDF of drawings), and Jefferson Middle School (PDF of portions of the drawing set). Construction drawings for Fleet Elementary School are available. The drawings for the Facilities shall include architectural, structural and electrical discipline data. This data is not guaranteed to be accurate as-built conditions. The Offeror shall field verify all data that is critical to their design and pricing for this RFP response.
5. Local Utility’s Existing Rate Schedule for APS is available at [<http://vepga.org/contract-materials/>].
6. Electrical Riser Diagram for Each Facility and highlighted floor plan areas that may provide information beneficial to establishing inverter locations is available from Cathy Lin, at [cathy.lin@apsva.us](mailto:cathy.lin@apsva.us)

**C. Maintenance and Operation:**

1. Contractor shall be responsible for maintaining the SPRS for the length of the Lease, including but not limited to cleaning, upgrades, and repairs necessary to ensure the continuous delivery of electricity. It is understood that any damage to the SPRS caused by weather, or any other cause for which APS is not solely responsible is the Contractor’s responsibility to repair at no cost to APS.
2. Contractor shall be responsible for repair of all damage of any sort, including but not limited to moisture damage, caused by the SPRS.
3. Contractor shall provide an acceptable method of metering to measure the amount of power provided to APS. Meters shall be installed to capture all photovoltaic power production. Data captured from meters shall be delivered to the Facility’s IT/LAN rooms via CAT 6 cabling. This data shall be used in the APS energy dashboard for the Facility that will be provided outside of this RFP.



4. Contractor shall extend CAT6 cabling from each inverter and meter to nearest IT/LAN room. Data collected from meters and inverters shall be used for energy dashboard that shall be provided by others outside of this RFP. The dashboard shall be web compatible for access and use elsewhere by APS, and shall coordinate Internet connections with APS.
5. In the event any repair to a roofing system is required prior to expiration of the term of the Lease or the prior termination thereof due to any cause other than the negligence, gross negligence, recklessness or willful act of the Contractor or anyone for whom Contractor is responsible, the repair shall be the responsibility of APS, and Contractor shall be responsible for relocating the SPRS to allow for the repairs and for reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement. Contractor shall determine the likelihood of a required roof replacement during the term of the Lease and this cost shall be reflected within the Lease rate structure. APS shall provide age/type/warranty of roof respectively for each Facility. If the roof system repair or replacement is due to the negligence, gross negligence, recklessness or willful misconduct of the Contractor or anyone for whom Contractor is responsible, Contractor shall be responsible for all required repairs and for relocating and/or reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement.

**D. Financing**

1. The Conceptual Proposal shall contain a statement of how the Offeror intends to finance the Project, including all costs of design, installation, startup, maintenance, and operation.
2. Within ninety (90) days following execution of a Comprehensive Agreement the Contractor shall provide a letter of commitment from any financial entity which is to provide financing for the Project.
3. The Conceptual Proposal shall include estimated cost per kWh of power delivered.
4. The Conceptual Proposal shall provide rates with all federal, state, and local utility, energy or environmental incentives and credits accruing to the Contractor and included in the cost calculations, and alternate rates with Solar Renewable Energy Credits accruing to APS.
5. Offeror shall include in its Conceptual Proposal a methodology for determination of a buy-out price in the event of a termination for convenience by APS, with alternative calculations based upon whether APS retains the SPRS or it is removed by the Contractor.
6. Offeror shall include in its Conceptual Proposal a methodology for determination of a buy-out price at the end of the Lease term in the event APS elects at that time to retain the SPRS rather than having it removed by Contractor.

**E. Electricity Generation and Sale**

1. There will be no sale of generated power to third parties

**F. End of Service Life**

1. At the end of the Comprehensive Agreement term, including any extensions, if APS does not elect to retain the SPRS for self-operation the Contractor is responsible for decommissioning and removing the SPRS from all Facilities and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal. If any Lease term is for a duration shorter than the term of the Comprehensive Agreement, if at the end of the Lease Term APS does not elect to retain the SPRS for self-operation the Contractor shall be responsible for decommissioning and removing the SPRS from the Facility and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal at no cost to APS.

2. At the sole discretion of APS, APS may negotiate with the Contractor an extension of the Comprehensive Agreement and any modifications thereto by Change Order for the operation and maintenance of the SPRS and the provision of electric power to APS.
3. At the sole discretion of APS, APS may purchase any one or more of the SPRS in their operational state at a price calculated as set forth for a buy-out in accordance with Section III.D. 5 and 6 above.

**G. Obligations of APS**

1. APS shall provide the necessary space for the installation of the SPRS and ancillary equipment and items as required by the design documents approved by APS and Arlington County. APS shall be under no obligation to approve any proposed design which interferes with or in any way impairs the current or planned use of the Facility on which the SPRS is to be located.
2. APS shall provide access to the Facility as needed for design, and for all agreed installation, operation, and maintenance. Contractor shall not seek access in such a manner as will interfere with any ongoing use of the Facility on which the SPRS is located.
3. Payment terms shall be as set forth in the Comprehensive Agreement and in the Lease for each Facility.

**H. Optional Items**

1. The Offeror shall include in its Conceptual Proposal the Optional Items set forth below, which APS may, but is under no obligation to, include in any Interim Agreement and/or Comprehensive Agreement awarded to an Offeror.
  - a. The Offeror may include in its Conceptual Proposal any other Optional Items it deems to be consistent with the general intent of this procurement and readily compatible with the proposed SPRS.
2. The impact of each Optional Item on the proposed rates, net of all incentives and credits, must be clearly stated in the Proposal and must be amortized over the life of the Comprehensive Agreement term in the Proposal.
3. If selected by APS, any Optional Item shall become a part of the SPRS and all obligations of the Contractor under the Interim Agreement and/or Comprehensive Agreement shall be applicable.

## IV. INSTRUCTIONS TO OFFERORS

### A. Information Requests

All questions relating to this solicitation shall be submitted in writing to David J. Webb, Purchasing Director, Arlington Public Schools Purchasing Office at [david.webb@apsva.us](mailto:david.webb@apsva.us), with a copy to Cathy Lin, Energy Manager and Stormwater Program Administrator, at [cathy.lin@apsva.us](mailto:cathy.lin@apsva.us), who is designated as the Arlington Public Schools contact person for this procurement. For a question to be considered, the subject line of the email must state the following: "RFP #01FY18 Questions". Questions should be succinct and must include the submitter's name, title, company name, company address, email address and telephone number. Prior to the award of a Contract resulting from this solicitation, Offerors and prospective Offerors are prohibited from contacting Arlington Public Schools staff other than the designated Arlington Public Schools contact persons.

Questions will not be considered if they are received after January 19, 2018, by 12:00 P.M., Local Prevailing Time. Any questions related to any answers provided or to any Addendum may be addressed in additional answers or Addenda.

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal amendment only in the form of a written Addendum issued by the Office of the Purchasing Agent. Offerors are cautioned that any written, electronic, or oral representations made by any Arlington Public Schools representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Addendum issued by the Office of the Purchasing Agent.

### B. Tentative Schedule For RFP #01Y18

RFP Issuance	December 1, 2017
Mandatory pre-Proposal Conference	January 12, 2018, at 10:00 A.M. (Local Prevailing Time)
Question Deadline	January 19, 2018 Prior to 12:00 P.M., (Local Prevailing Time)
Conceptual Proposals Due	March 19, 2018 Prior to 2:00 P.M., (Local Prevailing Time)
Notification to all Offerors remaining in consideration	TBD
Short List Interviews, if Scheduled	TBD
Notification to all remaining Offerors of those selected for Detailed Stage	TBD
Submission of Detailed Stage Proposals	TBD
Short List Interviews, if Scheduled	TBD
Negotiations	TBD
Contract Award	TBD
Contract Starts	Upon execution by the Purchasing Agent

### C. Additional Information

#### 1. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction are subject to public disclosure under the Virginia Freedom of Information Act (FOIA) unless the Offeror invokes those protections from public disclosure provided by the FOIA or by Virginia Code Section 2.2-4343.F upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. **Offerors shall submit, under Tab 7 of the Conceptual Proposal, any data or materials it considers to be a trade secret or proprietary information, or falls within the exceptions to the FOIA and shall state the reason why protection is necessary. Offerors may not declare the entire Proposal proprietary nor may they declare proposed pricing to be proprietary.** APS will consider and act upon such declarations as provided in the APS PPEA Guidelines. References may be made within the body of the Proposal to proprietary or trade secret information; however, all information contained within the body of the Proposal not in the separate section labeled proprietary shall be public information. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

2. DEBARMENT STATUS

The Offeror shall indicate, in the space provided on Title Page - Five, whether or not it, or any of its principals, is/are currently debarred from submitting bids or proposals to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting proposals to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the Proposal. This statement shall also apply to any subcontractor(s) the Offeror intends to use in the performance of a resulting contract.

3. CONFLICT OF INTEREST STATEMENT

The Offeror must provide a statement regarding potential conflicts of interest. The certification shall be in the form provided in this solicitation, signed by an authorized agent and principal of the Offeror and notarized. The completed Conflict of Interest Statement (Appendix B) shall be provided in Tab #1 of the Proposal.

4. EXPENSES INCURRED IN PREPARING PROPOSAL

APS accepts no responsibility for any expense incurred by any Offeror in the preparation and presentation of a Conceptual Proposal or, if required, a Detailed Proposal. All expenses related to any Proposal are the sole responsibility of the Offeror.

5. INCOMPLETE DOCUMENTS

Each Offeror is responsible for having determined the accuracy and/or completeness of the solicitation documents upon which it relied in making its Proposal, and has an affirmative obligation to notify the Purchasing Agent immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential Offeror downloaded an electronic version of the solicitation documents, that potential Offeror is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful Offeror proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified the Purchasing Agent, the Offeror hereby agrees to perform any work described in such missing or incomplete documents at the Offeror's sole expense and at no additional cost to APS.

Failure to acknowledge all Addenda issued during the solicitation process on the Request for Proposals Title Page - Three is considered an incomplete Proposal document.

6. OFFEROR INVESTIGATIONS

Before submitting a Proposal, each Offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the Contract and to verify any representations made by APS upon which the Offeror relies. No pleas of ignorance or mistake, inaccuracy, or misrepresentation of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful Offeror from its obligation to comply in every detail with all provisions and requirements of the Contract Documents, or will be accepted as a basis for any claim whatsoever for any monetary compensation on the part of the successful Offeror.

7. COMPETITIVE NEGOTIATION FOR NON-PROFESSIONAL SERVICES

This solicitation is let under the procedure for "Competitive Negotiation for Goods and Services Other Than Professional Services" as defined in the APS Purchasing Resolution consistent with the direction of the APS PPEA Guidelines. Under this procedure, the content of the Conceptual Proposals and the identity of the Offerors are not public record until an award determination has been made. Because of this restriction, the opening of Proposals is not public.

8. ARLINGTON COUNTY BUSINESS LICENSES

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

9. AUTHORITY TO TRANSACT BUSINESS

Any Offeror organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the Offeror by the Virginia State Corporation Commission must be written in the space provided on the Proposal Form. If the Offeror is a joint venture which does not have a SCC identification number, then the name of the joint venture shall be provided, all members of the joint venture shall be identified by full name, and each member of the joint venture shall provide its SCC identification number or establish its exemption from such requirement. Any Offeror that is not required to be authorized to transact business in the Commonwealth shall include in its Proposal a statement describing why the Offeror is not required to be so authorized. APS may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, joint venture, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a prospective and/or successful Offeror to provide such documentation shall be grounds for rejection of the Proposal or cancellation of the award. For further information prospective Offerors should refer to the Commonwealth of Virginia State Corporation Commission website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

10. INSURANCE REQUIREMENTS

Each Offeror must review the insurance requirements set forth in the Insurance Requirements Checklist, Appendix E carefully with its insurance agent or broker prior to submitting a Proposal to ensure they can provide the specific coverage requirements and limits applicable to this solicitation. If the Offeror is not able to meet the insurance requirements of the solicitation, alternate insurance coverage satisfactory to APS may be proposed by the Offeror and considered by APS. Written requests for consideration of alternate coverage must be received by the Purchasing Agent at least ten (10) calendar days prior to the Proposal Due Date. If APS denies the request for alternate coverage, the coverage required by the Insurance Requirements Checklist must be provided. If APS permits alternate coverage, an amendment to the Insurance Checklist will be issued prior to the Proposal Due Date.

11. INTEREST IN MORE THAN ONE PROPOSAL, AND COLLUSION

More than one Proposal received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names, or as a member of a joint venture, will be rejected. Reasonable grounds for believing that an Offeror is interested in more than one (1) Proposal for a solicitation both as an Offeror and as a subcontractor for another Offeror, will result in rejection of all Proposals in which the Offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more Offerors submitting a Proposal for the work. Any or all Proposals may be rejected if reasonable grounds exist for believing that collusion exists among any Offerors. Offerors rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

12. PROPOSAL WITHDRAWAL OR CORRECTION

An Offeror may withdraw a Conceptual Proposal at any time. In the event an Offeror discovers an error in its Conceptual Proposal and desires to make a correction after the Proposal Due Date, the Offeror shall submit in writing the requested correction, along with a written explanation and justification for the change, no later than one (1) business day following the Proposal Due Date. If APS is satisfied that the identified error was the result of a clerical or mathematical error, APS may permit the correction. APS shall issue its written decision to the requesting Offeror within three (3) business days of receipt of the correction request. If the request is approved, the Conceptual Proposal shall be deemed modified by incorporation of the correction requested. If the requested correction is denied, the Conceptual Proposal shall be considered as originally submitted. APS may request additional information or clarifications from an Offeror at any time after the review process has begun.

13. PARKING

Where parking is not provided at the Facility, the Contractor is responsible for the payment of any parking charges or fines resulting from parking at any worksite(s).

14. CONTRACT AWARD IS IN THE BEST INTEREST

APS reserves the right to accept or reject Proposals, to cancel this solicitation, to waive any informalities or irregularities therein, (an informality is a minor defect or variation of a bid or Proposal from the exact requirements of the IFB or RFP, which does not affect the prices, quantity or delivery schedule for the goods, services or construction being procured), and to contract as the best interests of APS may require in order to

obtain the firms that best meet the needs of APS, as expressed in this RFP. Selection of a Proposal does not mean that all aspects of the Proposal are acceptable to APS. APS reserves the right to negotiate the modification of terms and conditions with the Offeror offering the best value to APS in conjunction with the Evaluation Criteria contained herein prior to the execution of a Contract, to ensure a satisfactory Contract.

APS retains the right to reject any Proposal at any time for any reason whatsoever, including but not limited to a decision that it no longer wishes to proceed with the proposed Project which is the subject of this RFP.

15. NOTICE OF DECISION TO AWARD

APS will post a written Notice of Decision to Award on a public notice board in the Arlington Public Schools Education Center, 1426 N. Quincy Street, Arlington, Virginia, 22207, stating the date the decision to award was made, and identifying the name(s) of the awardee(s).

16. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS

The Team Members submitted by the Offeror in its Conceptual Proposal are considered essential to the Offeror's qualifications and may not be replaced, substituted, or augmented after the Offeror has been selected for submission of a Detailed Proposal or for negotiations, whichever first occurs, without prior written approval of APS. A request to replace or substitute any Team Member must be submitted to and approved by APS prior to substitution or augmentation.

18. CONTRACTOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS

As a condition of awarding a Contract for the provision of Work that requires the Contractor or its employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Contractor shall provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its subcontractors and the employees thereof. (Submit completed Appendix A).

The Contractor certification shall also cover its employees, its subcontractors, and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's certification

The Contractor shall submit to APS a completed Contractor Certification Regarding Criminal Convictions on the form provided by APS.

19. REQUEST FOR COMMENTS

Following the award of any Contract or Contracts, or the cancellation of this solicitation, all Offerors or potential Offerors are invited to provide to APS written comments regarding the manner in which this solicitation was conducted and any suggested modifications to that process which might make future solicitations by APS more efficient, more productive, and more attractive to potential Offerors.

## **V. CONCEPTUAL STAGE PROPOSAL REQUIREMENTS**

### **A. GENERAL REQUIREMENTS**

One original hard copy Conceptual Proposal in a binder, and nine (9) complete electronic copies of the original hard copy Conceptual Proposal, in pdf format on CD-ROM or memory stick, each one containing the Offeror's name, for a total of ten (10) individual copies of your Conceptual Proposal is required. The Offeror's Conceptual Proposal shall not exceed the stated page limitations, if any. The Conceptual Proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than ten (10) point font for each response item. Note: for page-counting purposes, a page equals a one-sided sheet. If a page limit is not noted within the section below there is no page limit.

Conceptual Proposals shall be submitted in a sealed package, with the RFP number, the Proposal Due Date, the Offeror's name, and the Offeror's Class A Virginia Contractor's License number, and its expiration date, on the outside of the sealed package, to the APS Purchasing Office, located on the fourth floor of the Arlington Public Schools Education Center, 1426 N. Quincy Street, Arlington, VA 22207, before expiration of the Proposal Due Date. Offerors are responsible for timely submission of their Conceptual Proposal. APS will not assume responsibility for reproduction where an insufficient number of copies have been supplied. APS will notify the Offerors of the deficiency and request that the appropriate number of copies are delivered by the end of the second (2nd) business day following the request. Failure to comply with this or other requirements of this Request for Proposals may be grounds for APS to reject such Conceptual Proposals.

Emailed or facsimile submission of Conceptual Proposals are not acceptable, and any Conceptual Proposals submitted in either such manner will not be considered. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors who attended the mandatory pre-Proposal conference in compliance with Title Page – Two, Pre-Proposal Conference, are encouraged to submit Conceptual Proposals.

Offerors shall submit their Conceptual Proposals with the required information in the order listed below. Additional instructions are in the Instructions to Offerors (Section IV) of this solicitation.

Modification of or additions to any portion or terms of the solicitation may be cause for rejection of the Conceptual Proposal; however, APS reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a Conceptual Proposal as nonresponsive. Any objections or proposed modifications to the terms of the solicitation shall be submitted only as provided below.

Mandatory provisions of this Request for Proposals are indicated by the inclusion of the words "shall" or "must" to identify the Offeror's obligations. Failure to comply with these requirements or with any other requirements stated as mandatory either in this RFP or in the Instructions to Offerors shall result in rejection of the Offeror's Conceptual Proposal as not responsive, except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality, or time.

APS has a standard form Interim Agreement, Comprehensive Agreement, and Lease which are included as a part of this RFP. Modifications to these standard forms to accommodate the Project which is the subject of this RFP are included as Supplemental Conditions. Offerors shall not include any objections to, or proposed modifications to, the Interim Agreement, Comprehensive Agreement, Lease, or Supplemental Conditions in their Conceptual Proposal. If there is a Detailed Proposal Stage and the Offeror is selected for the Detailed Proposal Stage, any objections or proposed modifications to the Interim Agreement, Comprehensive Agreement, Lease, or Supplemental Conditions shall be submitted in writing as a part of the Detailed Stage Proposal or shall be deemed to have been waived without objection. If there is no Detailed Proposal Stage and APS proceeds with negotiations based on the Conceptual Proposals, any objections or proposed modifications to the Interim Agreement, Comprehensive Agreement, Lease, or Supplemental Conditions shall be submitted in writing at the commencement of negotiations with that Offeror or shall be deemed to have been waived. Any Offeror receiving award of an Interim Agreement and/or of a Comprehensive Agreement shall be required to execute a contract in substantial compliance with the APS standard Interim Agreement and/or Comprehensive Agreement and will be required to furnish all other required Contract Documents including tax identification or social security number within fifteen (15) days

after receipt of notification that the Contract is ready for signature; otherwise, APS may award the contract to another Offeror.

Any erasures or corrections in a Conceptual Proposal must be initialed by the Offeror in blue ink.

**B. UNNECESSARILY ELABORATE RESPONSES**

Conceptual Proposals shall contain sufficient information to respond fully to the requirements of this RFP, and to establish the benefits to APS of contracting with the Offeror. However, unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate or expensive art work, paper, bindings, and visual and other presentations are neither necessary at this time nor desired by APS.

**C. USE OF INFORMATION AND DOCUMENTS**

APS and its officials, employees and agents will copy and use the Conceptual Proposal and documents included therewith for various purposes related to analysis, evaluation, and decision to approve the Offeror for the Detailed Stage if applicable and to award a Contract. Conceptual Proposals shall be the property of APS. Following award APS may be required to allow inspection and copying of documents, and may also use the Offeror's documents in connection with any resulting contracts with that Offeror. The Offeror is responsible for obtaining any necessary authorizations for all such use of the documents and information, and for assuring that such copying and use is in conformance with laws related to trademarks and copyrights. Any documents or information for which the Offeror has not obtained such authorization, or for which such copying and use is not authorized, shall not be submitted. The undersigned Offeror agrees to indemnify defend and hold APS, its officials, employees and agents harmless from any claims of any nature, including claims arising from trademark or copyright laws, related to use of information and documents submitted with the Offeror's Conceptual Proposal.

**D. SUBMISSION OF PROPRIETARY INFORMATION**

See Section IV.C.1.

**E. FORMAT AND CONTENT**

The Conceptual Proposal shall address all requirements of this RFP. The content of the Conceptual Proposal copies submitted on CD-ROM or memory stick should mirror the content of the original hard copy and should be in pdf format. Failure to do so will result in a lowered evaluation. Incomplete Conceptual Proposals may be determined nonresponsive.

**Offerors should organize their Conceptual Proposals using the following tabular format; failure to follow this format, or the omission of required information, will directly impact the evaluation factors:**

**TAB 1: Administrative: The following information shall be included in Tab 1**

1. A fully executed Request for Proposals Title Pages One – Seven of this solicitation should be included as the first six (6) pages of your Conceptual Proposal. The name stated on Title Page – Seven must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided.

2. The Contractor Certification Regarding Criminal Convictions at Appendix A
3. The Conflict of Interest Statement at Appendix B
4. The Non-Disclosure and Data Security Statement at Appendix C
5. The Insurance Checklist at Appendix E
6. If the Offeror is a joint venture, a copy of the joint venture agreement.



**TAB 2: Executive Summary: The following information shall be included in Tab 2**

1. Identify the legal structure of the Offeror. If the Offeror is a partnership or a joint venture, provide a copy of the partnership agreement or joint venture agreement.
2. Provide three (3) current references for installation of SPRS performed within three (3) years prior to the Proposal Due Date. Indicate organization name, contact name, telephone number and **e-mail address of each reference**. Please verify all information prior to submitting it.
3. Provide three (3) current references for operation and maintenance of SPRS involving sale of electricity generated by the SPRS to the owner which either have been completed within three (3) years prior to the issue date of the RFP, or which are ongoing at the time of submission of the Conceptual Proposal. Indicate organization name, contact name, telephone number and **email address of each reference**. Please verify all information prior to submitting it. You may use the same references as you used for installation.
4. Address factors which the Offeror believes to differentiate it from other potential Offerors for this project.
5. Address the Offeror's particular strength in the market place.
6. Describe the Offeror's experience in installing, operating and maintaining SPRS in addition to those projects identified in the references section above.
7. Describe how long the Offeror has been installing, operating, and maintaining SPRS. If the duration is different for installing, operating, or maintaining, clarify the time applicable to each segment of the business.
8. State whether the Offeror's business line is solely installing, operating, and maintaining SPRS. If not, what other services does the Offeror provide and what percentage of the Offeror's business lines is the installation, operation, and maintenance of SPRS?

**TAB 3: Offeror information: The following information shall be included in Tab 3**

1. Identify the organizational structure for the Project, the management approach and how each Private Entity in the organizational structure fits into the overall team assembled by the Offeror to perform the Project ("Project Team"). The Offeror should identify any Major Subcontractor that is proposed as part of the initial Project Team, and architecture/engineering firms which will be providing design services. All intended members of the Project Team ("Team Members") known at the time the Conceptual Proposal is submitted for the Conceptual Stage must be identified. Identified Team Members may not be substituted or replaced without the prior written approval of APS.
2. Provide adequate evidence to support that you possess the minimum qualifications/experience as required in Section II.C.
3. Provide your most recently filed, signed tax return, and financial statements audited by an independent Certified Public Accountant (CPA). If the Offeror is a joint venture, provide this information for all members of the joint venture. This includes the opinion letter, management letter comments, income statement, balance sheet, and notes to the financial statements from the most recent reporting period. Additional financial details, to include balance sheets and cash flow statements are requested for the past three years. Note: APS will treat any financial information provided in the Conceptual Proposal as proprietary and confidential, and it will not be subject to public disclosure. Therefore, APS will not execute any Offeror-provided non-disclosure agreements related to such documents.
4. For each Team Member, provide a certification that it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, including the identification number issued to it by the State Corporation Commission

or, if the Team Member is not required to be so authorized to transact business in Virginia by the State Corporation Commission a statement of the reasons why.

5. A copy of the Class A Virginia Contractor's License, and the classification/specialty, or certificate for each Team Member required by law to have such license or certificate. If a copy of the license or certificate is not available, list the license or certificate number, issue date, expiration date, and classification(s). For any Team Member not required to have a Class A Virginia Contractor's License or certificate, provide a statement of the reasons why.

6. Describe the relevant experience of each Team Member and of the key personnel to be involved in the Project, including experience with Projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of each Team Member. Include the identity of any Team Members that will provide design, construction and completion, or financial guarantees and warranties and a description of such guarantees and warranties.

7. Provide the names, addresses, and telephone numbers of persons within each Team Member who may be contacted for further information.

8. Provide a current or most recently audited financial statement for each Team Member and for each owner of each such Team Member with an equity or controlling interest of twenty percent (20%) or greater.

9. Identify any persons affiliated with any Team Member who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 *et seq.*

10. Provide for each Team Member a statement listing all the Team Member's prior projects and clients for the past five (5) years and contact information for same (name, address, telephone number and e-mail address). If a member of the Project Team has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the Proposed Project and, second, it shall include as many of its most recent projects as the required number permit.

11. For each Team Member provide a brief summary of the safety performance record and current safety capabilities, including a summary of state and federal OSHA citations and records during the past five (5) years. APS reserves the right to determine, in its sole discretion, the extent to which safety records impact the qualifications of any Team Member.

12. For each Team Member provide the following information:

a. A sworn certification by an authorized representative of the Team Member attesting to the fact that the Team Member currently is not debarred or suspended by any federal, state, or local government Entity;

b. A disclosure and description by the Team Member for the past five (5) years of any of the following conduct or action taken by or against the Team Member:

- (1). Bankruptcy filings.
- (2). Assessing and/or being assessed liquidated damages.
- (3). The imposition of any fines, penalties or assessments.
- (4). Any judgments or decrees.
- (5). Legal claims or lawsuits filed by or against the Team Member, including both judicial proceedings and arbitrations.

- (6). Contract terminations (whether for default, convenience or otherwise).
- (7). License revocations, suspensions or other disciplinary actions.
- (8). Prior debarments or suspensions by a non-governmental Entity.
- (9). Denials of prequalification.
- (10). Findings of non-responsibility.
- (11). Violations of any federal, state or local criminal or civil law.
- (12). Criminal indictments or investigations of the Team Member or any principals, officers, directors or owners of the Team Member.

**TAB 4: Project and Performance Information: The following information shall be included in Tab 4.**

1. Provide all information required by Section III.A not identified below.
2. Provide the conceptual design for the Project. For each SPRS to be provided, include any foreseeable impact upon the structure, function, or aesthetics of the building, identify the materials and equipment proposed to be used, and state the power production output projected expressed in kW annual average.
3. For each SPRS to be provided, complete an APS Facility System Summary Form, Appendix D.
4. For each SPRS to be provided, identify, and fully describe any work to be performed by APS or other proposed obligations of APS.
5. For each SPRS to be provided, include a list of all federal, state, and local permits and approvals required for the Project and a schedule for obtaining such permits and approvals.
6. For each SPRS to be provided, identify any anticipated adverse social, economic, and environmental impacts of the Proposed Project. Specify the strategies or actions to mitigate known impacts of the Proposed Project.
7. For each SPRS to be provided, identify the projected positive social, economic, and environmental impacts of the Proposed Project.
8. For each SPRS to be provided, identify the proposed schedule for the work on the Proposed Project, including the estimated time for completion.
9. For each SPRS to be provided, propose allocation of risk and liability for work completed beyond the Proposed Project's completion date to be included in the Comprehensive Agreement.
10. For each SPRS to be provided, state assumptions related to ownership, legal liability, law enforcement and operation of the Proposed Project and the existence of any restrictions on APS's use of the Proposed Project.
11. For each SPRS to be provided, provide information relative to phased or partial completion of the Proposed Project prior to completion of the entire work.
12. For any of the required information, if the information is the same for more than one Facility, consolidation of this information by Facility groupings is acceptable.

**TAB 5: Financing and Cost Information: The following information shall be included in Tab 5**

1. Provide all information required by Section III. D not identified below.

2. Fully set forth the details of the proposed Project Financing as required in Section III.D.
3. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
4. Complete and include Appendix F.
5. Price will be considered in evaluating Conceptual Proposals, but may not be the controlling factor. Pricing shall be provided on a per kWh of electricity provided and shall not provide for any additional charges to APS other than for any increase in the rate which may result from election by APS of any Optional Item. Pricing shall be set forth at a constant rate over the term of the Comprehensive Agreement. The Conceptual Proposal may, but is not required to, also include a pricing alternative based on rate increases over the term of the Comprehensive Agreement. Pricing of Optional Items shall be provided but shall not be included in the Total Price of Electricity Provided. Pricing shall be provided in the form set forth on Appendix F, for which all information requested therein shall be provided.
6. Provide a plan for the development, financing, and operation (as applicable) of the Proposed Project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan (if applicable) should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports such as but not limited to feasibility studies. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included.
7. Identify the proposed risk factors and methods for dealing with these factors.
8. Identify any local, state, or federal resources that the Offeror contemplates requesting for the Proposed Project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of APS's credit or revenue.
9. Identify the amounts and the terms and conditions for any revenue sources.
10. Identify any aspect of the Project that could disqualify the Project from obtaining tax-exempt financing.

**TAB 6: Public service and involvement factors: The following information shall be included in Tab 6**

Provide a statement setting forth participation efforts that are intended to be undertaken in connection with the Project with regard to the following types of businesses: (i) minority-owned businesses; (ii) women-owned businesses, (iii) small businesses; (iv) service disabled veteran owned businesses; (v) employment service organizations.

**TAB 7: Trade Secrets or Proprietary Information**

Offerors are to provide information on the data or other materials sought to be protected and state the reasons why protection is necessary or falls within the exceptions of the Virginia Freedom of Information Act. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction. See Section IV.C.1.

**VI. DETAILED STAGE PROPOSAL REQUIREMENTS**  
**(If Detailed Proposals Are Deemed Necessary)**

If Detailed Stage Proposals are required, the following requirements shall apply to Detailed Stage Proposals from those Offerors from which Detailed Proposals are requested. The due date and time for Detailed Stage Proposals ("Detailed Stage Proposal Due Date") shall be set by the Selection Committee in the notice issued to the remaining Offerors that they are to submit Detailed Stage Proposals. Failure to submit a Detailed Stage Proposal by the Detailed Stage Proposal Due Date will eliminate the Offeror from further consideration. The format of the Detailed Stage Proposal and the Conceptual Proposal is the same. The Conceptual Proposal shall be re-submitted incorporating all changes for the Detailed Stage Proposal, with all changes for the Detailed Stage Proposal highlighted in a readily detectable manner.

**A. GENERAL REQUIREMENTS**

One (1) original hard copy Detailed Stage Proposal in a binder, and nine (9) complete electronic copies of the original hard copy Detailed Stage Proposal, in pdf format on CD-ROM or memory stick, each one containing the Offeror's name, for a total of ten (10) individual copies of your Detailed Stage Proposal document is required. The Offeror's Detailed Stage Proposal shall address all requirements of this solicitation, not exceeding the stated page limitations. The Detailed Stage Proposal shall be limited to a page size of 8 1/2" x 11", single space and type size shall not be less than ten (10) point font for each response item. Note: for page-counting purposes, a page equals a one-sided sheet. If a page limit is not noted within the section below there is no page limit.

Proposals shall be submitted in a sealed package, with the RFP number, the Proposal Due Date, the Offeror's name, and the Offeror's Class A Virginia Contractor's License number, and its expiration date, on the outside of the sealed package. Offerors are responsible for having their Detailed Stage Proposal received by Purchasing Office staff prior to the Detailed Stage Proposal Due Date. APS will not assume responsibility for reproduction where an insufficient number of copies have been supplied. APS will notify the Offerors of the deficiency and request that the appropriate number of copies are delivered by the end of the second business day following the request. Failure to comply with this or other requirements of this Request for Proposals may be grounds for APS to reject such Detailed Stage Proposal and upon rejection the Offeror shall be eliminated from further consideration.

Emailed or facsimile submission of Detailed Stage Proposals are not acceptable and any Detailed Stage Proposals submitted in either manner will not be considered. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All invited Offerors are encouraged to submit Detailed Stage Proposals.

Offerors shall submit their Detailed Stage Proposals with the required information in the order listed below.

Modification of or additions to any portion or terms of the solicitation, except as expressly authorized by these Instructions, may be cause for rejection of the Detailed Stage Proposal; however, APS reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a Detailed Stage Proposal as nonresponsive. Any objections or proposed modifications to the terms of the solicitation shall be submitted only as provided below.

Mandatory provisions of this Request for Proposals are indicated by the inclusion of the words "shall" or "must" to identify the Offeror's obligations. Failure to comply with these requirements or with any other requirements stated as mandatory either in this RFP or in the Instructions to Offerors shall result in rejection of the Offeror's Detailed Stage Proposal as not responsive, except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality, or time.

APS has a standard form Interim Agreement, Comprehensive Agreement and Lease which are included as a part of this RFP. Modifications to these standard forms to accommodate the Project which is the subject of this RFP are included as Supplemental Conditions. Offerors shall include any objections to, or proposed modifications to, the Interim Agreement, Comprehensive Agreement, Lease, or Supplemental Conditions in their Detailed Stage Proposal. Any objection to or proposed modification of the Interim Agreement,

Comprehensive Agreement, Lease, or Supplemental Conditions not submitted in writing as a part of the Detailed Stage Proposal shall be deemed to have been waived without objection. Objections or proposed modifications will be addressed during the negotiations phase. Any Offeror receiving award of an Interim Agreement and/or of a Comprehensive Agreement shall be required to execute a contract in substantial compliance with the APS standard Interim Agreement and/or Comprehensive Agreement and will be required to furnish all other required Contract Documents including tax identification or social security number within fifteen (15) days after receipt of notification that the Contract is ready for signature; otherwise, APS may award the contract to another Offeror.

Erasures or corrections to any Detailed Stage Proposal must be initialed by the Offeror in blue ink.

An Offeror may withdraw a Detailed Stage Proposal at any time. In the event an Offeror discovers an error in its Detailed Stage Proposal and desires to make a correction after the Detailed Stage Proposal Due Date, the Offeror shall submit in writing the requested correction, along with a written explanation and justification for the change, no later than one (1) business day following the Detailed Stage Proposal Due Date. If APS is satisfied that the identified error was the result of a clerical or mathematical error, APS may permit the correction. APS shall issue its written decision to the requesting Offeror within three (3) business days of receipt of the correction request. If the request is approved, the Detailed Stage Proposal shall be deemed modified by incorporation of the correction requested. If the requested correction is denied, the Detailed Stage Proposal shall be considered as originally submitted. APS may request additional information or clarifications from an Offeror at any time after the review process has begun.

**B. UNNECESSARILY ELABORATE RESPONSES**

Detailed Stage Proposals shall contain sufficient information to respond fully to the requirements of this RFP, and to establish the benefits to APS of contracting with the Offeror. However, unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate or expensive art work, paper, bindings, and visual and other presentations are neither necessary at this time nor desired by APS.

**C. USE OF INFORMATION AND DOCUMENTS**

APS and its officials, employees and agents will copy and use the Detailed Stage Proposal and documents included with therewith, for various purposes related to analysis, evaluation, and decision to determine to which Offeror to award a Contract. Detailed Stage Proposals shall be the property of APS. Following award APS may be required to allow inspection and copying of documents, and may also use the Offeror's documents in connection with any resulting contracts with that Offeror. The Offeror is responsible for obtaining any necessary authorizations for all such use of the documents and information, and for assuring that such copying and use is in conformance with laws related to trademarks and copyrights. Any documents or information for which the Offeror has not obtained such authorization, or for which such copying and use is not authorized, shall not be submitted. The undersigned Offeror agrees to indemnify defend and hold APS, its officials, employees, and agents harmless from any claims of any nature, including claims arising from trademark or copyright laws, related to use of information and documents submitted with the Offeror's Detailed Stage Proposal.

**D. SUBMISSION OF PROPRIETARY INFORMATION**

See Section IV.C.1.

**E. FORMAT AND CONTENT**

The Detailed Stage Proposal shall address all information required by this RFP, and any additional information which may be identified by APS in the notification that the Offeror has been selected to submit a Detailed Stage Proposal. The content of the Detailed Stage Proposal copies submitted on CD/ROM or memory stick should mirror the content of the original hard copy and should be in pdf format. Failure to do so will result in a lowered evaluation. Incomplete Detailed Stage Proposals may be determined nonresponsive.

In addition to all information required for the Conceptual Proposal, the Detailed Stage Proposal shall contain

all of the following. Provided, however, in its notice to Offerors to submit Detailed Stage Proposals, the Selection Committee may designate any of the items listed below as not required:

1. Identify each Major Subcontractor and describe its scope of work, the qualifications and experience with respect to such scope of work and the Proposed Project, and how it fits into the overall Project Team. Include in **Tab 3**.
2. For each Private Entity which or who has become a Team Member subsequent to submission of the Conceptual Proposal, or for whom or for which the information required for Team Members was not provided as part of the Conceptual Proposal, or for whom or for which such information was provided but no longer is correct, provide all current information required for Team Members as specified in the Conceptual Proposal requirements. Include in **Tab 3**.
3. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties if in any way different from the Team Members with such responsibilities previously identified. Include in **Tab 3**.
4. Detailed resumes for all key personnel for each Team Member. Include in **Tab 3**.
5. A total life-cycle of costs, specifying methodology and assumptions of the Proposed Project and the proposed start date for the Proposed Project. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of Proposed Project revenues and Proposed Project costs. The Life-Cycle Cost Analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses. A sensitivity analysis should also be included to show the positive and adverse effects of significant variables, risks, and uncertainties on the projected cash flows, if applicable, and life-cycle costs. Include in **Tab 5**.
6. A detailed discussion of assumptions about Lease Payments, Revenues, and usage of the Proposed Project. Include in **Tab 5**.
7. Identification of any known conflicts of interest or other disabilities that may impact APS's consideration of the Detailed Stage Proposal, including the identification of any persons in any way affiliated with any Team Member or the Proposed Project known to the Offeror who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Proposed Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 *et seq.* Include in **Tab 3**.
8. Each Team Member may be required to submit any or all performance evaluation reports or other documents which are in its possession evaluating the Team Member's performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety, and other matters relevant to the successful development, operation and completion of a project. Include in **Tab 3** a list of all Team Members for which such documents are not available and explain what efforts have been made to obtain the same.
9. Additional material and information as may be included in the notice to Offerors to submit Detailed Stage Proposals. The notice also will designate in which Tab such additional information is to be included.

**Offerors should organize their Detailed Stage Proposals using the same tabular format as required for the Conceptual Proposal and including all information appearing in the Offeror's Conceptual Proposal, with any additions or modifications highlighted as required and supplemented by the information required above; failure to follow this format, or the omission of required information, will direct impact the evaluation factors.**

## **VII. PROPOSAL EVALUATION PROCESS**

### **A. EVALUATION OF CONCEPTUAL PROPOSALS**

1. A Selection Committee will review and evaluate all Conceptual Proposals. The Selection Committee will determine from the content of the Conceptual Proposals if any Offeror has failed to meet the requirements of this RFP to a sufficient degree that they will not be invited to participate further in the selection process. The Selection Committee also will determine from the content of the Proposals if Detailed Stage Proposals are necessary for the selection of a Contractor. Offerors therefore must emphasize specific information considered pertinent to the Project and submit all information requested.

2. If the Selection Committee determines that Detailed Stage Proposals are not necessary, the Selection Committee may, but is not required so to do, permit short list interviews by the remaining Offerors and, following completion of such short list interviews, if permitted, or following the determination that Detailed Stage Proposals are not necessary, selection shall be made of two (2) or more Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors stated in this RFP. Negotiations shall then be conducted with each of the Offerors so selected. The Offeror shall state any exception to any liability provisions contained in the Request for Proposals in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Failure of the Offeror to submit written exceptions to any liability provisions at the beginning of negotiations shall be deemed acceptance of the liability provisions contained in the Requests for Proposal and no exceptions shall be considered. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, Arlington Public Schools shall select the Offeror which, in its opinion, has made the best Proposal, and shall award the Contract to that Offeror. Should Arlington Public Schools determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror.

3. If the Selection Committee determines that a Detailed Stage is necessary, the Offerors invited to participate in the selection process will be invited to submit Detailed Stage Proposals within such time as may be set by the Selection Committee. Following receipt of the Detailed Stage Proposals, the Selection Committee may, but is not required so to do, short list interviews by the remaining Offerors. Following completion of such short list interviews, if permitted, or following the receipt of the Detailed Stage Proposals if short list interviews are not permitted, selection shall be made of two (2) or more Offerors deemed to be fully qualified and best suited among those submitting Proposals, on the basis of the factors stated in this RFP. Negotiations shall then be conducted with each of the Offerors so selected. The Offeror shall state any exception to any liability provisions contained in the Request for Proposals in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Failure of the Offeror to submit written exceptions to any liability provisions at the beginning of negotiations shall be deemed acceptance of the liability provisions contained in the Requests for Proposal and no exceptions shall be considered. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, Arlington Public Schools shall select the Offeror which, in its opinion, has made the best Proposal, and shall award the contract to that Offeror. Should Arlington Public Schools determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror.

4. Additional information regarding evaluation of Proposals at either stage:

- a. Price may be considered in the evaluations but may not be the controlling factor.
- b. The Selection Committee may consider the proposed cost of the Project.



- c. The Selection Committee may consider the general reputation, industry experience, and financial capacity of the Offeror.
- d. The Selection Committee may consider the proposed design of the Project, including but not limited to the materials and equipment to be used, the potential impact upon the buildings on which the SPRS are to be installed, and aesthetic appearance.
- e. The Selection Committee may consider the Offeror’s compliance with, or good faith effort to comply with, a participation plan for small businesses, minority owned businesses, women owned businesses, service disabled veteran-owned businesses and employment services organizations.
- f. The Selection Committee may consider the Offeror’s plans to employ local contractors and residents.
- g. The Selection Committee may consider the schedule of installation proposed, including but not limited to the order in which each the installation and commissioning will be performed for the identified Facilities and the duration of time from commencement of installation to production of electricity for APS use on each Facility.
- h. The Selection Committee may consider the extent to which the Offeror in its Conceptual Proposal has complied with the instructions and requirements set forth in this RFP.

**B. CONCEPTUAL PROPOSAL EVALUATION CRITERIA**

The following Conceptual Proposal Initial Evaluation Criteria will be used in reviewing and evaluating the Conceptual Proposals for ranking Offerors (Initial Evaluations). Scores from the Initial Evaluations will determine the Offerors which fail to meet the requirements of this RFP to a sufficient degree that they will not be invited to participate further in the selection process. If Detailed Stage Proposals are determined not to be necessary and short list interviews are allowed for the Offerors invited to participate in the solicitation process, Offerors interviewed will be rescored based on the Conceptual Proposal Shortlist Interviews Evaluation Criteria identified herein. Only scores resulting from the Conceptual Proposal Shortlist Interviews Evaluation Criteria will determine the ranking of Conceptual Proposals whereby Arlington Public Schools will enter into negotiations as described in Section A above; Initial Evaluation scores will not be used. Scores resulting from the Conceptual Proposal Shortlist Interview will be given primary consideration in determining with whom to enter into negotiations, but the factors which led to the Initial Evaluations may be given some consideration when evaluating the Conceptual Proposal Shortlist Interviews.

**Conceptual Proposal Initial Evaluations Criteria:**

	<b>Weight</b>	<b>Evaluation Criteria</b>
<b>1.</b>	<b>60%</b>	Price – Base PPA rate, price per kilowatt hour (kW) and saving to APS over term
<b>2.</b>	<b>15%</b>	Project and PPA qualification & industry experience
<b>3.</b>	<b>15%</b>	Conceptual design, footprint, quality of components, and production estimates
<b>4.</b>	<b>5%</b>	Innovation – Novel approaches, advanced design, local contractors, small business, minority owned business, and women owned business.
<b>5.</b>	<b>5%</b>	Schedule
	<b>100%</b>	<b>TOTAL</b>

If Conceptual Proposal Shortlist Interviews are conducted, Offerors selected will be asked to provide information that serves to clarify the Offeror’s Conceptual Proposal. The Conceptual Proposal Shortlist Interviews may include a presentation, a product/service demonstration, and a question-and-answer session. Offerors selected for Conceptual Proposal Shortlist Interviews will be evaluated in accordance with the Conceptual Proposal Shortlist Interviews Evaluation Criteria listed below:

**Conceptual Proposal Shortlist Interviews Evaluation Criteria:**

	<b>Weight</b>	<b>Evaluation Criteria</b>
<b>1</b>	<b>35%</b>	Price – Base PPA rate, price per kilowatt hour (kW) and saving to APS over term
<b>1.</b>	<b>30%</b>	Clarity of Presentation
<b>2.</b>	<b>25%</b>	Clarity of Responses to Questions
<b>3.</b>	<b>10%</b>	Coordination of presentation across professionals who will be working with financing, construction, project management, etc...
	<b>100%</b>	<b>TOTAL</b>

**NOTE:** If, in the sole opinion of APS, the Offeror’s last audited financial statement does not demonstrate the Offeror’s ability to generate sufficient income to meet its operating expenses and financial obligations, APS will reject the Offeror’s Conceptual Proposal and not consider it for contract award.

**C DETAILED STAGE PROPOSAL EVALUATION CRITERIA**

If Detailed Stage Proposals are determined to be necessary, the Detailed Stage Initial Evaluation Criteria will be set forth in the RFP for Detailed Stage Proposals will be used in reviewing, evaluating, and scoring the Detailed Stage Proposals. Following completion of short list interviews if permitted, Offerors interviewed will be rescored based on the Detailed Stage Shortlist Interviews Evaluation Criteria identified in the RFP. Only scores resulting from the Detailed Stage Shortlist Interviews Evaluation Criteria will determine the ranking of Detailed Stage Proposals whereby Arlington Public Schools will enter into negotiations as described in Section A above. Initial Evaluation scores will not be used. Scores resulting from the Detailed Stage Shortlist Interview will be given primary consideration, but the factors which led to the Detailed Stage Initial Evaluations may be given some consideration when evaluating the Detailed Stage Shortlist Interviews.

If Detailed Stage Shortlist Interviews are conducted, Offerors selected will be asked to provide information that serves to clarify the Offeror’s Detailed Stage Proposal. The Shortlist Interviews may include a presentation, a product/service demonstration, and a question-and-answer session. Offerors selected for Detailed Stage Shortlist Interviews will be evaluated in accordance with the Detailed Stage Shortlist Interviews Evaluation Criteria listed in the RFP for Detailed Stage Proposals.

**ISSUED BY: David J. Webb, C.P.M.**  
**Purchasing Director**  
**Purchasing Office**  
**Arlington Public Schools**  
**Phone: (703) 228-6127**  
**Email: [david.webb@apsva.us](mailto:david.webb@apsva.us)**

**VIII. APPENDIX A**



**CONTRACTOR CERTIFICATION**  
**REGARDING CRIMINAL CONVICTIONS**

**This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.**

**The completed form from the Contractor is a condition precedent to the award of the Contract.**

As the official authorized to enter into this Contract on behalf of my organization, I certify that:

1. No employee of the organization who will be in direct contact with students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Virginia Code Ann. Section 18.2-370.4, no employee who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Virginia Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Name and Title (please type or print)

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

**IX. APPENDIX B**

**CONFLICT OF INTEREST STATEMENT**

I, whose name is subscribed below, a duly authorized representative and agent of the entity submitting this Conceptual Proposal to Arlington Public Schools in response to its Request for Proposals #01FY18, and on behalf of the Offeror:

Certify that neither the Offeror nor any Team Member nor any affiliated firm, parent corporation or subsidiary of either has, within the past five (5) years, been employed by or represented a deliverer of services, which services reasonably could be expected to be considered for purchase by the Arlington Public Schools as a result of this solicitation.

Affirm that if the Offeror is awarded a contract under this solicitation, and during the term of that contract prepares an invitation to bids or request for proposals for or on behalf of the Arlington Public Schools, the Offeror agrees that it shall not (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or Offeror information concerning the procurement which is not available to the public.

Affirm that the Offeror further agrees that it shall not solicit or accept any commissions or fees from vendors who ultimately furnish services to the Arlington Public Schools as a result of services furnished by the Offeror under any contract award made as a result of this solicitation.

FIRM NAME (Offeror): \_\_\_\_\_

SIGNED BY:

DATE:

NAME/TITLE: \_\_\_\_\_

**ACKNOWLEDGMENT**

COMMONWEALTH OF VIRGINIA/STATE OF ( \_\_\_\_\_ ) CITY/COUNTY  
OF ( \_\_\_\_\_ ) to wit:

\_\_\_\_\_

personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_ 2017 the undersigned a Notary Public in and for the State and County of aforesaid, \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument as an agent of the Offeror and acknowledged that he/she has executed the same for the purposes therein contained.

(Seal)

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_, 20\_\_\_\_

## X. APPENDIX C

### NON-DISCLOSURE AND DATA SECURITY AGREEMENT

The undersigned, an authorized agent of the Contractor and on behalf of \_\_\_\_\_ (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter “information”) confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the “Project” or “APS Contract” as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as “information” or “APS information”).

In addition to the DATA SECURITY obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS information, control and limit internal access and authorization for access to such information and not divulge or allow or facilitate access to APS information for any purpose or by anyone unless expressly authorized. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter “his”) Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as “information” or “APS information”).

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. Contractor acknowledges that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of information and the integrity of APS networked resources.

Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which information is stored, even temporarily, will have strict security and access control. Any information that is accessible will not leave the Contractor’s work site or the APS’ physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded except as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, the APS Contract, APS policy, Contractor’s security policies, or any other breach of Project protocols. The Contractor will fully cooperate with the APS to regain possession of any information and to prevent its further

disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this agreement also extend to its employees, agents or subcontractors who are given access to APS information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the APS Contract.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of APS information and APS networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Project, Contractor agrees to return all APS information to the APS Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the APS Contract.

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

**XI. APPENDIX D**

**APS FACILITY SYSTEM SUMMARY FORM**

Provide a completed form for each APS Facility identified in the RFP -Title Page - Two. All additional sheets or attachments shall include the Facility Name and Facility Address as a header.

Facility Name: \_\_\_\_\_  
Facility Address: \_\_\_\_\_  
Proposed Solar Photovoltaic Rooftop System Size in kW/DC \_\_\_\_\_  
Proposed System Photovoltaic Rooftop Solar System Size in kW/AC \_\_\_\_\_  
Square Footage of Roof Area Used: \_\_\_\_\_  
Photovoltaic Manufacturer: \_\_\_\_\_  
Module Manufacturer: \_\_\_\_\_  
Racking/Support Assembly Manufacturer: \_\_\_\_\_  
Inverter Manufacturer: \_\_\_\_\_  
System Design Operational Life: \_\_\_\_\_

Describe the mounting system, how it is attached to the roof, the details of any roof penetrations and the anticipated impact on the existing roof: remedial measures required: (add additional sheets if necessary):

---

Provide a brief description of the Solar Photovoltaic Rooftop System, its design, and any unique characteristics: (add additional sheets if necessary):

---

Provide a conceptual rendering of the Solar Photovoltaic Rooftop System, showing at a minimum its orientation relative to the Facility and the site, the amount of roof area used, and scaled orientation to other structures or obstructions on the roof.

Identify and explain how you intend to address any reasonably foreseeable zoning approval issues.

Describe any Optional Items you are offering to provide as set forth in Section III. H, including details of the technology involved, the manufacturer, the proposed incorporation into the overall design, and any site impacts or site restrictions.

**XII. APPENDIX E**

**INSURANCE CHECKLIST**

Certificate of Insurance must show all coverage and endorsements indicated by "X"

COVERAGES REQUIRED			LIMITS (FIGURES DENOTE MINIMUMS)
X	1	Workers' Compensation	Statutory limits of Virginia but not less than \$1,000,000
X	2	Employer's Liability	\$100,000 accident, \$100,000 disease, \$500,000 disease policy limit (if applicable)
X	3	Commercial General Liability(CGL)	\$2,00,000 CSL BI/PD each occurrence, \$5,000,000 annual aggregate
	4	Premises/Operations	\$500,000 CSL BI/PD each occurrence Million annual aggregate
X	5	Automobile Liability	\$100,000 per person/ \$500,000 per accident, Uninsured Motorist
	6	Owned/Hired/Non-Owned Vehicles	\$1 Million BI/PD each accident, Uninsured Motorist
	7	Independent Contractors	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
X	8	Products Liability	\$500,000 CSL each occurrence, \$1,000,000 annual aggregate
	9	Completed Operations	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
	10	Contractual Liability (Must be shown on Certificate)	\$500,000 CSL BI/PD each occurrence
	11	Personal and Advertising Injury Liability	\$1 Million ea. offense, \$1 Million annual aggregate
	12	Umbrella Liability	\$1 Million Bodily Injury, Property Damage and Personal Injury
	13	Per Project Aggregate	\$1 Million per occurrence/claim
	14	Professional Liability	
	15	Miscellaneous E&O	\$1 Million per occurrence/claim
	16	Motor Carrier Act End. (MCS-90)	\$1 Million BI/PD each accident, Uninsured Motorist
	17	Motor Cargo Insurance	
	18	Garage Liability	\$1 Million Bodily Injury, Property Damage per occurrence
	19	Garage keepers Liability	\$500,000 Comprehensive, \$500,000 Collision
	20	Inland Marine-Baillie's Insurance	\$
	21	Moving and Rigging Floater	Endorsement to CGL
	22	Dishonesty Bond	\$
X	23	Builder's Risk	Provide Coverage in the full amount of the Solar Photovoltaic Rooftop System cost as shown in the Proposal



	24	XCU Coverage	Endorsement to CGL
	25	USL&H	Federal Statutory Limits
X	26	Carrier Rating shall be Best's Rating of B or better or its equivalent	
X	27	Notice of Cancellation, nonrenewal or material change in coverage shall be provided to APS at least 45 days prior to action	
X	28	APS shall be an Additional Named Insured on all policies except Workers Compensation, Professional Liability, and Automobile Liability	
X	29	Certificate of Insurance shall show Solicitation Number and Title	
	30	Intellectual Property Infringement Insurance	
	31	Cyber Liability Insurance	\$500,000 CSL each occurrence, \$1 Million annual aggregate

**INSURANCE AGENT'S STATEMENT:**

I have reviewed the above requirements with the Offeror named below and have advised the Offeror of required coverages not provided through this agency.

AGENCY NAME: \_\_\_\_\_ AUTH. SIGNATURE: \_\_\_\_\_

**OFFEROR'S STATEMENT:**

If awarded the Contract, I will comply with contract insurance requirements.

OFFEROR NAME: \_\_\_\_\_ AUTH. SIGNATURE: \_\_\_\_\_

**XIII. APPENDIX F**

**PRICING**

**(Provide Separate Pricing Model for Each Facility)**

Project Name: \_\_\_\_\_  
 Project Address: \_\_\_\_\_  
 Capacity DC (kW) \_\_\_\_\_  
 Capacity AC (kW) \_\_\_\_\_

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Escalator Percentage	■	■	■	■	■																									
Price/kW DC																														
Price/kW AC																														
System Buy-out Price																														

Total price/kW DC including escalator over proposed term of Contract: In words: \_\_\_\_\_  
 In Figures: \_\_\_\_\_

Total price/kW AC including escalator over proposed term of Contract: In words: \_\_\_\_\_  
 In Figures: \_\_\_\_\_

Total price/kW of all electricity provided over proposed term of Contract: In Words: \_\_\_\_\_  
 In Figures: \_\_\_\_\_

**Optional Items (Amortized per Kw over the life of the Contract)**

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Price/kW DC Impact																														
Price/kW AC Impact																														
System Buy-out Price Impact																														

**XV. APPENDIX G**

**FORM INTERIM AGREEMENT**

**Solar Photovoltaic Rooftop System Installation and Sale of Generated Electricity  
Contract No. 01FY18**

THIS INTERIM AGREEMENT (“Contract”), made and entered into as of the date of the Owner’s signature appearing below, between Arlington County School Board operating as Arlington Public Schools through its Purchasing Agent (the "Owner" or “APS”), and \_\_\_\_\_ (the "Contractor"), whose address is \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Defined terms used in this Contract are as set forth in Article 31, except as may be expressly set forth in other provisions.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereby agree as follows:

**ARTICLE 1: THE PROJECT:**

**1.1.** The Work of this Project involves the design and installation by Contractor of a Solar Photovoltaic Rooftop System (SPRS) on a Facility owned by APS. Contractor shall enter into a Lease with APS to operate and maintain the SPRS on the Facility on the terms set forth herein and in the Lease. Following completion of the installation of the SPRS, the Contractor shall operate and maintain the SPRS so as to provide to APS from the SPRS on the Facility the kW of electric power designated by the Lease for that Facility, at the established rates to be paid by APS to Contractor for that electric power, for the duration set forth in the Lease. The duration of the Lease shall be not less than fifteen (15) years and not more than twenty-five (25) years, all subject to earlier termination or extension as provided herein.

**1.2.** The Facility to which this Contract is applicable is any one of the Facilities identified below, and any additional Facilities which may be added by Change Order.

<u>Facility Name</u>	<u>Facility Address</u>
Kenmore Middle School (existing)	200 S. Carlin Springs Road, Arlington, Va. 22204
Tuckahoe Elementary School (existing)	6550 N. 26 <sup>th</sup> Street, Arlington, Va. 22213
Washington-Lee High School (existing)	1301 N. Stafford Street, Arlington, Va. 22201
Jefferson Middle School (existing)	125 S. Old Glebe Road, Arlington, Va. 22204
Fleet Elementary School (under construction)	125 S. Old Glebe Road, Arlington, Va. 22204

**1.3.** Contractor shall execute the Lease for the Facility as selected by APS and submit to APS the signed Lease at the same time it submits to APS the signed Contract. APS will issue the signed Lease to the Contractor at the same time APS issues a Notice to Proceed on the Facility.

**1.4.** Contractor shall provide all labor, services, equipment and materials necessary and required to complete the Work and to provide the on-going services and deliverables in accordance with the Contract Documents for the Facility for which the parties enter into a Lease. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; provided, however, that the Contractor shall employ

adequate and safe procedures, methods, structures and equipment both during the installation period and during the term for maintenance and operation. Neither the Owner's approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner's approval or failure to approve create a cause of action for damages against the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor. The terms of this Interim Agreement shall be incorporated into the Facility Lease.

**ARTICLE 2: FINANCING:**

2.1. If the Contractor is relying on third party financing to perform this Interim Agreement, then within ninety (90) days following execution of this Interim Agreement the Contractor shall provide a letter of commitment from any financial entity which is to provide financing for the Project.

2.2. All federal, state and local utility, energy or environmental incentives and credits shall accrue to the Contractor and are included in the cost and price calculations.

**ARTICLE 3: THE CONTRACT DOCUMENTS:**

3.1. The following, except for such portions thereof as may be specifically excluded, constitute the Contract Documents except for titles, subtitles, headings, running headlines, and tables of contents (all of which are used merely for convenience): of the Interim Agreement, , the Lease, the Drawings and Specifications, this Request for Proposals, any Change Orders, the Notice to Proceed, and any Addenda or Modifications to any of the foregoing.

Interim Agreement  
Lease  
Drawings and Specifications as accepted by APS  
The Request for Proposals  
Drawings and Specifications  
Notice to Proceed  
Modifications issued after execution of this Interim Agreement

3.2. All provisions required by Law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

3.3. In the event of any inconsistency among the Contract Documents, the order of priority shall be as listed above. For any Modifications, the priority will be the latest Modification within the Contract Document modified. In the event that there is a conflict between the language of this Interim Agreement and that of any applicable provision of the Code of Virginia, the Code of Virginia shall control.

3.4. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing, call it to the attention of Owner before proceeding with the Work affected thereby. The Owner shall promptly resolve the matter in writing. Work done by the Contractor after it discovered, or reasonably should have discovered, such conflicts, errors, ambiguities or discrepancies, prior to written resolution thereof by the Owner, shall be done at the Contractor's expense and the Contractor shall bear the risk of any delay or extra cost arising therefrom or related thereto. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

3.5. The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. Any doubt as to whether any Work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use of the term "include"

or “including” shall be deemed to mean “include without limitation,” “including but not limited to,” and similar expansive intent.

**3.6.** The Contractor shall be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

**ARTICLE 4: TERM OF CONTRACT:** The duration of this Interim Agreement shall be twenty-five (25) years from the date of its execution by the Owner. Any Lease for a Facility entered into by the parties pursuant to the terms of this Interim Agreement shall be for a term of not less than fifteen (15) years and no more than twenty-five (25) years. In the event the term of any Lease exceeds the duration of this Interim Agreement, the terms of this Interim Agreement as incorporated into the Lease shall be deemed to survive for the purpose of establishing the incorporated terms.

**ARTICLE 5: OBLIGATIONS OF OWNER:**

**5.1.** APS shall provide the necessary space for the installation of the SPRS and ancillary equipment and items as required by the Drawings and Specifications approved by APS and Arlington County. APS shall be under no obligation to approve any proposed design which interferes with or in any way impairs the current or planned use of the Facility on which the SPRS is to be located.

**5.2.** APS shall provide access to the site as needed for design, and for all agreed installation, operation and maintenance. Contractor shall not seek access in such a manner as will interfere with any ongoing use of the Facility on which the SPRS is located.

**5.3.** APS shall purchase electricity at the rates set forth in, and make payment in accordance with, Article 11.

**ARTICLE 6: DESIGN, DRAWINGS AND SPECIFICATIONS:**

**6.1.** Contractor as a part of its Proposal has provided conceptual designs for each SPRS to be installed. Contractor warrants that such conceptual designs are based upon Contractor’s inspection of each Facility, that all reasonably foreseeable repairs of each Facility to be required of APS have been disclosed to APS, and that the designs are anticipated to be in accordance with all current and applicable local, state and federal codes and regulations and requirements of the Local Utility.

**6.2.** By submitting to APS for acceptance any final detailed Drawings and Specifications, Contractor warrants to APS that:

**6.2.1.** The Drawings and Specifications are based upon Contractor’s inspection of the Facility and that prior to submission of any design to APS, the Contractor has inspected the Facility and submitted in writing to APS identification of any repairs to the roof or roof covering which the Contractor deems necessary to accommodate installation of a SPRS and for the roof to have a projected life at least as long as the term of the Lease for that Facility. APS shall be responsible for accomplishing all identified repairs APS agrees are necessary.

**6.2.2.** That all designs are in accordance with the latest applicable local, state, and federal codes and the regulations and requirements of the Local Utility;

**6.2.3.** That the design includes all load studies and structural modifications for each Facility necessary to accommodate the SPRS;

**6.2.4.** That the design, and installation in accordance therewith, does and will involve as few roof penetrations as safety and the functional integrity of the proposed SPRS will permit to reduce risk of leaks and damage to existing roof finishes.

**6.2.5.** All Drawings and Specifications prepared by the Contractor shall be subject to the review and written approval of APS, and any modifications thereof required by APS shall become part of the Contract Documents.

**6.3.** The subdivision of the Drawings and Specifications into divisions, Sections and articles is for the purpose of ease of reference only and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor shall be responsible for segregating the Work among the various trades.

**6.4.** The Specifications shall serve to amplify the requirements of materials and assemblies. The mention in any Section of the Specifications of any article or operation requires that the Contractor shall provide all such items indicated on, or reasonably inferred from, the Drawings, furnishing for such purpose all labor, materials and equipment required in connection therewith. Omission of any article, operation, or detail does not relieve the Contractor of the responsibility for completion of the Work reasonably intended by the Drawings and Specifications to be included in the Contract.

**6.5.** In the case of conflict or inconsistency between the Drawings and Specifications or within Drawings, or Specifications not clarified by Addendum, the Contractor shall: (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement either or both in accordance with the Owner's Representative's interpretation. The Contractor shall notify the Owner's Representative of discrepancies found before materials are fabricated or Work performed.

**6.6.** The Contractor shall adhere to dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner's Representative. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding.

**6.7.** Original Drawings and Specifications prepared by the Contractor shall remain the property of the Contractor. Contractor shall provide to Owner an as-built set of the Drawings and Specifications prior to the first payment being due from the Owner for any power produced by the SPRS. Owner shall have an irrevocable license to use the copy of the as-built Drawings and Specifications so long as the SPRS remains in or on the Facility on which it initially was installed.

**6.8.** Substitutions of materials or equipment are not permitted after Proposals are received unless approved in writing at Owner's sole discretion, which Owner shall be under no obligation to grant.

**6.9. Shop Drawings**

**6.9.1.** The Contractor shall be responsible for obtaining, reviewing and approving all Shop Drawings and similar submittals necessary to confirm that all materials, equipment and services are in compliance with existing conditions and the approved Drawings and Specifications.

**6.10.** No materials or equipment containing asbestos or any other hazardous material recognized and identified by the Commonwealth of Virginia Department of Environmental Quality shall be utilized in the construction, maintenance or operation of the SPRS. In the event a substitute product is needed and time does not allow for the mandated submittal process, the Contractor shall confirm these materials do not contain asbestos or any other hazardous material as noted above in writing to the Owner and will provide the MSDS sheets to the Owner prior to being allowed to install the product in or on the Facility.

**ARTICLE 7: INSTALLATION OF THE SRPS:**

**7.1.** Contractor shall perform the installation of the SPRS on the Facility in compliance with the design for that Facility previously accepted by APS (the "Facility Specific Design"). Contractor remains responsible for all aspects of the design, Drawings and Specifications. Owner's approval and acceptance of the Drawings and Specifications is

for design intent only, and Owner shall have no responsibility for the completeness or functionality of the Drawings and Specifications, nor for any omissions or inconsistencies therein.

**7.2.** The Owner shall make available to the Contractor such information as the Owner has in its possession describing the physical characteristics, legal limitations and utility locations for the Project Site; provided, however, that the provision of such information shall not relieve the Contractor from its obligation to inspect for itself and determine the site conditions. The Owner makes no representations whatsoever concerning the quality or contents of any information so provided and the Contractor relies on such information solely at its own risk.

**7.3.** The Contractor shall confirm locations of existing utilities by such means and methods as may reasonably be required or as outlined by the Commonwealth of Virginia Miss Utility laws, at the Contractor's sole expense as a part of the Work. Any discrepancies found with locations of existing utilities will be brought to the attention of the Owner and coordinated around the new Work in its design intent at the Contractor's sole expense as a part of the Work. All discrepancies will be noted on the as-builts and documented at the Contractor's sole expense as a part of the Work.

**7.4.** Contractor shall obtain all federal, state, and local governmental permits and zoning approvals, inspections, licenses, fees and other authorizations required for installation and subsequent operation of the SPRS.

**7.5.** The Contractor shall comply with all local, state and federal laws, rules or ordinances applicable to this Contract and the Work to be performed hereunder.

**7.6.** Contractor shall coordinate and obtain all required interconnection agreements with the Local Utility.

**7.7.** Contractor shall coordinate with the obligors under any existing roof warranty or warranties such that the warranty or warranties will remain in effect.

**7.8.** Contractor shall provide all materials, equipment, wiring and ancillary items necessary to install and make the SPRS ready for Operation in the intended manner. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.

**7.9.** Contractor shall Commission the SPRS to the satisfaction of the Owner before Owner becomes responsible for any payments to Contractor as provided in the Lease.

**7.10.** The finished installation should minimize exposed fasteners, sharp edges, and design or placement which may be conducive to damage to the modules or support structure. Materials used should be corrosion resistant and durable, and galvanic corrosion shall be avoided. The use of ferrous metals, wood or plastic components will not be accepted.

**7.11.** The Contractor shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations and directives of any public authority bearing on the performance of the Work. Should the Contractor determine that the Contract Documents, or any of them, do not conform with such laws, ordinances, rules, regulations and directives in any respect, it shall promptly inform the Owner's Representative of such fact in writing. Any required changes shall be made by Change Order. If the Contractor performs any Work when it knew or in the exercise of reasonable care should have known it to be in conflict with such laws, ordinances, rules and regulations without notifications to the Owner's Representative, the Contractor shall accept all responsibility and bear all cost relating thereto.

**7.12.** The Contractor shall comply with all conditions in any approved permits for the Project and shall comply with all requirements for final permits and use. Should the Contractor not meet the stipulated contractual dates for permits, inspections and use, the Contractor shall be responsible for any and all costs, overtime fees and other costs of any type related to the delay in obtaining the required permits, inspections or use.

**7.13.** The Owner may award separate contracts in connection with other construction or operations in or on the Facility. When separate contracts are awarded for other construction or operations in or on the Facility, at no

additional cost to the Owner the Contractor shall coordinate the Work with the activities of each other party under contract with the Owner, including but not limited to the storage of materials and equipment. When directed to do so by the Owner, the Contractor shall participate with such other contractors and the Owner in reviewing their separate construction schedules so as to avoid delay for any affected party.

**7.14.** If part of the Contractor's Work depends for proper execution or results upon construction or operations by a third party, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**7.15.** The Owner shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. The observations of the Owner's Representative will be for the sole purpose of keeping the Owner informed regarding the progress of the Work or to gather information to respond to any request by Contractor for a Contract interpretation. The Owner shall not have control over or charge of and shall not be responsible for construction methods, techniques, procedures, sequences or safety measures employed in connection with the Work. The Owner shall not be responsible for the failure of the Contractor, Subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.

**7.16.** The Owner's Representative and/or the Owner shall have the authority to reject Work that does not conform to the requirements of the Contract Documents.

#### **ARTICLE 8: SCHEDULE OF THE INSTALLATION:**

**8.1.** APS will issue any Lease and a Notice to Proceed on the Facility at its sole discretion, with the Lease and Notice to Proceed to be governed by the terms of this Interim Agreement which are incorporated therein. Contractor shall not commence the SPRS installation on the Facility before receipt of a Notice to Proceed for that Facility.

**8.2.** APS shall have two (2) years from the date of this Contract within which to issue any Notice to Proceed and Lease for any of the Facilities identified above, or to add additional Facilities. If additional Facilities are added, the Contractor's Work as to those Facilities, from design through maintenance and Operation, shall be the same as set forth in this Interim Agreement, the Work shall be performed, upon the terms and conditions of this Interim Agreement, and the rates applicable to that Facility shall be negotiated as a part of the Change Order adding that Facility.

**8.3.** Contractor shall complete Commissioning of each SPRS and begin Operation of the SPRS within One Hundred Eighty (180) calendar days from the date APS issues Notice to Proceed and the Lease ("Contract Period").

#### **ARTICLE 9: CONTRACTOR'S RESPONSIBILITY FOR PERSONNEL AND SITE:**

**9.1.** The Contractor warrants that it and its Subcontractors represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction, maintenance and Operation services required hereunder. The Contractor agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. The Contractor represents that it and its Subcontractors are capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide services of high quality. The Contractor agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.



**9.2.** The Owner, upon written notice to the Contractor, and in the Owner's sole discretion, shall have the right to direct the Contractor and its Subcontractors to remove an employee permanently from the Project Site for any reason. Any individual who is removed from the Project Site pursuant to this Section may not return without specific permission of the Owner.

**9.3.** The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors or other persons performing any of the Work under a contract with the Contractor or a contract with a Subcontractor. The Contractor shall be responsible for maintaining the cleanliness on the Project Site at all times, shall exercise dust control when required, and shall exercise a high degree of care to prevent any objects blowing off or falling from elevated surfaces.

**9.4.** The Contractor will ensure that no Work shall be performed in occupied areas during school hours or office hours unless express written approval has been granted by the Owner and proper safety precautions have been exercised to isolate the area of the Work.

**9.5.** Tobacco products, alcoholic beverages, illegal drugs, and weapons not commonly recognized as tools for use in performance of the Work are prohibited on and in the Facility and will constitute grounds for immediate removal of any employee of the Contractor or of any Subcontractor from the Facility. Sexual harassment, profanity, and inappropriate behavior are not permitted in, on or near the Facility and will constitute grounds for immediate removal of any employee of the Contractor or of any of its Subcontractors.

**9.6.** No Smoking Policy on Arlington Public Schools' property: Contractors, including their employees or agents, performing Work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.

**9.7.** Drug-Free Workplace. For the purposes of this Contract drug-free workplace means a site for performance of Work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract. During the performance of this Contract, the Contractor agrees to:

**9.7.1.** Provide a drug-free workplace for the Contractor's employees;

**9.7.2.** 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

**9.7.3.** State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and

**9.7.4.** Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor.

**9.8.** Contractor Certification Regarding Criminal Convictions

**9.8.1.** As a condition of awarding a contract for the provision of Work that requires the Contractor or its employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Contractor shall provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the

course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors and the employees thereof.

**9.8.2.** The Contractor certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's initial certification or any certification after Contract award.

**9.8.3.** The Contractor shall submit to the Owner a completed Contractor Certification Regarding Criminal Convictions on the form provided by the Owner, Appendix A to this Interim Agreement, prior to commencing any Work on or in the Facility.

**9.8.4.** Contractor shall provide to Owner annually on the anniversary date of the completion of Commissioning of the Facility an updated Contractor Certification Regarding Criminal Convictions for the Facility on which a SPRS is being Operated.

**9.9.** The Contractor shall confine the Work to areas of the Project Site reasonably necessary to perform the Work and shall comply with all applicable laws, ordinances, and permits related to the Project Site.

**9.10.** The Contractor shall establish and maintain security procedures controlling access to the Project Site and shall maintain proper safety procedures and precautions at all times. The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. This obligation shall remain in effect so long as the Contractor is performing any obligations under the Contract. The Contractor shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.

**9.11.** The Contractor shall select one or more on-site personnel who shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of APS or jurisdictional authorities in order to prevent injury, damage or loss to:

**9.11.1.** All persons involved in performance of the Work;

**9.11.2.** All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work;

**9.11.3.** The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site; and

**9.11.4.** Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

**9.12.** Owner will designate to Contractor the route of access within the Facility to the SPRS location. Contractor workers shall not use any other route within the Facility. In the event the Contractor desires to perform Work outside the Normal Working Hours in the Facility, Contractor shall notify the Owner in writing at least two Working Days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the Contractor to the Owner at a rate of \$40 per hour per person. The cost of custodial support for Sunday or holiday Work shall be paid by the Contractor to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the Contractor for review and

verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday Work shall be paid by the Contractor at rate of \$150 per hour.

**9.13.** The Contractor shall maintain the Facility interior and the exterior grounds in a clean and orderly state. The Contractor shall conduct daily cleaning of the portions of the Facility affected by the Work, and periodic cleaning of the grounds, parking lots, driveways and sidewalks to ensure that construction debris and unnecessary material and equipment do not accumulate. The Contractor shall also conduct periodic landscape maintenance of vegetated areas of the Site to the extent such vegetated areas are affected by the Work.

**9.14.** If in the Owner’s sole discretion, the Facility interior or exterior grounds or any other area for which Contractor is responsible requires cleaning, landscape maintenance, or excess material removal, for which Contractor is responsible, the Owner shall request the Contractor conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the requested cleaning within three (3) Working Days, the Owner reserves the right to use outside sources to conduct the cleaning or maintenance and to charge the Contractor for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.

**9.15.** The Contractor shall use no explosives on the Owner’s property

**9.16.** The Contractor shall not load or permit any part of the Project Site, whether or not a part of the Work, to be loaded so as to endanger its safety or structural integrity.

**ARTICLE 10: MAINTENANCE AND OPERATION:**

**10.1.** Contractor through the Operation of the SPRS shall provide to APS for the selected Facility the size of the photovoltaic array ( $kW_{dc}$ ) specified for that Facility at the agreed rates and for the agreed duration as set forth in the Lease.

<b>FACILITY NAME</b>	<b>Approximate PV System Size (<math>KW_{dc}</math>)</b>	<b>Year 1 PPA Price/<math>kWh</math> (0% esc)</b>	<b>Annual Yield (<math>kWh_{ac}/kW_{dc}</math>)</b>	<b>Yr 1 Production (<math>kWh</math>)</b>
Fleet Elementary				
Kenmore Middle School				
TJ Middle School				
Tuckahoe Elementary				
Washington Lee High School				

**10.2.** Any interruption of electric power to the Facility required for installation or maintenance shall be of short duration, shall be scheduled to occur at night or on weekends, and shall be coordinated with APS officials in charge of functions and activities taking place in the Facility outside normal school hours or the office hours of an administrative Facility and of equipment within the Facility which may be sensitive to loss of power.

**10.3.** Contractor shall be responsible for the Operation and maintenance of the SPRS for the duration of the Lease, including but not limited to cleaning, upgrades and repairs necessary to ensure the continuous delivery of electricity. Any damage to the SPRS caused by weather, vandalism or any other cause for which APS is not solely responsible is the Contractor’s responsibility to repair.

**10.4.** Contractor shall be responsible for repair of all damage of any sort, including but not limited to moisture damage, caused by the SPRS.

**10.5.** Contractor shall provide an acceptable method of metering the amount of power provided to APS. Meters shall be installed to capture all power generated by the SPVS. Data captured from meters shall be delivered to the Facility’s IT/LAN rooms via CAT 6 cabling. This data shall be used in the APS energy dashboard for the Facility that will be provided by others.

**10.6.** Contractor shall extend CAT6 cabling from each inverter and meter to nearest IT/LAN room. Data collected from meters and inverters shall be used for energy dashboard that shall be provided by others outside of

this RFP. The dashboard shall be web compatible for access and use elsewhere by APS, and Contractor shall coordinate Internet connections with APS.

**10.7.** In the event any repair to a roofing system is required prior to expiration of the term of the Lease or the prior termination thereof due to any cause other than the negligence, gross negligence, recklessness or willful act of the Contractor or anyone for whom Contractor is responsible, the repair shall be the responsibility of APS, and Contractor shall be responsible for relocating the SPRS to allow for the repairs and for reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement. Costs to Contractor associated with reasonably foreseeable roof replacement or repair during the term of the Lease is included within the Lease rate calculation. If the roof system repair or replacement is due to the negligence, gross negligence, recklessness or willful misconduct of the Contractor or anyone for whom Contractor is responsible, Contractor shall be responsible for all roof system required repairs and for relocating and/or reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement.

**10.8.** For any SPRS which has a longer specified service life than the remaining life of the roofing system on which it is placed, Contractor shall be responsible for relocating and/or reinstalling to operable condition the SPRS after completion of any roofing system repair or replacement.

**10.9.** The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. This obligation shall remain in effect so long as the Contractor is performing any obligations under the Contract.

**10.10.** Electricity Generation and Sale. APS shall be the sole consumer of power generated by the SRS. No right is provided to the Contractor to sell excess power to the regional grid or to others.

**10.11.** End of Service Life.

**10.11.1.** At the end of the Interim Agreement term, including any extensions, for any SPRS which APS does not elect to retain for self-operation, the Contractor is responsible for decommissioning and removing the SPRS from the Facility and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal. If any Lease term is for a duration shorter than the term of the Interim Agreement, if at the end of the Lease Term APS does not elect to retain the SPRS for self-operation the Contractor shall be responsible for decommissioning and removing the SPRS from the Facility and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal at no cost to APS.

**10.11.2.** At the sole discretion of APS, APS may negotiate with the Contractor an extension of the Interim Agreement and any Modifications thereto and any Lease by Change Order for the operation and maintenance of the SPRS and the provision of electric power to APS.

**10.11.3.** At the sole discretion of APS, APS may at any time terminate the Contract or any Lease, either or both, at its convenience prior to expiration of the Contract term or the Lease term and may elect to purchase any one or more of the SPRSs in their operational state at a price calculated as set forth below:

[insert the agreed buyout formula]

**ARTICLE 11: PAYMENT TO CONTRACTOR:**

**11.1.** The sole compensation payable by APS to the Contractor shall be the payment rates for electrical power generated by the SPRS at the Facility. The rates per Facility shall be included in each Lease and are as set forth below. In the event any additional Facilities are added, the Change Order shall include the agreed rates for each additional Facility:

[insert rates as finally established]

**11.2.** Contractor shall invoice APS for energy consumed at the agreed rates on a monthly basis, with the invoice reflecting the calculation applying rate to units. The invoice shall be submitted to APS after the first of each month for the immediately preceding month. Upon receipt of an invoice, APS shall review the invoice to determine if it is consistent with the volume of power received and the Contract rates. The Contractor shall submit such additional information as may be reasonably requested by the Owner to substantiate the amount invoiced.

**11.3** Payments will be made within thirty (30) days after the later of receipt of an invoice by APS or receipt of additional documentation as requested by APS of all amounts within the invoice approved for payment. All funds not paid by Owner within thirty (30) days of the due date shall bear interest at the rate of 0.5 percent per month.

**11.4.** Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner to protect the Owner due to loss because of:

**11.4.1.** Defective Work not remedied,

**11.4.2.** Third party claims filed or reasonable evidence indicating probable filing of such claims,

**11.4.3.** Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

**11.4.4.** Damage to the Owner,

**11.4.5.** Persistent failure to carry out or perform the Work in accordance with the Contract Documents, or

**11.4.6.** Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors or others, caused by the act or neglect of the Contractor or any of its Subcontractors.

**11.4.7.** The Owner shall have the right, as an authorized representative for the Contractor and without the Surety's consent, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. The application of these amounts shall be deemed payments for the account of the Contractor and shall reduce the Owner's obligation to the Contractor accordingly. The Contractor may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If Contractor does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the Contractor shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

## **ARTICLE 12: MINOR CHANGES IN THE WORK:**

**12.1.** The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall substantially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.

**12.2.** Construction conditions may require minor changes in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder. The Contractor, when ordered by the Owner, shall make such adjustments and changes in the locations and Work as may be necessary without additional cost to the Owner, provided such adjustments and changes do not substantially alter the character and quantity of the Work as a whole, and provided further that Drawings and Specifications showing such adjustments and changes are given to the Contractor by the Owner within fourteen (14) days. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal

procedures set forth in the Contract Documents and the Owner's written direction for such minor change shall be deemed to be the occurrence.

**12.3.** The Contractor may be entitled to an extension of time for such minor changes only for the number of days which the Owner may determine to be necessary to complete such changes and only to the extent that such changes actually delay the completion of the Project, and then only if the Contractor shall have strictly complied with all the claims procedures and submittal requirements of the Contract Documents.

**12.4.** If the Contractor is of the opinion that any Work required, necessitated, or ordered by the Owner, or any action required or ordered by the Owner to be taken or not taken is not Work included within the original Contract requirements, any claim for additional compensation or an extension of the Contract Period arising therefrom shall be subject to the claims procedures and submission requirements set forth in the Contract Documents.

**ARTICLE 13: EXTRA WORK:**

**13.1.** Pursuant to the provisions of the PPEA and of the APS PPEA Guidelines, no change to the substantive terms of the Work, or to either the compensation payable to the Contractor or to the Contract Period, or both, may be made without the prior approval of the Arlington County School Board. Any such change made without the prior approval of the Arlington County School Board shall be void.

**13.2.** The Contractor shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in Article 4, for any Extra Work performed by the Contractor without a valid Change Order, and the Owner may order the removal or alteration at the Contractor's expense of any extra Work performed without a validly issued Change Order.

**13.3.** A Change Order covering extra Work shall be valid only if issued by Notice by the Owner prior to initiation of such Work. When signed by the Contractor, Contractor acknowledges and accepts the terms and conditions of the Change Order as full and final agreement as to all claims for compensation or time for the Work described.

**13.4.** The amount of compensation to be paid to the Contractor for any extra Work shall be based on the reasonable costs necessarily incurred plus fifteen percent (15%), which shall constitute full and mutual accord and satisfaction for all costs related to such change.

**13.5.** Records of extra Work performed hereunder, if any, shall be submitted to the Owner within 24 hours of the Work being complete. Advanced notification must be provided to the Owner prior to the initiation of the Work described therein. Strict compliance with these requirements shall be a condition precedent to compensation for such Work. Duplicate copies of accepted records shall be made and signed by both Contractor or its representative and the Owner's Representative, and one copy retained by each.

**ARTICLE 14: CLAIMS FOR DAMAGES:**

**14.1.** The Contractor shall have no claim against the Owner for any damages or increased costs from any cause other than intentional, reckless or negligent action by the Owner which results in the damage claimed. The Contractor knowingly and willingly assumes all other risk of damage or loss from any other cause in return for the compensation provided by the Contract. If the Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

**14.2.** The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any Work on which the claim is based deliver to the Owner's Representative if one has been designated, and to the Purchasing Agent, a written statement identifying itself as a Notice of claim, stating the circumstances of the occurrence, specifying the additional Work contemplated as being required, state why such Work is not already included within the scope of the Contract Documents, and to the extent reasonably foreseeable estimate the anticipated amount of the claim.

**14.3.** If the Owner within ten (10) Working Days following receipt of such Notice of claim does not direct the Contractor otherwise, the Contractor shall proceed with the Work which is the subject of the claim and within ten (10) calendar Days after completion of the Work for which additional compensation is claimed shall submit in writing to the Owner's Representative, if one has been designated, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.

**14.4.** The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Article 14.2 above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90<sup>th</sup>) day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the claim. The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six-month limitation.

**14.5.** The Contractor shall comply with all directions and decisions of the Owner's Representative or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

**14.6.** No claim whatsoever shall be made by the Contractor against any officer, authorized representative or employee of the Owner for, or on account of, anything done or omitted to be done in connection with this Contract.

**14.7.** Failure of the Owner at any time to require compliance with any term or condition of the Contract Documents or of any claims submissions requirements shall not be deemed a waiver of such term, condition, or requirement, or a waiver of the subsequent enforcement thereof.

**14.8.** In the event the Contractor makes a claim for additional compensation other than for damages related to delay which results in litigation, if the Owner substantially prevails in such litigation the Contractor shall indemnify and hold the Owner harmless from any and all reasonable attorneys' fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such claim and litigation. Any claim for delay damages shall be subject to the provisions of Va. Code. Ann. § 2.2-4335.

**14.9.** If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the Contractor shall not be entitled to recover any interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the legal rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.

**14.10.** No claims provision in this Interim Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

#### **ARTICLE 15: TIME, DELAYS AND EXTENSIONS OF TIME:**

**15.1.** The Owner and the Contractor hereby acknowledge and agree that time is of the essence with respect to all performance, submission and Notice requirements. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the Work within the

Contract Period. By submitting a Proposal, the Contractor confirms that the Contract Period is a reasonable period for performing the Work. The Contractor shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.

**15.2.** The parties agree that no extension beyond any required date of completion or other performance fixed by the terms of the Contract shall be effective unless granted in writing, and signed by the Owner's Purchasing Agent or his designee. All time requirements set forth herein shall be of the essence. It shall be a condition precedent to any claim for extension of time that the Contractor comply strictly with the following requirements:

**15.2.1.** Give Notice of delay in writing to the Owner's Representative, if one has been designated, and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with, and are subject to the limitations of, Article 15.6, Weather Delays. The Notice of claim for delay shall identify itself as a Notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. Strict compliance with all of these submission requirements shall be a condition precedent to consideration of any claim for delay, but compliance of itself shall not establish the validity of any claim.

**15.2.2.** The Contractor shall submit to the Owner's Representative, if one has been designated, and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this Article 15, within twenty-one (21) days after the delay has ceased.

**15.2.3.** The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

**15.2.4.** Strict compliance with all applicable submittal requirements shall be a condition precedent to entitlement to any extension of time, but such compliance shall not of itself establish entitlement. Failure to comply with the foregoing submittal requirements shall be deemed a conclusive waiver, without limitation, of any claim for extension of time arising from or related to the alleged occurrence.

**15.3.** The Contractor shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.

**15.4.** The Contractor shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the Contractor. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner may determine to be due solely to such causes and only to the extent that such occurrences actually delay achieving the applicable completion date, and then only if the Contractor shall have strictly complied with all applicable claims submission requirements of this Contract, including, without limitation, Section 14.1. To the extent any delay for which the Contractor seeks an extension of time is due concurrently to causes for which Contractor may be entitled to a delay and to causes within the reasonable control or foreseeability of the Contractor, the Contractor shall not be entitled to any extension of time.

**15.5.** The Contractor is to assume five (5) Days delay from the date of Notice to Proceed to the date Commissioning is completed and generation of power has commenced. These five (5) Days shall be known as "Owner Float," and



may be applied to any delay from any cause, at the Owner's sole discretion, including but not limited to Owner caused delay. The Contractor shall include this Owner Float in the Contract Period and shall incorporate the Owner Float in its schedule for the Work. The Contractor will not be compensated, neither monetarily nor by time extension, for any delay to which the Owner elects to apply any portion of the Owner Float so long as the Owner Float has not been exhausted.

**15.6. Weather Delays.** Unusually severe weather conditions which prevent or inhibit the Contractor's performance of the Work are referred to in this Article 15 as "Inclement Weather" and are more specifically defined below. The Contract Period may be adjusted to account for Inclement Weather, but only if (i) there has been strict compliance by Contractor with all claims submission requirements and other requirements of the Contract Documents related to time extensions; and (ii) the following definition of "Inclement Weather" is satisfied:

**15.6.1.** Inclement Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour period that prevents Work shown on the Construction Schedule as planned for performance at that time which is directly affected by such weather conditions or by impact on access to the Site: (i) Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure; (ii) Temperatures that do not rise above that required for the Day's planned Work, if such temperature requirement is specified or accepted as standard industry practice; or (iii) Sustained wind in excess of twenty-five (25) m.p.h.

**15.6.2.** Monthly Assumed Inclement Weather Days also are herein referred to as the Standard Baseline. The Standard Baseline for purposes of factoring the Monthly Assumed Inclement Weather Days into the Project Schedule is four calendar days per month. Standard Baseline Inclement Weather is included in the Work, is to be included in any schedule for the Work developed by Contractor, and shall not form any basis for an extension of Contract Time. The Standard Baseline is not cumulative. Any portion of the Standard Baseline not applied to an Inclement Weather delay approved by APS in any month shall not be carried forward to any subsequent month.

**15.6.3.** In accordance with the Notice and claims submittal requirements of this Article 15, as a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:

**15.6.3.1.** Notify the Owner's Representative, if one has been designated, and the Purchasing Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a Notice of claim for Inclement Weather delay, shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the activities on the Contractor's previously established project schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.

**15.6.3.2.** Submit to the Owner's Representative if there be one designated and to the Purchasing Agent a statement of the actual time extension requested in strict compliance with Article 15.2.

**15.6.3.3.** For purposes of any claim for delay based on Inclement Weather, each Inclement Weather Day claimed shall constitute a separate occurrence and the Contractor shall comply with the foregoing claim submittal requirements for each Day of Inclement Weather claimed.

**15.6.3.4.** Compliance with the foregoing conditions precedent shall not of itself establish entitlement to a time extension for Inclement Weather but failure to comply shall be a bar to any such time extension.

**15.6.4.** If the basis for an extension of time for Inclement Weather is established in accordance with all claim submittal requirements, an extension of time on the basis of Inclement Weather may be granted only for the number of Inclement Weather Delay Days in excess of the Standard Baseline for the month of the occurrence.

**15.6.5.** Any request for an extension of time on the basis of Inclement Weather MUST prove impact to activities on the Contractor's previously established project schedule in effect at the time of the occurrence.

**15.6.6.** Inclement Weather may support a time extension only if Inclement Weather prevents planned Work for fifty percent (50%) or more of the Contractor's scheduled Working Day, the affected construction activities were included in the Day's schedule, and performance of that Work was directly impacted by the Inclement Weather.

**15.6.7.** Should the Contractor be granted an extension of time on the basis of Inclement Weather, the Owner may or may not elect to use any of the Owner Float described in Article 15.5 in lieu of granting a time extension.

**15.7.** The Owner's Purchasing Agent or his designee shall issue the Owner's final decision on any claim for delay within ninety (90) Days following receipt of the Contractor's final submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to issue a written decision shall be deemed a final decision to deny the claim as of the ninetieth (90) Day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial proceeding for relief on the claim. The Contractor's right to seek a judicial appeal of denial of a claim for extension of time is barred if no suit is filed within six (6) months following the Owner's final decision on the claim. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six month period.

**15.8.** Delays caused by the failure of the Contractor's Subcontractors, suppliers and dealers to furnish approved working drawings, shop drawings, submittals, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors or Sub-Subcontractors to perform their Work in conformity with the Contractor's Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.

**15.9.** The Contractor making a claim against the Owner for costs or damages due to unreasonable delays caused by the Owner, and its agents or employees, shall be liable to the Owner for a percentage of all the costs the Owner incurs in investigating, analyzing, negotiating, and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be false or to have no basis in law.

**15.10.** No claims provision in this Interim Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

**15.11.** The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

## **ARTICLE 16: SUBCONTRACTORS AND SUB-SUBCONTRACTORS:**

**16.1.** Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the Contractor, or between a Sub-subcontractor and a Subcontractor, as applicable.

**16.2.** Team Members.

**16.2.1.** There shall be no substitution for a Team Member identified in the Contractor's Proposal without the prior written consent of the Owner. The Contractor shall provide to the Owner justification for the change to any previously submitted Team Member and obtain the Owner's consent to the proposed substitution prior to any Work commencing by the Subcontractor. The justification for such substitution, and for any Subcontractor not identified in Contractor's Proposal, shall include all information intended to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, safety records, past experience and financial resources to perform the Work in accordance with the terms and conditions of the Contract Documents.

**16.2.2.** If the Owner finds, in its sole and absolute discretion, that the proposed substitute is not qualified, the Contractor will be notified in writing within five (5) Working Days of the Owner receiving the request for approval of the substitute. If no such notice is provided, the Owner shall be deemed to have accepted the substitute. The Owner may retract its acceptance of any substitute in the event such substitute evidences an unwillingness or inability to perform its portion of the Work in strict accordance with the Contract Documents. Notice of such

retraction will be given in writing to the Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within five (5) Days, submit a new substitute for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the Contractor.

**16.3.** The Contractor shall not enter into a contract in connection with the Work with any Subcontractor who has been rejected by the Owner, and shall promptly terminate any contract with a Subcontractor who subsequently is rejected by Owner as provided herein.

**16.4.** Each agreement with a Subcontractor or Sub-subcontractor shall:

**16.4.1.** Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;

**16.4.2.** Not contain a provision which purports to adversely affect the rights of the Owner as such rights are defined in the Contract Documents;

**16.4.3.** Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the Contractor may in turn promptly process such applications or claims in conformance with the Contract Documents;

**16.4.4.** Include appropriate provisions in all subcontracts to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses caused by its exercising of its rights under this Article 16.4.4.

**16.4.5.** Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in Articles 17.1.5 and 17.1.6. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;

**16.4.6.** Include all provisions required by this Article 16 and by any other provision of the Contract Documents; and

**16.4.7.** Include the same requirements as Article 9.8. herein and require the completion of the Contractor Certification Regarding Criminal Convictions, Appendix A.

**16.4.8.** Require submission to the Contractor of all information and documentation necessary for the Contractor to comply with Article 9.8.

**16.4.9.** Include a requirement that each Subcontractor shall include in its contracts with its Sub-Subcontractors the same payment obligations required herein for payment by the Contractor to its Subcontractors.

**16.5.** Any Subcontractor agreement shall be submitted by the Contractor to the Owner within ten (10) days following request by the Owner.

**16.6.** Payment of Subcontractors.

**16.6.1.** All subcontracts shall provide for billing by Subcontractors in intervals of no greater than thirty (30) days.

**16.6.2.** All subcontracts shall provide that payment will be made by the Contractor to the Subcontractor of all undisputed amounts within no more than thirty (30) days following receipt by the Contractor of an invoice submitted in compliance with the billing procedures set forth in the subcontract.

**16.6.3.** All subcontracts shall provide that the Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid after the due date established in the Subcontract. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month or at such other rate as may be set by the subcontract but not less than 0.5% per month, six percent (6% per annum). Interest shall not accrue on amounts withheld by the Contractor due to a good faith dispute regarding the Subcontractor's compliance with subcontract requirements until the final resolution of such dispute.

**16.6.4.** The Contractor's obligations with respect to payments to its Subcontractors shall not operate to create any obligation or contractual relationship between the Owner and any Subcontractor or Sub-subcontractor.

**16.6.5.** The Contractor's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**16.7.** Insurance proceeds received by the Contractor under the insurance policies described in Article 17 shall be equitably distributed to the Subcontractors affected by the insured loss.

**16.8.** Nothing contained in the Contract Documents shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner or the Owner's Representative and any Subcontractor.

**16.9.** The Owner's review or acceptance of Subcontractors as described herein shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

#### **ARTICLE 17: CONTRACTOR'S INSURANCE:**

**17.1.** Throughout the term of this Agreement commencing with Notice to Proceed with Construction, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:

**17.1.1.** Commercial General Liability occurrence-based insurance shall be in the amount of \$2/\$5 Million (\$2 Million per occurrence / \$5 Million annual aggregate). Such insurance shall cover claims for bodily injury, property damage and personal injury, to include death and dismemberment, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The Contractor shall provide a certificate of insurance that names Arlington County School Board, operating as Arlington Public Schools, including elected and appointed officials, agents and employees as additional named insured. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board operating as Arlington Public Schools including its elected and appointed officials, agents and employees. If the insurance policy represented by certificate requires endorsement in order to satisfy this additional insureds requirement, then such endorsement must accompany the Certificate.

**17.1.2.** The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance in amounts satisfactory to the Contractor, naming the Owner as an additional named insured.

**17.1.3.** Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in Work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of its Subcontractors shall be not less than \$1 million.

**17.1.4.** Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than \$100,000 per occurrence/ \$500,000, including uninsured motorist.

**17.1.5.** All risk insurance covering damage, loss or injury to the SPRS. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the Contractor of its obligations under this Contract and, upon such performance, shall be released to the Contractor. Such policy shall be in an amount equal to the SPRS cost as shown on the Proposal.

**17.1.6.** The Contractor shall purchase Builder's Risk insurance upon the entire SPRS during the construction period to the full insurance value of Soar Photovoltaic Rooftop System and installation thereof. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:

**17.1.6.1.** Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).

**17.1.6.2.** Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.

**17.1.6.3.** Coverage of Contractor's labor, overhead and profit.

**17.1.6.4.** Coverage of materials stored or installed at the Facility, until said materials are accepted by the Owner per Substantial Completion and acceptance requirements. Payment by Owner for materials stored or installed at the Facility does not eliminate Contractor's responsibility or liability with regards to theft and vandalism or other damage.

**17.2.** Proof, to the satisfaction of the Owner, of insurance for each type of coverage identified herein as required from Notice to Proceed through the term of this Contract shall be provided within ten (10) days of the Contractor's receipt of the Notice to Proceed, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence Work on its subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. The Contractor certifies by commencement of the Work that its insurance and that of all Subcontractors is in effect and meets the requirements set forth herein. Copies of Subcontractor insurances shall be kept on file and made available to the Owner upon request.

**17.3.** All of the aforesaid insurance policies must be endorsed to provide that the insurance company shall give forty-five (45) days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide the Owner with a copy of each policy which it shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.

#### **ARTICLE 18: CONTRACTOR'S DEFAULT AND TERMINATION:**

**18.1.** The parties agree that:

**18.1.1.** If the Contractor fails to begin the Work when required to do so; or

**18.1.2.** If, at any time during the progress of the Work, the Owner determines that the Contractor is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or

**18.1.3.** If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or

**18.1.4.** If the Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or

**18.1.5.** If the Contractor fails in any manner of substance to comply with the requirements of this Contract; or

**18.1.6.** If any of the Work, machinery, or equipment is defective and is not replaced as herein provided;

then the Owner, without prejudice to any other rights or remedies Owner may have hereunder, shall have the right to declare the Contractor in default in whole or in part. In the event the Owner elects to declare the Contractor in default, the Owner shall notify the Contractor and its Sureties by written notice describing the nature of the default and providing the Contractor a right to cure such default within three (3) calendar days after the date of the Notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in this Article 18.

**18.2.** The parties agree that:

**18.2.1.** If legal proceedings have been instituted by others than the Owner in such manner as to interfere with the progress of the Work and to potentially subject the Owner to the peril of litigation or outside claims; or

**18.2.2.** If the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or

**18.2.3.** If in any proceeding instituted by or against the Contractor, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or

**18.2.4.** If a receiver or trustee is appointed for the Contractor or the Contractor's property; or

**18.2.5.** If the Contract or any part hereof is sublet without the prior written consent of the Owner; or

**18.2.6.** If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or

**18.2.7.** If the Work to be done under this Contract is abandoned;

then the Owner, without prejudice to any other rights or remedies the Owner may have, shall have the right to terminate the Contract immediately upon written notice to the Contractor or, in the Owner's sole discretion, exercise any other rights available to it.

**18.3.** Contractor's Duty Upon Default: Immediately, but no later than three (3) days after receipt of Notice that it is in default hereunder, the Contractor shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the Facility, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.

**18.4.** Completion of Work Or Performance After Default:

**18.4.1.** If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:

**18.4.1.1.** Have the defaulted Work performed by others;

**18.4.1.2.** Supplement the Contractor's workforce;

**18.4.1.3.** Withhold payments due the Contractor and use such payments to satisfy any claims for moneys owed by the Contractor in connection with the Project, in accordance with any provisions of the Contract Documents;

**18.4.1.4.** Replace or repair any defective Work;

**18.4.1.5.** Notify the Surety of such default and make demand upon the Surety as may be applicable under the circumstances of the default, but Owner shall be under no obligation to notify the Surety;

**18.4.1.6.** Terminate the Contractor's performance of the Contract.

**18.4.2.** The Contractor and its Sureties shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-letting, and any and all costs incurred in connection with the Owner's exercise of any right upon default. Any costs incurred in connection with completing or correcting the Work shall be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the Contractor and its Surety shall pay to the Owner the amount of any deficiency.

**18.5. Partial Default:** In the event the Owner declares the Contractor in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the Contractor shall discontinue such portion of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract and shall not hinder or interfere with any other contractor or persons whom the Owner may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and its Sureties as provided in the Contract Documents.

**18.6. Death, Dissolution or Incompetence of Contractor:** In the event of the death or legal incompetence of a Contractor who shall be an individual or surviving member of a sole proprietor contracting firm, or the dissolution of the business entity which is the contracting firm, such death, adjudication of incompetence, or dissolution shall not terminate the Contract, but shall constitute a default hereunder, and the estate or successors of the Contractor and his or its sureties, if any, shall remain liable hereunder to the same extent as though the Contractor remained living. Notice of default, as provided in Article 18.1 shall not be required to be given in the event of such death, adjudication of incompetence, or dissolution.

**18.7. Owner's Right to Terminate for Convenience:** Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In the event of such termination for convenience within five hundred forty (540) Days following issuance of the Notice to Proceed, the Contractor shall be paid an amount equal to the actual cost of any Work actually performed and in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus the percent (10%), plus the amount due at the rates agreed for any power provided prior to the effective date of the termination. The Owner shall have the right of audit, and Contractor shall have the obligations, stated in Article 24 insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Article 18.7.

**ARTICLE 19: ROYALTIES AND PATENTS:** The payment obligations of the Owner under any Lease includes payment to the Contractor for all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner, its officers,

agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

**ARTICLE 20: IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**ARTICLE 21: CIVIL RIGHTS ACT COMPLIANCE:** The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.

**ARTICLE 22: SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES AND EMPLOYMENT SERVICES ORGANIZATIONS:**

**22.1.** The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, the PPEA, the APS PPEA Guidelines and relevant Federal and State Laws, orders and regulations, require Arlington Public Schools to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small Business Enterprises, Minority Business Enterprises, Service Disabled Veteran Owned Business Enterprises, and Employment Services Organizations.

**22.2.** In seeking Subcontractors, suppliers and vendors necessary to perform the Work, the Contractor shall encourage the participation of Small Businesses, Women-Owned Businesses, Minority-Owned Businesses, Service Disabled Veteran-Owned Businesses, and Employment Services Organizations. At a minimum, for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such Work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category if identifiable to perform such Work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

**22.3.** As used in this section:

**22.3.1.** “Minority Individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

**22.3.1.1.** “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.2.** “Asian American” means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.3.** “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.4.** “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.



**22.3.2.** “Minority-Owned Business” means a business that is at least 51 percent owned by one or more Minority Individuals who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more Minority Individuals who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more Minority Individuals.

**22.3.3.** “Service Disabled Veteran” means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

**22.3.4.** “Service Disabled Veteran-Owned Business” means a business that is at least 51 percent owned by one or more Service Disabled Veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are Service Disabled Veterans and both the management and daily business operations are controlled by one or more individuals who are Service Disabled Veterans.

**22.3.5.** “Small Business” means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of \$10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

**22.3.6.** “Women-Owned Business” means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**22.3.7.** “Employment Service Organization” means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

## **ARTICLE 23: LABOR UNIONS AND RIGHT TO WORK:**

**23.1.** The Contractor is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against Subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations.

**23.2.** Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Articles 1 and 3 of Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.

## **ARTICLE 24: AUDIT:**

**24.1.** The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the Contractor for the purposes of verifying that the certified cost or pricing data submitted were accurate, complete and current. The Owner shall, until the expiration of three years from the date of final payment under this Contract, have the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein (the "Records"), and the Contractor hereby covenants to maintain the Records in good order for such time and to deliver promptly the Records to the Owner upon request.

**24.2.** The Contractor agrees to include in all subcontracts under this Contract a provision to the effect that the Owner and its authorized representatives will, until three years from the date of final payment under the subcontract, have access to and the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to the subcontract.

**ARTICLE 25: NO ASSIGNMENTS:** No assignment by either party hereto of any rights or interest under any of the Contract Documents will be effective unless in writing signed by the authorized representative of each party; and no assignment will release or discharge the assignor from any responsibility under the Contract Documents. Owner shall be under no obligation to consent to any request by Contractor for approval of an assignment as the Contractor's obligations are intended not to be assignable. However, after the SPRS has been operational to the satisfaction of the Owner for a period of not less than one year, the Contractor may request assignment of this Contract or any Lease to a third party who or which is able to satisfy the Owner, at the Owner's sole discretion, that it has the qualifications to maintain and operate the assigned SPRS, which qualifications shall be no less stringent than those set forth in the RFP. Such assignment may be requested of the entire Contract and all Leases hereunder, or of no less than five (5) Leases hereunder and of this Contract to the extent applicable to the Leases assigned.

**ARTICLE 26: INDEMNIFICATION:** The Contractor covenants to save, defend, hold harmless, and indemnify the Owner and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's intentional, negligent, or grossly negligent acts or omissions in performance or nonperformance of its Work called for by the Contract Documents, or otherwise occurring at the Facility, or arising from or related to the Contractor's obligations under this Contract. This indemnification obligation shall survive the termination of this Contract.

**ARTICLE 27: PERFORMANCE BOND:**

**27.1.** The Contractor shall execute and deliver to the Owner a Performance Bond on the forms provided in the Contract Documents in an amount equal to [insert construction cost estimate from Proposal for the selected Facility]. The Performance Bond shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. The Bond shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance Bond shall serve as security for the faithful performance of the design and installation requirements of this Contract. The premiums on the Performance Bond shall be paid by the Contractor and shall be included in the power rates as established in this Contract and any Leases.

**27.2.** If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance Bond, or if for any other reason such bond shall cease to be adequate security for the Contractor, the Contractor shall within ten (10) days after notification of such fact, substitute an acceptable Performance Bond in such form and sum and signed by such other Sureties as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor and shall be included in the power rates as established in this Contract and any Leases. No further partial payments shall be deemed due nor shall be made until the new Bond is in effect and provided to and approved by Owner.

**27.3.** Alternative Forms of Security: Any Performance Bond required under the Contract Documents may be provided in the form of a certified check, cashier's check, or cash escrow in the face amount required for the bond and conditioned as required for a surety bond. Any Performance Bond required under the Contract Documents may be in the form of a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bond, but only if approved by the Arlington Public Schools Attorney. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Arlington Public Schools equivalent to a corporate surety's bond.

**27.4.** No bond required by the Contract Documents shall be deemed released without a written release from the Owner specifically granting such release.

**ARTICLE 28: POWERS OF THE PURCHASING AGENT:** The Owner’s Purchasing Agent, in addition to those matters expressly made subject to his determination, direction or approval shall have the power:

**28.1.** To decide any and all questions, claims and disputes in relation to this Contract and its performance, except as herein otherwise specifically provided, and his decisions upon such questions, claims and disputes shall be final and conclusive upon the parties hereto.

**28.2.** To modify or change this Contract in accordance with Articles 12 and 13 so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he deems it in the interest of the Owner to do so.

**28.3.** To suspend the whole or any part of the Work whenever, in his judgment, such suspension is required: (1) in interest of the Owner generally, or (2) to expedite the completion of the Project, or (3) due to a delay caused by the Owner or its authorized representatives.

**28.4.** The Purchasing Agent may delegate his authority/power to his designee or designees, but only to the extent the Contractor has been given written notice by the Purchasing Agent of such delegation.

**ARTICLE 29: ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.

**ARTICLE 30: GOVERNING LAW:** This Agreement and each of the Contract Documents shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of laws principles. This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, Contractor shall comply with applicable federal, state, and local laws, ordinances, and regulations.

**ARTICLE 31: DEFINITIONS:**

**Addendum or Addenda:** Any modification to the RFP issued in writing by the APS Purchasing Office.

**APS or Arlington Public Schools:** Arlington Public Schools (“APS”) is the name under which Arlington County School Board conducts its procurement activities.

**APS Facilities:** See “Facilities.”

**APS PPEA Guidelines:** Guidelines adopted by APS pursuant to the requirements of the PPEA and included as a part of the APS Purchasing Resolution.

**APS Purchasing Resolution:** The Arlington Public Schools Purchasing Resolution as in effect at the time of this RFP and as may be amended from time-to-time hereafter.

**Board:** The Arlington County School Board.

**Change Order:** A written Modification to the Interim Agreement or any Lease, or both, agreed and signed by both the Contractor and by APS. The Interim Agreement or any Lease may be modified only by Change Order.

**Commission:** To start up, test, and confirm that an item of equipment or an element of the Work is fully operational in compliance with the requirements of the Contract Documents for its intended purpose.

**Comprehensive Agreement:** The written Comprehensive Agreement or Contract between the Private Entity and APS that is required prior to the development of a Qualifying Project, executed either in lieu of an Interim Agreement or subsequent to an Interim Agreement for additional phases.

**Contract:** See “Interim Agreement.”

**Contract Documents:** See Article 3.

**Contract Period:** See Article 8.3.

**Contractor:** The Private Entity with which APS contracts to perform and provide the Project.

**Day:** The term “day” or “Day” shall mean “calendar day” unless otherwise noted. When any provision of the Contract Documents establishes a time within which an action must be taken or a right must be exercised, if the last Day falls on a Saturday, Sunday, or Holiday, the deadline thereby established shall be extended to the first Arlington Public Schools Normal Working Day thereafter.

**Drawings:** The term “Drawings” or “Plans” shall mean any drawings, profiles, cross-sections, elevations, details, and other depictions or reproductions thereof, which show the location, character, dimensions, or details of the Work. Drawings are not Contract Documents until approved in writing by APS.

**Facility:** The APS building or structure on which the SPRS is installed, and/or which is to receive power from the SPRS.

**Facility Specific Design:** The design prepared by the Contractor and accepted by the Owner for the SPRS on a Facility. Each Facility shall have a Facility Specific Design.

**Gender and Plural:** Whenever the Contract so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.

**Holiday:** Holidays recognized by the Owner which shall not be considered Normal Working Hours or Normal Working Days are as follows: New Year’s Eve Day, New Year’s Day, Martin Luther King, Jr., Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the following Friday, Christmas Eve Day, and Christmas Day. Actual dates should be based on the most current Arlington Public Schools calendar.

**Interim Agreement:** A written agreement between a Private Entity and APS that provides for phasing of the development or operation, or both, of a Qualifying Project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the Project that constitutes activity on any part of the Qualifying Project preceding a Comprehensive Agreement. An Interim Agreement prior to a Comprehensive Agreement is not a required step.

**kW:** Kilowatt

**kWh:** Kilowatt hours

**Lease:** The written agreement between the Contractor and APS providing the terms under which the Contractor may maintain and operate a SPRS on a Facility, and establishing the power requirements and rates applicable to that Facility. There will be a separate Lease for each Facility, and all Leases will be subject to the terms of the Interim Agreement. A Lease may also be referred to herein as a “Power Purchase Agreement.” The two terms shall have the same meaning.

**Lease Payment:** Any form of payment, including a land lease, by APS to the Private Entity for the use of a Qualifying Project.

**Local Utility:** Dominion Energy Virginia

**Major Subcontractor:** A Private Entity responsible for 10% or more of the reasonably anticipated cost of the Proposed Project, and is proposed as part of the initial Project Team.

**Material Default:** Any default by the Private Entity in the performance of its duties under VA. CODE ANN. § 56-575.8.E, or in the performance of any other contract or legal duty, which jeopardizes adequate service to APS or to the public from a Qualifying Project.

**Modification:** Any written change to any provision of the Contract Documents whether by Change Order or by other means provided by the Contract Documents.

**Normal Working Day:** The hours between 7:00 A.M. and 5:00 P.M., prevailing local time, Monday through Friday, excluding Owner Holidays. May also be referred to as "Business Day."

**Notice:** Notice shall mean written notice. Written Notice shall be deemed to have been duly served if:

- A. Delivered by mail, courier, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.
- B. Delivered by mail, express mail or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207.

Any requirement in the Contract Documents that an action be taken in writing shall require transmission of the writing to the other party in the form required of a Notice, unless otherwise expressly stated.

**Notice to Proceed:** A written Notice from the Owner to the Contractor, which gives consent for commencement of the Work. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all installation durations shall be based upon that date.

**Operate, Operation:** To finance, maintain, improve, equip, modify, repair, or operate.

**Operator:** The Private Entity responsible for operating the completed Qualifying Project.

**Owner:** See APS.

**Owner's Representative:** The employees of the Owner responsible for administration of the Contract. The Owner's Representative shall be designated by the Purchasing Agent for each Facility by Notice to the Contractor, and may be changed at the discretion of the Purchasing Agent. The Purchasing Agent may designate more than one Owner's Representative, in which case any Notice to Owner required of Contractor shall be provided to all Owner's Representatives for the Facility which is the subject of the Notice.

**Power Purchase Agreement or PPA:** See "Lease."

**PPEA:** The Public-Private Education Facilities and Infrastructure Act of 2002, VA. CODE ANN. §§ 56-575.1, *et seq.*, as may be amended by the General Assembly.

**Private Entity:** Any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

**Project or Proposed Project:** The project or improvement which is the subject of this procurement, which is the Installation of SPRSs to be hosted on Arlington Public Schools Facilities, with the SPRSs to be maintained and operated by the successful Contractor under long term leasing agreements, with sale to Arlington Public Schools of electricity generated by these SPRSs. Synonymous with the term “Work” as the context may require.

**Project Site:** The location at which the improvements which are the subject of the Work are to be or are being constructed, Operated, and maintained. May also be referred to as “Site.”

**Project Team:** The Private Entities assembled by the Offeror and identified in the Conceptual Proposal and, if applicable, the Detailed Stage Proposal, as the overall team to perform the Proposed Project

**Proposed Modification:** A request by the Owner or the Owner’s Representative for the Contractor’s estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and Contractor shall provide the requested information within fourteen (14) Days.

**Purchasing Agent:** The employee of APS authorized to act on behalf of APS in contractual matters. The Purchasing Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. No Private Entity shall rely upon and APS shall not be bound by any statement or representation made on behalf of APS by any person not designated by the Purchasing Agent to the Private Entity in writing as authorized to so act on behalf of the Purchasing Agent. It shall be the responsibility of the Private Entity to establish the authority to act regarding any communication or action by any person other than the Purchasing Agent. Use of the term Purchasing Agent in any writing issued by APS related to any Proposed Project or Qualifying Project shall be deemed to include such properly authorized designee within the scope of that designee’s authorization.

**Purchasing Office:** The office of the Purchasing Agent and designated staff.

**Qualifying Project:** APS has determined that the Proposed Project is a Qualifying Project. A Qualifying Project is (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for APS; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by APS; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of APS through the use of technology or other means; or (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools.

**Revenues:** All revenues, income, earnings, User Fees, or Lease Payments arising out of or in connection with supporting the Development or Operation of a Qualifying Project, including without limitation, money received as grants or otherwise from the United States of America, from any public body, agency or department, or from any agency or instrumentality of the foregoing in aid of such facility.

**RFP:** The Request for Proposals which resulted in the award of this Interim Agreement.

**Responsible Public Entity:** A public entity that has the power to develop or operate the Project. APS is the Responsible Public Entity for this Project.

**Solar Photovoltaic Rooftop System or SPRS:** A system installed on a rooftop for the collection of solar energy and conversion of that energy to electricity for use by APS.

**Specifications:** The term “Specifications” or “specifications” shall mean those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship to be applied to the Work and administrative details applicable thereto.

**Subcontractor:** Any individual, firm or organization other than an employee of the Contractor, who contracts with the Contractor to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the Contractor in connection with the Work.

**Sub-Subcontractor:** Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.

**Surety:** Any person, firm or corporation that has executed as Surety the Contractor’s performance bond securing performance of the design and installation requirements of this Contract. The Surety shall be authorized to do business in the Commonwealth of Virginia and shall be listed on the United States Treasury Department’s latest Circular 570.

**Team Member:** All members of the Project Team required to be identified in a Conceptual Proposal or a Detailed Stage Proposal if applicable, as set forth in this RFP.

**User Fees:** The rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Interim Agreement.

**VPPA:** The Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, *et seq.*

**Warranty Period:** All warranties and guarantees against any defect in the Work shall apply from the date the SPRS begins producing power and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

**Work:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.

**Working Day:** See “Normal Working Day.”

**ARTICLE 32: EFFECT OF EXECUTING CONTRACT:**

Execution of the Contract by Contractor is a certification that the Contractor has examined each of the initial Facilities, become familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents, and has examined all Contract Documents. Owner and Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized officers.

<p><b>CONTRACTOR</b></p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Dated</p>
---

<p><b>ARLINGTON PUBLIC SCHOOLS</b></p> <p>By: _____</p> <p style="padding-left: 100px;"><b>David J. Webb, C.P.M.</b></p> <p>Title:           Director of Purchasing</p> <p>_____</p> <p style="text-align: center;">Dated</p>
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**APPENDIX A**

**CONTRACTOR CERTIFICATION**  
**REGARDING CRIMINAL CONVICTIONS**

**This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.**

**The completed form from the Contractor is a condition precedent to the award of the Contract.**

As the official authorized to enter into this Contract on behalf of my organization, I certify that:

1. No employee of the organization who will be in the presence of students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Va. Code Ann. Section 18.2-370.4, no employee who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Va. Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Name and Title (please type or print)

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_

**XV. APPENDIX H**

**FORM COMPREHENSIVE AGREEMENT**

**Solar Photovoltaic Rooftop System Installation and Sale of Generated Electricity  
Contract No. 01FY18**

THIS COMPREHENSIVE AGREEMENT (“Contract”), made and entered into as of the date of the Owner’s signature appearing below, between Arlington County School Board operating as Arlington Public Schools through its Purchasing Agent (the "Owner" or “APS”), and \_\_\_\_\_  
(the "Contractor"), whose address is \_\_\_\_\_

\_\_\_\_\_

Defined terms used in this Contract are as set forth in Article 31, except as may be expressly set forth in other provisions.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereby agree as follows:

**ARTICLE 1: THE PROJECT:**

**1.1.** The Work of this Project involves the design and installation by Contractor of a Solar Photovoltaic Rooftop System (SPRS) on each of multiple Facilities owned by APS. Contractor shall enter into a Lease with APS to operate and maintain the SPRS on each Facility on the terms set forth herein and in each Lease. Following completion of the installation of the SPRS, the Contractor shall operate and maintain each SPRS so as to provide to APS from the SPRS on each Facility the kW of electric power designated by the Lease for that Facility, at the established rates to be paid by APS to Contractor for that electric power, for the duration set forth in each Lease. The duration in each Lease shall be not less than fifteen (15) years and not more than twenty-five (25) years, all subject to earlier termination or extension as provided herein.

**1.2.** The Facilities to which this Contract is applicable are as identified below, and any additional Facilities which may be added by Change Order.

<u>Facility Name</u>	<u>Facility Address</u>
Kenmore Middle School (existing)	200 S. Carlin Springs Road, Arlington, Va. 22204
Tuckahoe Elementary School (existing)	6550 N. 26 <sup>th</sup> Street, Arlington, Va. 22213
Washington-Lee High School (existing)	1301 N. Stafford Street, Arlington, Va. 22201
Jefferson Middle School (existing)	125 S. Old Glebe Road, Arlington, Va. 22204
Fleet Elementary School (under construction)	125 S. Old Glebe Road, Arlington, Va. 22204

**1.3.** Contractor shall execute the Lease for each of the foregoing Facilities and submit to APS each signed Lease at the same time it submits to APS the signed Contract. APS will issue the signed Lease to the Contractor at the same time APS issues a Notice to Proceed on a Facility.

**1.4.** Contractor shall provide all labor, services, equipment and materials necessary and required to complete the Work and to provide the on-going services and deliverables in accordance with the Contract Documents for each Facility for which the parties enter into a Lease. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; provided, however, that the Contractor shall employ

adequate and safe procedures, methods, structures and equipment both during the installation period and during the term for maintenance and operation. Neither the Owner's approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner's approval or failure to approve create a cause of action for damages against the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor. The terms of this Comprehensive Agreement shall be incorporated into each Facility Lease.

**ARTICLE 2: FINANCING:**

- 2.1. If the Contractor is relying on third party financing to perform this Comprehensive Agreement, then within ninety (90) days following execution of this Comprehensive Agreement the Contractor shall provide a letter of commitment from any financial entity which is to provide financing for the Project.
- 2.2. All federal, state and local utility, energy or environmental incentives and credits shall accrue to the Contractor and are included in the cost and price calculations.

**ARTICLE 3: THE CONTRACT DOCUMENTS:**

3.1. The following, except for such portions thereof as may be specifically excluded, constitute the Contract Documents except for titles, subtitles, headings, running headlines, and tables of contents (all of which are used merely for convenience): of the Interim Agreement, if any, the Comprehensive Agreement, the Lease, the Drawings and Specifications, this Request for Proposals, any Change Orders, the Notice to Proceed, and any Addenda or Modifications to any of the foregoing.

Comprehensive Agreement  
Interim Agreement, if applicable  
Lease  
Drawings and Specifications as accepted by APS  
The Request for Proposals  
Drawings and Specifications  
Notice to Proceed  
Modifications issued after execution of this Comprehensive Agreement

- 3.2. All provisions required by Law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.
- 3.3. In the event of any inconsistency among the Contract Documents, the order of priority shall be as listed above. For any Modifications, the priority will be the latest Modification within the Contract Document modified. In the event that there is a conflict between the language of this Comprehensive Agreement and that of any applicable provision of the Code of Virginia, the Code of Virginia shall control.
- 3.4. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing, call it to the attention of Owner before proceeding with the Work affected thereby. The Owner shall promptly resolve the matter in writing. Work done by the Contractor after it discovered, or reasonably should have discovered, such conflicts, errors, ambiguities or discrepancies, prior to written resolution thereof by the Owner, shall be done at the Contractor's expense and the Contractor shall bear the risk of any delay or extra cost arising therefrom or related thereto. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- 3.5. The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings

required in connection therewith. Any doubt as to whether any Work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use of the term “include” or “including” shall be deemed to mean “include without limitation,” “including but not limited to,” and similar expansive intent.

**3.6.** The Contractor shall be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

**ARTICLE 4: TERM OF CONTRACT:** The duration of this Comprehensive Agreement shall be twenty-five (25) years from the date of its execution by the Owner. Any Lease for a Facility entered into by the parties pursuant to the terms of this Comprehensive Agreement shall be for a term of not less than fifteen (15) years and no more than twenty-five (25) years. In the event the term of any Lease exceeds the duration of this Comprehensive Agreement, the terms of this Comprehensive Agreement as incorporated into the Lease shall be deemed to survive for the purpose of establishing the incorporated terms.

**ARTICLE 5: OBLIGATIONS OF OWNER:**

**5.1.** APS shall provide the necessary space for the installation of the SPRS and ancillary equipment and items as required by the Drawings and Specifications approved by APS and Arlington County. APS shall be under no obligation to approve any proposed design which interferes with or in any way impairs the current or planned use of the Facility on which the SPRS is to be located.

**5.2.** APS shall provide access to the site as needed for design, and for all agreed installation, operation and maintenance. Contractor shall not seek access in such a manner as will interfere with any ongoing use of the Facility on which the SPRS is located.

**5.3.** APS shall purchase electricity at the rates set forth in, and make payment in accordance with, Article 11.

**ARTICLE 6: DESIGN, DRAWINGS AND SPECIFICATIONS:**

**6.1.** Contractor as a part of its Proposal has provided conceptual designs for each SPRS to be installed. Contractor warrants that such conceptual designs are based upon Contractor’s inspection of each Facility, that all reasonably foreseeable repairs of each Facility to be required of APS have been disclosed to APS, and that the designs are anticipated to be in accordance with all current and applicable local, state and federal codes and regulations and requirements of the Local Utility.

**6.2.** By submitting to APS for acceptance any final detailed Drawings and Specifications, Contractor warrants to APS that:

**6.2.1.** The Drawings and Specifications are based upon Contractor’s inspection of the Facility and that prior to submission of any design to APS, the Contractor has inspected the Facility and submitted in writing to APS identification of any repairs to the roof or roof covering which the Contractor deems necessary to accommodate installation of a SPRS and for the roof to have a projected life at least as long as the term of the Lease for that Facility. APS shall be responsible for accomplishing all identified repairs APS agrees are necessary.

**6.2.2.** That all designs are in accordance with the latest applicable local, state, and federal codes and the regulations and requirements of the Local Utility;

**6.2.3.** That the design includes all load studies and structural modifications for each Facility necessary to accommodate the SPRS;

**6.2.4.** That the design, and installation in accordance therewith, does and will involve as few roof penetrations as safety and the functional integrity of the proposed SPRS will permit to reduce risk of leaks and damage to existing roof finishes.

**6.2.5.** All Drawings and Specifications prepared by the Contractor shall be subject to the review and written approval of APS, and any modifications thereof required by APS shall become part of the Contract Documents.

**6.3.** The subdivision of the Drawings and Specifications into divisions, Sections and articles is for the purpose of ease of reference only and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor shall be responsible for segregating the Work among the various trades.

**6.4.** The Specifications shall serve to amplify the requirements of materials and assemblies. The mention in any Section of the Specifications of any article or operation requires that the Contractor shall provide all such items indicated on, or reasonably inferred from, the Drawings, furnishing for such purpose all labor, materials and equipment required in connection therewith. Omission of any article, operation, or detail does not relieve the Contractor of the responsibility for completion of the Work reasonably intended by the Drawings and Specifications to be included in the Contract.

**6.5.** In the case of conflict or inconsistency between the Drawings and Specifications or within Drawings, or Specifications not clarified by Addendum, the Contractor shall: (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement either or both in accordance with the Owner's Representative's interpretation. The Contractor shall notify the Owner's Representative of discrepancies found before materials are fabricated or Work performed.

**6.6.** The Contractor shall adhere to dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner's Representative. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding.

**6.7.** Original Drawings and Specifications prepared by the Contractor shall remain the property of the Contractor. Contractor shall provide to Owner an as-built set of the Drawings and Specifications prior to the first payment being due from the Owner for any power produced by the SPRS. Owner shall have an irrevocable license to use the copy of the as-built Drawings and Specifications so long as the SPRS remains in or on the Facility on which it initially was installed.

**6.8.** Substitutions of materials or equipment are not permitted after Proposals are received unless approved in writing at Owner's sole discretion, which Owner shall be under no obligation to grant.

**6.9.** Shop Drawings

**6.9.1.** The Contractor shall be responsible for obtaining, reviewing and approving all Shop Drawings and similar submittals necessary to confirm that all materials, equipment and services are in compliance with existing conditions and the approved Drawings and Specifications.

**6.10.** No materials or equipment containing asbestos or any other hazardous material recognized and identified by the Commonwealth of Virginia Department of Environmental Quality shall be utilized in the construction, maintenance or operation of the SPRS. In the event a substitute product is needed and time does not allow for the mandated submittal process, the Contractor shall confirm these materials do not contain asbestos or any other hazardous material as noted above in writing to the Owner and will provide the MSDS sheets to the Owner prior to being allowed to install the product in or on the Facility.

## **ARTICLE 7: INSTALLATION OF THE SRPS:**

**7.1.** Contractor shall perform the installation of the SPRS on each Facility in compliance with the design for that Facility previously accepted by APS (the “Facility Specific Design”). Contractor remains responsible for all aspects of the design, Drawings and Specifications. Owner’s approval and acceptance of the Drawings and Specifications is for design intent only, and Owner shall have no responsibility for the completeness or functionality of the Drawings and Specifications, nor for any omissions or inconsistencies therein.

**7.2.** The Owner shall make available to the Contractor such information as the Owner has in its possession describing the physical characteristics, legal limitations and utility locations for the Project Site; provided, however, that the provision of such information shall not relieve the Contractor from its obligation to inspect for itself and determine the site conditions. The Owner makes no representations whatsoever concerning the quality or contents of any information so provided and the Contractor relies on such information solely at its own risk.

**7.3.** The Contractor shall confirm locations of existing utilities by such means and methods as may reasonably be required or as outlined by the Commonwealth of Virginia Utility laws, at the Contractor’s sole expense as a part of the Work. Any discrepancies found with locations of existing utilities will be brought to the attention of the Owner and coordinated around the new Work in its design intent at the Contractor’s sole expense as a part of the Work. All discrepancies will be noted on the as-builts and documented at the Contractor’s sole expense as a part of the Work.

**7.4.** Contractor shall obtain all federal, state, and local governmental permits and zoning approvals, inspections, licenses, fees and other authorizations required for installation and subsequent operation of the SPRS.

**7.5.** The Contractor shall comply with all local, state and federal laws, rules or ordinances applicable to this Contract and the Work to be performed hereunder.

**7.6.** Contractor shall coordinate and obtain all required interconnection agreements with the Local Utility.

**7.7.** Contractor shall coordinate with the obligors under any existing roof warranty or warranties such that the warranty or warranties will remain in effect.

**7.8.** Contractor shall provide all materials, equipment, wiring and ancillary items necessary to install and make the SPRS ready for Operation in the intended manner. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.

**7.9.** Contractor shall Commission the SPRS to the satisfaction of the Owner before Owner becomes responsible for any payments to Contractor as provided in the Lease.

**7.10.** The finished installation should minimize exposed fasteners, sharp edges, and design or placement which may be conducive to damage to the modules or support structure. Materials used should be corrosion resistant and durable, and galvanic corrosion shall be avoided. The use of ferrous metals, wood or plastic components will not be accepted.

**7.11.** The Contractor shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations and directives of any public authority bearing on the performance of the Work. Should the Contractor determine that the Contract Documents, or any of them, do not conform with such laws, ordinances, rules, regulations and directives in any respect, it shall promptly inform the Owner’s Representative of such fact in writing. Any required changes shall be made by Change Order. If the Contractor performs any Work when it knew or in the exercise of reasonable care should have known it to be in conflict with such laws, ordinances, rules and regulations without notifications to the Owner’s Representative, the Contractor shall accept all responsibility and bear all cost relating thereto.

**7.12.** The Contractor shall comply with all conditions in any approved permits for the Project and shall comply with all requirements for final permits and use. Should the Contractor not meet the stipulated contractual dates for

permits, inspections and use, the Contractor shall be responsible for any and all costs, overtime fees and other costs of any type related to the delay in obtaining the required permits, inspections or use.

**7.13.** The Owner may award separate contracts in connection with other construction or operations in or on the Facility. When separate contracts are awarded for other construction or operations in or on the Facility, at no additional cost to the Owner the Contractor shall coordinate the Work with the activities of each other party under contract with the Owner, including but not limited to the storage of materials and equipment. When directed to do so by the Owner, the Contractor shall participate with such other contractors and the Owner in reviewing their separate construction schedules so as to avoid delay for any affected party.

**7.14.** If part of the Contractor's Work depends for proper execution or results upon construction or operations by a third party, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**7.15.** The Owner shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. The observations of the Owner's Representative will be for the sole purpose of keeping the Owner informed regarding the progress of the Work or to gather information to respond to any request by Contractor for a Contract interpretation. The Owner shall not have control over or charge of and shall not be responsible for construction methods, techniques, procedures, sequences or safety measures employed in connection with the Work. The Owner shall not be responsible for the failure of the Contractor, Subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.

**7.16.** The Owner's Representative and/or the Owner shall have the authority to reject Work that does not conform to the requirements of the Contract Documents.

#### **ARTICLE 8: SCHEDULE OF THE INSTALLATION:**

**8.1.** APS will issue any Lease and a Notice to Proceed on a Facility by Facility basis, in its sole discretion, with each Lease and Notice to Proceed to be governed by the terms of this Comprehensive Agreement which are incorporated therein. Contractor shall not commence the SPRS installation on any Facility before receipt of a Notice to Proceed for that Facility.

**8.2.** It is anticipated that the Notices to Proceed will be issued in the order and on the schedule set forth below. The number of Facilities for which Notices to Proceed will be issued and the timing of such Notices to Proceed will, however, be solely at the discretion of APS and will be dependent upon, among other things, the perceived needs of APS, market factors for electricity, and the Contractor's performance. APS shall have two (2) years from the date of this Contract within which to issue any Notice to Proceed and Lease for any of the Facilities identified above, or to add additional Facilities. If additional Facilities are added, the Contractor's Work as to those Facilities, from design through maintenance and Operation, shall be the same as set forth in this Comprehensive Agreement, the Work shall be performed, upon the terms and conditions of this Comprehensive Agreement, and the rates applicable to that Facility shall be negotiated as a part of the Change Order adding that Facility.

**8.3.** Contractor shall complete Commissioning of each SPRS and begin Operation of the SPRS within One Hundred Eighty (180) calendar days from the date APS issues Notice to Proceed and the Lease ("Contract Period").

#### **ARTICLE 9: CONTRACTOR'S RESPONSIBILITY FOR PERSONNEL AND SITE:**

**9.1.** The Contractor warrants that it and its Subcontractors represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction, maintenance and Operation services required hereunder. The Contractor agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to

the Owner to perform the Work in an efficient and timely manner. The Contractor represents that it and its Subcontractors are capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide services of high quality. The Contractor agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.

**9.2.** The Owner, upon written notice to the Contractor, and in the Owner's sole discretion, shall have the right to direct the Contractor and its Subcontractors to remove an employee permanently from the Project Site for any reason. Any individual who is removed from the Project Site pursuant to this Section may not return without specific permission of the Owner.

**9.3.** The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors or other persons performing any of the Work under a contract with the Contractor or a contract with a Subcontractor. The Contractor shall be responsible for maintaining the cleanliness on the Project Site at all times, shall exercise dust control when required, and shall exercise a high degree of care to prevent any objects blowing off or falling from elevated surfaces.

**9.4.** The Contractor will ensure that no Work shall be performed in occupied areas during school hours or office hours unless express written approval has been granted by the Owner and proper safety precautions have been exercised to isolate the area of the Work.

**9.5.** Tobacco products, alcoholic beverages, illegal drugs, and weapons not commonly recognized as tools for use in performance of the Work are prohibited on and in the Facility and will constitute grounds for immediate removal of any employee of the Contractor or of any Subcontractor from the Facility. Sexual harassment, profanity, and inappropriate behavior are not permitted in, on or near the Facility and will constitute grounds for immediate removal of any employee of the Contractor or of any of its Subcontractors.

**9.6.** No Smoking Policy on Arlington Public Schools' property: Contractors, including their employees or agents, performing Work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.

**9.7.** Drug-Free Workplace. For the purposes of this Contract drug-free workplace means a site for performance of Work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract. During the performance of this Contract, the Contractor agrees to:

**9.7.1.** Provide a drug-free workplace for the Contractor's employees;

**9.7.2.** 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

**9.7.3.** State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and

**9.7.4.** Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor.

**9.8.** Contractor Certification Regarding Criminal Convictions



**9.8.1.** As a condition of awarding a contract for the provision of Work that requires the Contractor or its employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Contractor shall provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors and the employees thereof.

**9.8.2.** The Contractor certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's initial certification or any certification after Contract award.

**9.8.3.** The Contractor shall submit to the Owner a completed Contractor Certification Regarding Criminal Convictions on the form provided by the Owner, Appendix A to this Comprehensive Agreement, prior to commencing any Work on or in the Facility.

**9.8.4.** Contractor shall provide to Owner annually on the anniversary date of the completion of Commissioning of each Facility an updated Contractor Certification Regarding Criminal Convictions for each Facility on which a SPRS is being Operated.

**9.9.** The Contractor shall confine the Work to areas of the Project Site reasonably necessary to perform the Work and shall comply with all applicable laws, ordinances, and permits related to the Project Site.

**9.10.** The Contractor shall establish and maintain security procedures controlling access to the Project Site and shall maintain proper safety procedures and precautions at all times. The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. This obligation shall remain in effect so long as the Contractor is performing any obligations under the Contract. The Contractor shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.

**9.11.** The Contractor shall select one or more on-site personnel who shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of APS or jurisdictional authorities in order to prevent injury, damage or loss to:

**9.11.1.** All persons involved in performance of the Work;

**9.11.2.** All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work;

**9.11.3.** The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site; and

**9.11.4.** Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

**9.12.** For each Facility, Owner will designate to Contractor the route of access to the SPRS location. Contractor workers shall not use any other route within the Facility. In the event the Contractor desires to perform Work

outside the Normal Working Hours in any Facility, Contractor shall notify the Owner in writing at least two Working Days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the Contractor to the Owner at a rate of \$40 per hour per person. The cost of custodial support for Sunday or holiday Work shall be paid by the Contractor to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the Contractor for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday Work shall be paid by the Contractor at rate of \$150 per hour.

**9.13.** The Contractor shall maintain the Facility interior and the exterior grounds in a clean and orderly state. The Contractor shall conduct daily cleaning of the portions of the Facility affected by the Work, and periodic cleaning of the grounds, parking lots, driveways and sidewalks to ensure that construction debris and unnecessary material and equipment do not accumulate. The Contractor shall also conduct periodic landscape maintenance of vegetated areas of the Site to the extent such vegetated areas are affected by the Work.

**9.14.** If in the Owner’s sole discretion, the Facility interior or exterior grounds or any other area for which Contractor is responsible requires cleaning, landscape maintenance, or excess material removal, for which Contractor is responsible, the Owner shall request the Contractor conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the requested cleaning within three (3) Working Days, the Owner reserves to right to use outside sources to conduct the cleaning or maintenance and to charge the Contractor for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.

**9.15.** The Contractor shall use no explosives on the Owner’s property

**9.16.** The Contractor shall not load or permit any part of the Project Site, whether or not a part of the Work, to be loaded so as to endanger its safety or structural integrity.

**ARTICLE 10: MAINTENANCE AND OPERATION:**

**10.1.** Contractor through the Operation of the SPRS shall provide to APS the size of the photovoltaic array (kW<sub>dc</sub>) specified for each Facility at the agreed rates and for the agreed duration as set forth in the Lease.

<b>FACILITY NAME</b>	<b>Approximate PV System Size (KW<sub>dc</sub>)</b>	<b>Year 1 PPA Price/kWh (0% esc)</b>	<b>Annual Yield (kWh<sub>ac</sub>/kW<sub>dc</sub>)</b>	<b>Yr 1 Production (kWh)</b>
Fleet Elementary				
Kenmore Middle School				
TJ Middle School				
Tuckahoe Elementary				
Washington Lee High School				

**10.2.** Any interruption of electric power to the Facility required for installation or maintenance shall be of short duration, shall be scheduled to occur at night or on weekends, and shall be coordinated with APS officials in charge of functions and activities taking place in the Facility outside normal school hours or the office hours of an administrative Facility and of equipment within the Facility which may be sensitive to loss of power.

**10.3.** Contractor shall be responsible for the Operation and maintenance of the SPRS for the duration of the Lease, including but not limited to cleaning, upgrades and repairs necessary to ensure the continuous delivery of electricity. Any damage to the SPRS caused by weather, vandalism or any other cause for which APS is not solely responsible is the Contractor’s responsibility to repair.

**10.4.** Contractor shall be responsible for repair of all damage of any sort, including but not limited to moisture damage, caused by the SPRS.

**10.5.** Contractor shall provide an acceptable method of metering the amount of power provided to APS. Meters shall be installed to capture all power generated by the SPVS. Data captured from meters shall be delivered to the Facility's IT/LAN rooms via CAT 6 cabling. This data shall be used in the APS energy dashboard for the Facility that will be provided by others.

**10.6.** Contractor shall extend CAT6 cabling from each inverter and meter to nearest IT/LAN room. Data collected from meters and inverters shall be used for energy dashboard that shall be provided by others outside of this RFP. The dashboard shall be web compatible for access and use elsewhere by APS, and Contractor shall coordinate Internet connections with APS.

**10.7.** In the event any repair to a roofing system is required prior to expiration of the term of the Lease or the prior termination thereof due to any cause other than the negligence, gross negligence, recklessness or willful act of the Contractor or anyone for whom Contractor is responsible, the repair shall be the responsibility of APS, and Contractor shall be responsible for relocating the SPRS to allow for the repairs and for reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement. Costs to Contractor associated with reasonably foreseeable roof replacement or repair during the term of the Lease is included within the Lease rate calculation. If the roof system repair or replacement is due to the negligence, gross negligence, recklessness or willful misconduct of the Contractor or anyone for whom Contractor is responsible, Contractor shall be responsible for all roof system required repairs and for relocating and/or reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement.

**10.8.** For any SPRS which has a longer specified service life than the remaining life of the roofing system on which it is placed, Contractor shall be responsible for relocating and/or reinstalling to operable condition the SPRS after completion of any roofing system repair or replacement.

**10.9.** The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. This obligation shall remain in effect so long as the Contractor is performing any obligations under the Contract.

**10.10.** Electricity Generation and Sale. APS shall be the sole consumer of power generated by the SRS. No right is provided to the Contractor to sell excess power to the regional grid or to others.

**10.11.** End of Service Life.

**10.11.1.** At the end of the Comprehensive Agreement term, including any extensions, for any SPRS which APS does not elect to retain for self-operation, the Contractor is responsible for decommissioning and removing the SPRS from all Facilities and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal. If any Lease term is for a duration shorter than the term of the Comprehensive Agreement, if at the end of the Lease Term APS does not elect to retain the SPRS for self-operation the Contractor shall be responsible for decommissioning and removing the SPRS from the Facility and restoring to its pre-Project condition all elements of the Facility affected by the installation or removal at no cost to APS.

**10.11.2.** At the sole discretion of APS, APS may negotiate with the Contractor an extension of the Comprehensive Agreement and any Modifications thereto and any Lease by Change Order for the operation and maintenance of the SPRS and the provision of electric power to APS.

**10.11.3.** At the sole discretion of APS, APS may at any time terminate the Contract or any Lease, either or both, at its convenience prior to expiration of the Contract term or the Lease term and may elect to purchase any one or more of the SPRSs in their operational state at a price calculated as set forth below:

[insert the agreed buyout formula]

**ARTICLE 11: PAYMENT TO CONTRACTOR:**

**11.1.** The sole compensation payable by APS to the Contractor shall be the payment rates for electrical power generated by the SPRS at the Facility. The rates per Facility shall be included in each Lease and are as set forth below. In the event any additional Facilities are added, the Change Order shall include the agreed rates for each additional Facility:

[insert rates as finally established]

**11.2.** Contractor shall invoice APS for energy consumed at the agreed rates on a monthly basis, with the invoice reflecting the calculation applying rate to units. The invoice shall be submitted to APS after the first of each month for the immediately preceding month. Upon receipt of an invoice, the APS shall review the invoice to determine if it is consistent with the volume of power received and the Contract rates. The Contractor shall submit such additional information as may be reasonably requested by the Owner to substantiate the amount invoiced.

**11.3** Payments will be made within thirty (30) days after the later of receipt of an invoice by APS or receipt of additional documentation as requested by APS of all amounts within the invoice approved for payment. All funds not paid by Owner within thirty (30) days of the due date shall bear interest at the rate of 0.5 percent per month.

**11.4.** Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner to protect the Owner due to loss because of:

**11.4.1.** Defective Work not remedied,

**11.4.2.** Third party claims filed or reasonable evidence indicating probable filing of such claims,

**11.4.3.** Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

**11.4.4.** Damage to the Owner,

**11.4.5.** Persistent failure to carry out or perform the Work in accordance with the Contract Documents, or

**11.4.6.** Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors or others, caused by the act or neglect of the Contractor of any of its Subcontractors.

**11.4.7.** The Owner shall have the right, as an authorized representative for the Contractor and without the Surety's consent, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. The application of these amounts shall be deemed payments for the account of the Contractor and shall reduce the Owner's obligation to the Contractor accordingly. The Contractor may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If Contractor does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the Contractor shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

**ARTICLE 12: MINOR CHANGES IN THE WORK:**

**12.1.** The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall substantially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.

**12.2.** Construction conditions may require minor changes in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder. The Contractor, when ordered by the Owner, shall make such adjustments and changes in the locations and Work as may be necessary without additional cost to the Owner, provided such adjustments and changes do not substantially alter the character and quantity of the Work as a whole, and provided further that Drawings and Specifications showing such adjustments and changes are given to the Contractor by the Owner within fourteen (14) days. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such minor change shall be deemed to be the occurrence.

**12.3.** The Contractor may be entitled to an extension of time for such minor changes only for the number of days which the Owner may determine to be necessary to complete such changes and only to the extent that such changes actually delay the completion of the Project, and then only if the Contractor shall have strictly complied with all the claims procedures and submittal requirements of the Contract Documents.

**12.4.** If the Contractor is of the opinion that any Work required, necessitated, or ordered by the Owner, or any action required or ordered by the Owner to be taken or not taken is not Work included within the original Contract requirements, any claim for additional compensation or an extension of the Contract Period arising therefrom shall be subject to the claims procedures and submission requirements set forth in the Contract Documents.

**ARTICLE 13: EXTRA WORK:**

**13.1.** Pursuant to the provisions of the PPEA and of the APS PPEA Guidelines, no change to the substantive terms of the Work, or to either the compensation payable to the Contractor or to the Contract Period, or both, may be made without the prior approval of the Arlington County School Board. Any such change made without the prior approval of the Arlington County School Board shall be void.

**13.2.** The Contractor shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in Article 4, for any Extra Work performed by the Contractor without a valid Change Order, and the Owner may order the removal or alteration at the Contractor's expense of any extra Work performed without a validly issued Change Order.

**13.3.** A Change Order covering extra Work shall be valid only if issued by Notice by the Owner prior to initiation of such Work. When signed by the Contractor, Contractor acknowledges and accepts the terms and conditions of the Change Order as full and final agreement as to all claims for compensation or time for the Work described.

**13.4.** The amount of compensation to be paid to the Contractor for any extra Work shall be based on the reasonable costs necessarily incurred plus fifteen percent (15%), which shall constitute full and mutual accord and satisfaction for all costs related to such change.

**13.5.** Records of extra Work performed hereunder, if any, shall be submitted to the Owner within 24 hours of the Work being complete. Advanced notification must be provided to the Owner prior to the initiation of the Work described therein. Strict compliance with these requirements shall be a condition precedent to compensation for such Work. Duplicate copies of accepted records shall be made and signed by both Contractor or its representative and the Owner's Representative, and one copy retained by each.

**ARTICLE 14: CLAIMS FOR DAMAGES:**

**14.1.** The Contractor shall have no claim against the Owner for any damages or increased costs from any cause other than intentional, reckless or negligent action by the Owner which results in the damage claimed. The Contractor knowingly and willingly assumes all other risk of damage or loss from any other cause in return for the compensation provided by the Contract. If the Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the

reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

**14.2.** The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any Work on which the claim is based deliver to the Owner's Representative if one has been designated, and to the Purchasing Agent, a written statement identifying itself as a Notice of claim, stating the circumstances of the occurrence, specifying the additional Work contemplated as being required, state why such Work is not already included within the scope of the Contract Documents, and to the extent reasonably foreseeable estimate the anticipated amount of the claim.

**14.3.** If the Owner within ten (10) Working Days following receipt of such Notice of claim does not direct the Contractor otherwise, the Contractor shall proceed with the Work which is the subject of the claim and within ten (10) calendar Days after completion of the Work for which additional compensation is claimed shall submit in writing to the Owner's Representative, if one has been designated, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.

**14.4.** The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Article 14.2 above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90<sup>th</sup>) day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the claim. The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six-month limitation.

**14.5.** The Contractor shall comply with all directions and decisions of the Owner's Representative or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

**14.6.** No claim whatsoever shall be made by the Contractor against any officer, authorized representative or employee of the Owner for, or on account of, anything done or omitted to be done in connection with this Contract.

**14.7.** Failure of the Owner at any time to require compliance with any term or condition of the Contract Documents or of any claims submissions requirements shall not be deemed a waiver of such term, condition, or requirement, or a waiver of the subsequent enforcement thereof.

**14.8.** In the event the Contractor makes a claim for additional compensation other than for damages related to delay which results in litigation, if the Owner substantially prevails in such litigation the Contractor shall indemnify and hold the Owner harmless from any and all reasonable attorneys' fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such claim and litigation. Any claim for delay damages shall be subject to the provisions of Va. Code. Ann. § 2.2-4335.

**14.9.** If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the Contractor shall not be entitled to recover any interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the legal rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.

**14.10.** No claims provision in this Comprehensive Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

## **ARTICLE 15: TIME, DELAYS AND EXTENSIONS OF TIME:**

**15.1.** The Owner and the Contractor hereby acknowledge and agree that time is of the essence with respect to all performance, submission and Notice requirements. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the Work within the Contract Period. By submitting a Proposal, the Contractor confirms that the Contract Period is a reasonable period for performing the Work. The Contractor shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.

**15.2.** The parties agree that no extension beyond any required date of completion or other performance fixed by the terms of the Contract shall be effective unless granted in writing, and signed by the Owner's Purchasing Agent or his designee. All time requirements set forth herein shall be of the essence. It shall be a condition precedent to any claim for extension of time that the Contractor comply strictly with the following requirements:

**15.2.1.** Give Notice of delay in writing to the Owner's Representative, if one has been designated, and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with, and are subject to the limitations of, Article 15.6, Weather Delays. The Notice of claim for delay shall identify itself as a Notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. Strict compliance with all of these submission requirements shall be a condition precedent to consideration of any claim for delay, but compliance of itself shall not establish the validity of any claim.

**15.2.2.** The Contractor shall submit to the Owner's Representative, if one has been designated, and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this Article 15, within twenty-one (21) days after the delay has ceased.

**15.2.3.** The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

**15.2.4.** Strict compliance with all applicable submittal requirements shall be a condition precedent to entitlement to any extension of time, but such compliance shall not of itself establish entitlement. Failure to comply with the foregoing submittal requirements shall be deemed a conclusive waiver, without limitation, of any claim for extension of time arising from or related to the alleged occurrence.

**15.3.** The Contractor shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.

**15.4.** The Contractor shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the Contractor. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner may determine to be due solely to such causes and only to the extent that such occurrences actually delay achieving the applicable completion date, and then only if the Contractor shall have strictly complied with all applicable claims submission requirements of this Contract, including, without

limitation, Section 14.1. To the extent any delay for which the Contractor seeks an extension of time is due concurrently to causes for which Contractor may be entitled to a delay and to causes within the reasonable control or foreseeability of the Contractor, the Contractor shall not be entitled to any extension of time.

**15.5.** The Contractor is to assume five (5) Days delay from the date of Notice to Proceed to the date Commissioning is completed and generation of power has commenced. These five (5) Days shall be known as “Owner Float,” and may be applied to any delay from any cause, at the Owner’s sole discretion, including but not limited to Owner caused delay. The Contractor shall include this Owner Float in the Contract Period and shall incorporate the Owner Float in its schedule for the Work. The Contractor will not be compensated, neither monetarily nor by time extension, for any delay to which the Owner elects to apply any portion of the Owner Float so long as the Owner Float has not been exhausted.

**15.6.** Weather Delays. Unusually severe weather conditions which prevent or inhibit the Contractor’s performance of the Work are referred to in this Article 15 as “Inclement Weather” and are more specifically defined below. The Contract Period may be adjusted to account for Inclement Weather, but only if (i) there has been strict compliance by Contractor with all claims submission requirements and other requirements of the Contract Documents related to time extensions; and (ii) the following definition of “Inclement Weather” is satisfied:

**15.6.1.** Inclement Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour period that prevents Work shown on the Construction Schedule as planned for performance at that time which is directly affected by such weather conditions or by impact on access to the Site: (i) Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10”) liquid measure; (ii) Temperatures that do not rise above that required for the Day’s planned Work, if such temperature requirement is specified or accepted as standard industry practice; or (iii) Sustained wind in excess of twenty-five (25) m.p.h.

**15.6.2.** Monthly Assumed Inclement Weather Days also are herein referred to as the Standard Baseline. The Standard Baseline for purposes of factoring the Monthly Assumed Inclement Weather Days into the Project Schedule is four calendar days per month. Standard Baseline Inclement Weather is included in the Work, is to be included in any schedule for the Work developed by Contractor, and shall not form any basis for an extension of Contract Time. The Standard Baseline is not cumulative. Any portion of the Standard Baseline not applied to an Inclement Weather delay approved by APS in any month shall not be carried forward to any subsequent month.

**15.6.3.** In accordance with the Notice and claims submittal requirements of this Article 15, as a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:

**15.6.3.1.** Notify the Owner’s Representative, if one has been designated, and the Purchasing Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a Notice of claim for Inclement Weather delay, shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the activities on the Contractor’s previously established project schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.

**15.6.3.2.** Submit to the Owner’s Representative if there be one designated and to the Purchasing Agent a statement of the actual time extension requested in strict compliance with Article 15.2.

**15.6.3.3.** For purposes of any claim for delay based on Inclement Weather, each Inclement Weather Day claimed shall constitute a separate occurrence and the Contractor shall comply with the foregoing claim submittal requirements for each Day of Inclement Weather claimed.

**15.6.3.4.** Compliance with the foregoing conditions precedent shall not of itself establish entitlement to a time extension for Inclement Weather but failure to comply shall be a bar to any such time extension.



**15.6.4.** If the basis for an extension of time for Inclement Weather is established in accordance with all claim submittal requirements, an extension of time on the basis of Inclement Weather may be granted only for the number of Inclement Weather Delay Days in excess of the Standard Baseline for the month of the occurrence.

**15.6.5.** Any request for an extension of time on the basis of Inclement Weather MUST prove impact to activities on the Contractor's previously established project schedule in effect at the time of the occurrence.

**15.6.6.** Inclement Weather may support a time extension only if Inclement Weather prevents planned Work for fifty percent (50%) or more of the Contractor's scheduled Working Day, the affected construction activities were included in the Day's schedule, and performance of that Work was directly impacted by the Inclement Weather.

**15.6.7.** Should the Contractor be granted an extension of time on the basis of Inclement Weather, the Owner may or may not elect to use any of the Owner Float described in Article 15.5 in lieu of granting a time extension.

**15.7.** The Owner's Purchasing Agent or his designee shall issue the Owner's final decision on any claim for delay within ninety (90) Days following receipt of the Contractor's final submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to issue a written decision shall be deemed a final decision to deny the claim as of the ninetieth (90) Day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial proceeding for relief on the claim. The Contractor's right to seek a judicial appeal of denial of a claim for extension of time is barred if no suit is filed within six (6) months following the Owner's final decision on the claim. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six month period.

**15.8.** Delays caused by the failure of the Contractor's Subcontractors, suppliers and dealers to furnish approved working drawings, shop drawings, submittals, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors or Sub-Subcontractors to perform their Work in conformity with the Contractor's Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.

**15.9.** The Contractor making a claim against the Owner for costs or damages due to unreasonable delays caused by the Owner, and its agents or employees, shall be liable to the Owner for a percentage of all the costs the Owner incurs in investigating, analyzing, negotiating, and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be false or to have no basis in law.

**15.10.** No claims provision in this Comprehensive Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

**15.11.** The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

## **ARTICLE 16: SUBCONTRACTORS AND SUB-SUBCONTRACTORS:**

**16.1.** Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the Contractor, or between a Sub-subcontractor and a Subcontractor, as applicable.

**16.2.** Team Members.

**16.2.1.** There shall be no substitution for a Team Member identified in the Contractor's Proposal without the prior written consent of the Owner. The Contractor shall provide to the Owner justification for the change to any previously submitted Team Member and obtain the Owner's consent to the proposed substitution prior to any Work commencing by the Subcontractor. The justification for such substitution, and for any Subcontractor not identified in Contractor's Proposal, shall include all information intended to prove that the proposed Subcontractor has the

necessary facilities, skill, integrity, safety records, past experience and financial resources to perform the Work in accordance with the terms and conditions of the Contract Documents.

**16.2.2.** If the Owner finds, in its sole and absolute discretion, that the proposed substitute is not qualified, the Contractor will be notified in writing within five (5) Working Days of the Owner receiving the request for approval of the substitute. If no such notice is provided, the Owner shall be deemed to have accepted the substitute. The Owner may retract its acceptance of any substitute in the event such substitute evidences an unwillingness or inability to perform its portion of the Work in strict accordance with the Contract Documents. Notice of such retraction will be given in writing to the Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within five (5) Days, submit a new substitute for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the Contractor.

**16.3.** The Contractor shall not enter into a contract in connection with the Work with any Subcontractor who has been rejected by the Owner, and shall promptly terminate any contract with a Subcontractor who subsequently is rejected by Owner as provided herein.

**16.4.** Each agreement with a Subcontractor or Sub-subcontractor shall:

**16.4.1.** Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;

**16.4.2.** Not contain a provision which purports to adversely affect the rights of the Owner as such rights are defined in the Contract Documents;

**16.4.3.** Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the Contractor may in turn promptly process such applications or claims in conformance with the Contract Documents;

**16.4.4.** Include appropriate provisions in all subcontracts to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses caused by its exercising of its rights under this Article 16.4.4.

**16.4.5.** Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in Articles 17.1.5 and 17.1.6. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;

**16.4.6.** Include all provisions required by this Article 16 and by any other provision of the Contract Documents; and

**16.4.7.** Include the same requirements as Article 9.8. herein and require the completion of the Contractor Certification Regarding Criminal Convictions, Appendix A.

**16.4.8.** Require submission to the Contractor of all information and documentation necessary for the Contractor to comply with Article 9.8.

**16.4.9.** Include a requirement that each Subcontractor shall include in its contracts with its Sub-Subcontractors the same payment obligations required herein for payment by the Contractor to its Subcontractors.

**16.5.** Any Subcontractor agreement shall be submitted by the Contractor to the Owner within ten (10) days following request by the Owner.

**16.6.** Payment of Subcontractors.

**16.6.1.** All subcontracts shall provide for billing by Subcontractors in intervals of no greater than thirty (30) days.

**16.6.2.** All subcontracts shall provide that payment will be made by the Contractor to the Subcontractor of all undisputed amounts within no more than thirty (30) days following receipt by the Contractor of an invoice submitted in compliance with the billing procedures set forth in the subcontract.

**16.6.3.** All subcontracts shall provide that the Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid after the due date established in the Subcontract. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month or at such other rate as may be set by the subcontract but not less than 0.5% per month, six percent (6% per annum). Interest shall not accrue on amounts withheld by the Contractor due to a good faith dispute regarding the Subcontractor's compliance with subcontract requirements until the final resolution of such dispute.

**16.6.4.** The Contractor's obligations with respect to payments to its Subcontractors shall not operate to create any obligation or contractual relationship between the Owner and any Subcontractor or Sub-subcontractor.

**16.6.5.** The Contractor's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**16.7.** Insurance proceeds received by the Contractor under the insurance policies described in Article 17 shall be equitably distributed to the Subcontractors affected by the insured loss.

**16.8.** Nothing contained in the Contract Documents shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner or the Owner's Representative and any Subcontractor.

**16.9.** The Owner's review or acceptance of Subcontractors as described herein shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

#### **ARTICLE 17: CONTRACTOR'S INSURANCE:**

**17.1.** Throughout the term of this Agreement commencing with Notice to Proceed with Construction, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:

**17.1.1.** Commercial General Liability occurrence-based insurance shall be in the amount of \$2/\$5 Million (\$2 Million per occurrence / \$5 Million annual aggregate). Such insurance shall cover claims for bodily injury, property damage and personal injury, to include death and dismemberment, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The Contractor shall provide a certificate of insurance that names Arlington County School Board, operating as Arlington Public Schools, including elected and appointed officials, agents and employees as additional named insured. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board operating as Arlington Public Schools including its elected and appointed officials, agents and employees. If the insurance policy represented by certificate requires endorsement in order to satisfy this additional insureds requirement, then such endorsement must accompany the Certificate.

**17.1.2.** The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance in amounts satisfactory to the Contractor, naming the Owner as an additional named insured.

**17.1.3.** Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in Work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of its Subcontractors shall be not less than \$1 million.

**17.1.4.** Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than \$100,000 per occurrence/ \$500,000, including uninsured motorist.

**17.1.5.** All risk insurance covering damage, loss or injury to the SPRS. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the Contractor of its obligations under this Contract and, upon such performance, shall be released to the Contractor. Such policy shall be in an amount equal to the SPRS cost as shown on the Proposal.

**17.1.6.** The Contractor shall purchase Builder's Risk insurance upon the entire SPRS during the construction period to the full insurance value of Soar Photovoltaic Rooftop System and installation thereof. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:

**17.1.6.1.** Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).

**17.1.6.2.** Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.

**17.1.6.3.** Coverage of Contractor's labor, overhead and profit.

**17.1.6.4.** Coverage of materials stored or installed at the Facility, until said materials are accepted by the Owner per Substantial Completion and acceptance requirements. Payment by Owner for materials stored or installed at the Facility does not eliminate Contractor's responsibility or liability with regards to theft and vandalism or other damage.

**17.2.** Proof, to the satisfaction of the Owner, of insurance for each type of coverage identified herein as required from Notice to Proceed through the term of this Contract shall be provided within ten (10) days of the Contractor's receipt of the Notice to Proceed, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence Work on its subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. The Contractor certifies by commencement of the Work that its insurance and that of all Subcontractors is in effect and meets the requirements set forth herein. Copies of Subcontractor insurances shall be kept on file and made available to the Owner upon request.

**17.3.** All of the aforesaid insurance policies must be endorsed to provide that the insurance company shall give forty-five (45) days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide the Owner with a copy of each policy which it shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.

## **ARTICLE 18: CONTRACTOR'S DEFAULT AND TERMINATION:**

**18.1.** The parties agree that:

**18.1.1.** If the Contractor fails to begin the Work when required to do so; or

**18.1.2.** If, at any time during the progress of the Work, the Owner determines that the Contractor is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or

**18.1.3.** If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or

**18.1.4.** If the Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or

**18.1.5.** If the Contractor fails in any manner of substance to comply with the requirements of this Contract; or

**18.1.6.** If any of the Work, machinery, or equipment is defective and is not replaced as herein provided;

then the Owner, without prejudice to any other rights or remedies Owner may have hereunder, shall have the right to declare the Contractor in default in whole or in part. In the event the Owner elects to declare the Contractor in default, the Owner shall notify the Contractor and its Sureties by written notice describing the nature of the default and providing the Contractor a right to cure such default within three (3) calendar days after the date of the Notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in this Article 18.

**18.2.** The parties agree that:

**18.2.1.** If legal proceedings have been instituted by others than the Owner in such manner as to interfere with the progress of the Work and to potentially subject the Owner to the peril of litigation or outside claims; or

**18.2.2.** If the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or

**18.2.3.** If in any proceeding instituted by or against the Contractor, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or

**18.2.4.** If a receiver or trustee is appointed for the Contractor or the Contractor's property; or

**18.2.5.** If the Contract or any part hereof is sublet without the prior written consent of the Owner; or

**18.2.6.** If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or

**18.2.7.** If the Work to be done under this Contract is abandoned;

then the Owner, without prejudice to any other rights or remedies the Owner may have, shall have the right to terminate the Contract immediately upon written notice to the Contractor or, in the Owner's sole discretion, exercise any other rights available to it.

**18.3.** Contractor's Duty Upon Default: Immediately, but no later than three (3) days after receipt of Notice that it is in default hereunder, the Contractor shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the Facility, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.

**18.4. Completion of Work Or Performance After Default:**

**18.4.1.** If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:

**18.4.1.1.** Have the defaulted Work performed by others;

**18.4.1.2.** Supplement the Contractor's workforce;

**18.4.1.3.** Withhold payments due the Contractor and use such payments to satisfy any claims for moneys owed by the Contractor in connection with the Project, in accordance with any provisions of the Contract Documents;

**18.4.1.4.** Replace or repair any defective Work;

**18.4.1.5.** Notify the Surety of such default and make demand upon the Surety as may be applicable under the circumstances of the default, but Owner shall be under no obligation to notify the Surety;

**18.4.1.6.** Terminate the Contractor's performance of the Contract.

**18.4.2.** The Contractor and its Sureties shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-letting, and any and all costs incurred in connection with the Owner's exercise of any right upon default. Any costs incurred in connection with completing or correcting the Work shall be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the Contractor and its Surety shall pay to the Owner the amount of any deficiency.

**18.5. Partial Default:** In the event the Owner declares the Contractor in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the Contractor shall discontinue such portion of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract and shall not hinder or interfere with any other contractor or persons whom the Owner may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and its Sureties as provided in the Contract Documents.

**18.6. Death, Dissolution or Incompetence of Contractor:** In the event of the death or legal incompetence of a Contractor who shall be an individual or surviving member of a sole proprietor contracting firm, or the dissolution of the business entity which is the contracting firm, such death, adjudication of incompetence, or dissolution shall not terminate the Contract, but shall constitute a default hereunder, and the estate or successors of the Contractor and his or its sureties, if any, shall remain liable hereunder to the same extent as though the Contractor remained living. Notice of default, as provided in Article 18.1 shall not be required to be given in the event of such death, adjudication of incompetence, or dissolution.

**18.7. Owner's Right to Terminate for Convenience:** Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In the event of such termination for convenience within five hundred forty (540) Days following issuance of the Notice to Proceed, the Contractor shall be paid an amount equal to the actual cost of any Work actually performed and in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus the percent (10%), plus the amount due at the rates agreed for any power provided prior to the effective date of

the termination. The Owner shall have the right of audit, and Contractor shall have the obligations, stated in Article 24 insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Article 18.7.

**ARTICLE 19: ROYALTIES AND PATENTS:** The payment obligations of the Owner under any Lease includes payment to the Contractor for all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

**ARTICLE 20: IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**ARTICLE 21: CIVIL RIGHTS ACT COMPLIANCE:** The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.

**ARTICLE 22: SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES AND EMPLOYMENT SERVICES ORGANIZATIONS:**

**22.1.** The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, the PPEA, the APS PPEA Guidelines and relevant Federal and State Laws, orders and regulations, require Arlington Public Schools to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small Business Enterprises, Minority Business Enterprises, Service Disabled Veteran Owned Business Enterprises, and Employment Services Organizations.

**22.2.** In seeking Subcontractors, suppliers and vendors necessary to perform the Work, the Contractor shall encourage the participation of Small Businesses, Women-Owned Businesses, Minority-Owned Businesses, Service Disabled Veteran-Owned Businesses, and Employment Services Organizations. At a minimum, for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such Work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category if identifiable to perform such Work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

**22.3.** As used in this section:

**22.3.1.** "Minority Individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

**22.3.1.1.** "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.2.** "Asian American" means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific,

India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.3.** “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

**22.3.1.4.** “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

**22.3.2.** “Minority-Owned Business” means a business that is at least 51 percent owned by one or more Minority Individuals who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more Minority Individuals who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more Minority Individuals.

**22.3.3.** “Service Disabled Veteran” means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

**22.3.4.** “Service Disabled Veteran-Owned Business” means a business that is at least 51 percent owned by one or more Service Disabled Veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are Service Disabled Veterans and both the management and daily business operations are controlled by one or more individuals who are Service Disabled Veterans.

**22.3.5.** “Small Business” means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of \$10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

**22.3.6.** “Women-Owned Business” means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**22.3.7.** “Employment Service Organization” means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

## **ARTICLE 23: LABOR UNIONS AND RIGHT TO WORK:**

**23.1.** The Contractor is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against Subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations.

**23.2.** Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Articles 1 and 3 of Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.



**ARTICLE 24: AUDIT:**

**24.1.** The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the Contractor for the purposes of verifying that the certified cost or pricing data submitted were accurate, complete and current. The Owner shall, until the expiration of three years from the date of final payment under this Contract, have the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein (the "Records"), and the Contractor hereby covenants to maintain the Records in good order for such time and to deliver promptly the Records to the Owner upon request.

**24.2.** The Contractor agrees to include in all subcontracts under this Contract a provision to the effect that the Owner and its authorized representatives will, until three years from the date of final payment under the subcontract, have access to and the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to the subcontract.

**ARTICLE 25: NO ASSIGNMENTS:** No assignment by either party hereto of any rights or interest under any of the Contract Documents will be effective unless in writing signed by the authorized representative of each party; and no assignment will release or discharge the assignor from any responsibility under the Contract Documents. Owner shall be under no obligation to consent to any request by Contractor for approval of an assignment as the Contractor's obligations are intended not to be assignable. However, after the SPRS has been operational to the satisfaction of the Owner for a period of not less than one year, the Contractor may request assignment of this Contract or any Lease to a third party who or which is able to satisfy the Owner, at the Owner's sole discretion, that it has the qualifications to maintain and operate the assigned SPRS, which qualifications shall be no less stringent than those set forth in the RFP. Such assignment may be requested of the entire Contract and all Leases hereunder, or of no less than five (5) Leases hereunder and of this Contract to the extent applicable to the Leases assigned.

**ARTICLE 26: INDEMNIFICATION:** The Contractor covenants to save, defend, hold harmless, and indemnify the Owner and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's intentional, negligent, or grossly negligent acts or omissions in performance or nonperformance of its Work called for by the Contract Documents, or otherwise occurring at the Facility, or arising from or related to the Contractor's obligations under this Contract. This indemnification obligation shall survive the termination of this Contract.

**ARTICLE 27: PERFORMANCE BOND:**

**27.1.** The Contractor shall execute and deliver to the Owner a Performance Bond on the forms provided in the Contract Documents in an amount equal to [insert construction cost estimate from Proposal]. The Performance Bond shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. The Bond shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance Bond shall serve as security for the faithful performance of the design and installation requirements of this Contract. The premiums on the Performance Bond shall be paid by the Contractor and shall be included in the power rates as established in this Contract and any Leases.

**27.2.** If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance Bond, or if for any other reason such bond shall cease to be adequate security for the Contractor, the Contractor shall within ten (10) days after notification of such fact, substitute an acceptable Performance Bond in such form and sum and signed by such other Sureties as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor and shall be included in the power rates as established in this Contract and any Leases. No further

partial payments shall be deemed due nor shall be made until the new Bond is in effect and provided to and approved by Owner.

**27.3. Alternative Forms of Security:** Any Performance Bond required under the Contract Documents may be provided in the form of a certified check, cashier's check, or cash escrow in the face amount required for the bond and conditioned as required for a surety bond. Any Performance Bond required under the Contract Documents may be in the form of a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bond, but only if approved by the Arlington Public Schools Attorney. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Arlington Public Schools equivalent to a corporate surety's bond.

**27.4.** No bond required by the Contract Documents shall be deemed released without a written release from the Owner specifically granting such release.

**ARTICLE 28: POWERS OF THE PURCHASING AGENT:** The Owner's Purchasing Agent, in addition to those matters expressly made subject to his determination, direction or approval shall have the power:

**28.1.** To decide any and all questions, claims and disputes in relation to this Contract and its performance, except as herein otherwise specifically provided, and his decisions upon such questions, claims and disputes shall be final and conclusive upon the parties hereto.

**28.2.** To modify or change this Contract in accordance with Articles 12 and 13 so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he deems it in the interest of the Owner to do so.

**28.3.** To suspend the whole or any part of the Work whenever, in his judgment, such suspension is required: (1) in interest of the Owner generally, or (2) to expedite the completion of the Project, or (3) due to a delay caused by the Owner or its authorized representatives.

**28.4.** The Purchasing Agent may delegate his authority/power to his designee or designees, but only to the extent the Contractor has been given written notice by the Purchasing Agent of such delegation.

**ARTICLE 29: ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.

**ARTICLE 30: GOVERNING LAW:** This Agreement and each of the Contract Documents shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of laws principles. This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, Contractor shall comply with applicable federal, state, and local laws, ordinances, and regulations.

**ARTICLE 31: DEFINITIONS:**

**Addendum or Addenda:** Any modification to the RFP issued in writing by the APS Purchasing Office.

**APS or Arlington Public Schools:** Arlington Public Schools ("APS") is the name under which Arlington County School Board conducts its procurement activities.

**APS Facilities:** See "Facilities."

**APS PPEA Guidelines:** Guidelines adopted by APS pursuant to the requirements of the PPEA and included as a part of the APS Purchasing Resolution.

**APS Purchasing Resolution:** The Arlington Public Schools Purchasing Resolution as in effect at the time of this RFP and as may be amended from time-to-time hereafter.

**Board:** The Arlington County School Board.

**Change Order:** A written Modification to the Comprehensive Agreement or any Lease, or both, agreed and signed by both the Contractor and by APS. The Comprehensive Agreement or any Lease may be modified only by Change Order.

**Commission:** To start up, test, and confirm that an item of equipment or an element of the Work is fully operational in compliance with the requirements of the Contract Documents for its intended purpose.

**Comprehensive Agreement:** The written Comprehensive Agreement or Contract between the Private Entity and APS that is required prior to the development of a Qualifying Project.

**Contract:** See “Comprehensive Agreement.”

**Contract Documents:** See Article 3.

**Contract Period:** See Article 8.3.

**Contractor:** The Private Entity with which APS contracts to perform and provide the Project.

**Day:** The term “day” or “Day” shall mean “calendar day” unless otherwise noted. When any provision of the Contract Documents establishes a time within which an action must be taken or a right must be exercised, if the last Day falls on a Saturday, Sunday, or Holiday, the deadline thereby established shall be extended to the first Arlington Public Schools Normal Working Day thereafter.

**Drawings:** The term “Drawings” or “Plans” shall mean any drawings, profiles, cross-sections, elevations, details, and other depictions or reproductions thereof, which show the location, character, dimensions, or details of the Work. Drawings are not Contract Documents until approved in writing by APS.

**Facility:** The APS building or structure on which the SPRS is installed, and/or which is to receive power from the SPRS.

**Facility Specific Design:** The design prepared by the Contractor and accepted by the Owner for the SPRS on a Facility. Each Facility shall have a Facility Specific Design.

**Gender and Plural:** Whenever the Contract so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.

**Holiday:** Holidays recognized by the Owner which shall not be considered Normal Working Hours or Normal Working Days are as follows: New Year’s Eve Day, New Year’s Day, Martin Luther King, Jr., Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the following Friday, Christmas Eve Day, and Christmas Day. Actual dates should be based on the most current Arlington Public Schools calendar.

**Interim Agreement:** A written agreement between a Private Entity and APS that provides for phasing of the development or operation, or both, of a Qualifying Project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the Project that constitutes activity on any part of the Qualifying Project preceding a Comprehensive Agreement. An Interim Agreement prior to a Comprehensive Agreement is not a required step.

**kW:** Kilowatt

**kWh:** Kilowatt hours

**Lease:** The written agreement between the Contractor and APS providing the terms under which the Contractor may maintain and operate a SPRS on a Facility, and establishing the power requirements and rates applicable to that Facility. There will be a separate Lease for each Facility, and all Leases will be subject to the terms of the Comprehensive Agreement. A Lease may also be referred to herein as a “Power Purchase Agreement.” The two terms shall have the same meaning.

**Lease Payment:** Any form of payment, including a land lease, by APS to the Private Entity for the use of a Qualifying Project.

**Local Utility:** Dominion Energy Virginia

**Major Subcontractor:** A Private Entity responsible for 10% or more of the reasonably anticipated cost of the Proposed Project, and is proposed as part of the initial Project Team.

**Material Default:** Any default by the Private Entity in the performance of its duties under VA. CODE ANN. § 56-575.8.E, or in the performance of any other contract or legal duty, which jeopardizes adequate service to APS or to the public from a Qualifying Project.

**Modification:** Any written change to any provision of the Contract Documents whether by Change Order or by other means provided by the Contract Documents.

**Normal Working Day:** The hours between 7:00 A.M. and 5:00 P.M., prevailing local time, Monday through Friday, excluding Owner Holidays. May also be referred to as “Business Day.”

**Notice:** Notice shall mean written notice. Written Notice shall be deemed to have been duly served if:

- C. Delivered by mail, courier, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.
- D. Delivered by mail, express mail or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207.

Any requirement in the Contract Documents that an action be taken in writing shall require transmission of the writing to the other party in the form required of a Notice, unless otherwise expressly stated.

**Notice to Proceed:** A written Notice from the Owner to the Contractor, which gives consent for commencement of the Work. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all installation durations shall be based upon that date.

**Operate, Operation:** To finance, maintain, improve, equip, modify, repair, or operate.

**Operator:** The Private Entity responsible for operating the completed Qualifying Project.

**Owner:** See APS.

**Owner's Representative:** The employees of the Owner responsible for administration of the Contract. The Owner's Representative shall be designated by the Purchasing Agent for each Facility by Notice to the Contractor, and may be changed at the discretion of the Purchasing Agent. The Purchasing Agent may designate more than one Owner's

Representative, in which case any Notice to Owner required of Contractor shall be provided to all Owner's Representatives for the Facility which is the subject of the Notice.

**Power Purchase Agreement or PPA:** See "Lease."

**PPEA:** The Public-Private Education Facilities and Infrastructure Act of 2002, VA. CODE ANN. §§ 56-575.1, *et seq.*, as may be amended by the General Assembly.

**Private Entity:** Any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

**Project or Proposed Project:** The project or improvement which is the subject of this procurement, which is the Installation of SPRSs to be hosted on Arlington Public Schools Facilities, with the SPRSs to be maintained and operated by the successful Contractor under long term leasing agreements, with sale to Arlington Public Schools of electricity generated by these SPRSs. Synonymous with the term "Work" as the context may require.

**Project Site:** The location at which the improvements which are the subject of the Work are to be or are being constructed, Operated, and maintained. May also be referred to as "Site."

**Project Team:** The Private Entities assembled by the Offeror and identified in the Conceptual Proposal and, if applicable, the Detailed Stage Proposal, as the overall team to perform the Proposed Project

**Proposed Modification:** A request by the Owner or the Owner's Representative for the Contractor's estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and Contractor shall provide the requested information within fourteen (14) Days.

**Purchasing Agent:** The employee of APS authorized to act on behalf of APS in contractual matters. The Purchasing Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. No Private Entity shall rely upon and APS shall not be bound by any statement or representation made on behalf of APS by any person not designated by the Purchasing Agent to the Private Entity in writing as authorized to so act on behalf of the Purchasing Agent. It shall be the responsibility of the Private Entity to establish the authority to act regarding any communication or action by any person other than the Purchasing Agent. Use of the term Purchasing Agent in any writing issued by APS related to any Proposed Project or Qualifying Project shall be deemed to include such properly authorized designee within the scope of that designee's authorization.

**Purchasing Office:** The office of the Purchasing Agent and designated staff.

**Qualifying Project:** APS has determined that the Proposed Project is a Qualifying Project. A Qualifying Project is (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for APS; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by APS; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of APS through the use of technology or other means; or (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools.

**Revenues:** All revenues, income, earnings, User Fees, or Lease Payments arising out of or in connection with supporting the Development or Operation of a Qualifying Project, including without limitation, money received as

grants or otherwise from the United States of America, from any public body, agency or department, or from any agency or instrumentality of the foregoing in aid of such facility.

**RFP:** The Request for Proposals which resulted in the award of this Comprehensive Agreement.

**Responsible Public Entity:** A public entity that has the power to develop or operate the Project. APS is the Responsible Public Entity for this Project.

**Solar Photovoltaic Rooftop System or SPRS:** A system installed on a rooftop for the collection of solar energy and conversion of that energy to electricity for use by APS.

**Specifications:** The term “Specifications” or “specifications” shall mean those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship to be applied to the Work and administrative details applicable thereto.

**Subcontractor:** Any individual, firm or organization other than an employee of the Contractor, who contracts with the Contractor to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the Contractor in connection with the Work.

**Sub-Subcontractor:** Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.

**Surety:** Any person, firm or corporation that has executed as Surety the Contractor’s performance bond securing performance of the design and installation requirements of this Contract. The Surety shall be authorized to do business in the Commonwealth of Virginia and shall be listed on the United States Treasury Department’s latest Circular 570.

**Team Member:** All members of the Project Team required to be identified in a Conceptual Proposal or a Detailed Stage Proposal if applicable, as set forth in this RFP.

**User Fees:** The rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Comprehensive Agreement.

**VPPA:** The Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, *et seq.*

**Warranty Period:** All warranties and guarantees against any defect in the Work shall apply from the date the SPRS begins producing power and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

**Work:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.

**Working Day:** See “Normal Working Day.”

**ARTICLE 32: EFFECT OF EXECUTING CONTRACT:**

Execution of the Contract by Contractor is a certification that the Contractor has examined each of the initial Facilities, become familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents, and has examined all Contract Documents. Owner and Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized officers.

<p><b>CONTRACTOR</b></p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Dated</p>
---

<p><b>ARLINGTON PUBLIC SCHOOLS</b></p> <p>By: _____</p> <p style="padding-left: 100px;"><b>David J. Webb, C.P.M.</b></p> <p>Title:           Director of Purchasing</p> <p>_____</p> <p style="text-align: center;">Dated</p>
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**APPENDIX A**

**CONTRACTOR CERTIFICATION**  
**REGARDING CRIMINAL CONVICTIONS**

**This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.**

**The completed form from the Contractor is a condition precedent to the award of the Contract.**

As the official authorized to enter into this Contract on behalf of my organization, I certify that:

1. No employee of the organization who will be in the presence of students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Va. Code Ann. Section 18.2-370.4, no employee who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Va. Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Name and Title (please type or print)

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_



**XVI. APPENDIX I**

**FORM LEASE**  
**FOR**  
**SOLAR ROOFTOP PHOTOVOLTAIC SYSTEM**

**Solar Photovoltaic Rooftop System Installation and Sale of Generated Electricity**  
**Contract No. 01FY18**

This Lease, dated as of the date of signature by the Lessor appearing below (the “**Effective Date**”), is made by and between the Arlington County School Board, operating as Arlington Public Schools (“**Lessor**”), and

\_\_\_\_\_(“**Lessee**”) (Lessor and Lessee being sometimes referred to herein as a “**Party**” or collectively as the “**Parties**”).

**WITNESSETH**

WHEREAS, Lessor is the owner of that certain Facility located in Arlington County, Virginia, commonly known as \_\_\_\_\_, located at \_\_\_\_\_ (the “**Facility**”);

WHEREAS, Lessee has agreed pursuant to a Comprehensive Agreement between the Parties dated \_\_\_\_\_, 20\_\_\_\_, (“**Comprehensive Agreement**”) to design, construct, install, operate and maintain a \_\_\_\_\_ kW Solar Photovoltaic Rooftop System (the “**SPRS**”) on the roof of the Facility to provide electric power for the Facility; and

WHEREAS, in connection with the foregoing, it is necessary that Lessor lease to Lessee a portion of the Facility in order that Lessee may perform under the Comprehensive Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

**1. Comprehensive Agreement Incorporated.** The Comprehensive Agreement is incorporated herein to establish the rights and obligations of the Parties not addressed herein. In the event of any inconsistency between the terms of the Comprehensive Agreement and the terms of this Lease, the Comprehensive Agreement shall prevail.

**2. Leased Premises; Additional Property Rights.**

**2.1. Leased Premises.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, up to a maximum of approximately \_\_\_\_\_ contiguous square feet of the roof of the Facility, generally as shown on **Exhibit A** attached hereto and incorporated herein, where the SPRS will be constructed, installed, operated and maintained (the “**Leased Premises**”).

**2.2. Lessee’s Ancillary Rights.** In connection with Lessor’s leasing the Leased Premises to Lessee, Lessor hereby grants to Lessee, for a period co-terminus with this Lease, the non-exclusive right to use the access drives and areas of the Facility parking lot designated on **Exhibit B** (“**Facility Exterior Access**”), and the access routes in the interior of the Facility designated on **Exhibit C**

(“**Facility Interior Access**”), both Exhibits being attached hereto and incorporated herein. Lessor may change the Facility Exterior Access and the Facility Interior Access at any time with reasonable Notice to Lessee, so long as comparable access is provided. The Facility Interior Access and Facility Exterior Access are provided for the purpose of accessing the Leased Premises for construction, installation, operation and maintenance of the SPRS and to locate any auxiliary equipment necessary to construct, install, operate or maintain the SPRS on the Leased Premises. Lessee shall not install any improvements that would prevent or impair access to or prevent or impair use of any portion of the Facility other than the Leased Premises. Lessor hereby further grants to Lessee, for a period co-terminus with this Lease, the non-exclusive right to enter the Facility for the purposes of utilizing the Facility’s mechanical and electrical systems in connection with the construction, installation, operation and maintenance of the SPRS; *provided, however*, Lessee shall exercise such right in a manner as to not unreasonably interfere with the use of the Facility and the Facility’s mechanical and electrical systems by Lessor, or otherwise in violation of the Comprehensive Agreement.

**2.3. Installation of Signage Identifying SRPS.** In order to attempt to minimize any interference or disruption in the operation of the SRPS caused by third parties that may access the roof from time to time, Lessee shall have the right, at its sole cost and expense, to install signage on the roof of the Facility in the vicinity of the Leased Premises and at the point of access to the roof of the Facility identifying the existence of the SRPS on the roof of the Facility and instructing parties accessing the roof to use caution so as not to damage the SRPS. The location, design and content of such signage shall be subject to the prior approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Such signage shall be removed by Lessee upon the final removal of the SRPS from the Leased Premises in accordance with the terms of the Comprehensive Agreement.

**3. Term.** The term of this Lease shall commence on the Effective Date and shall continue for \_\_\_\_\_ years. This Lease if not terminated sooner shall terminate at midnight Local Prevailing Time on the date which is the \_\_\_\_\_ anniversary of the Effective Date. The Term may be extended or terminated pursuant to the provisions of the Comprehensive Agreement.

**4. Annual Rent.** Commencing on the Effective Date and continuing thereafter for the remainder of the Term, Lessee shall pay to Lessor annual rent for the Leased Premises of One Dollar (\$1.00). Lessor hereby is authorized by Lessee to deduct the Annual Rent from any payment due by Lessor to Lessee at any time on or after the anniversary of the Effective Date.

**5. Lessor’s Purchase of Power from Lessee:**

**5.1.** All power generated by the SRPS shall be provided to Lessor for use in the Facility.

**5.2.** Lessor shall pay to Lessee, on the payment schedule set forth in the Comprehensive Agreement, for the purchase of power generated by the SRPS at the following rates:

[Insert applicable rates structure and payment calculation]

**6. SPRS Installation.** Installation of the SPRS shall be performed by the Lessee in accordance with the terms of the Comprehensive Agreement.

**7. SRPS Operation, Maintenance, Use and Removal.**

**7.1.** Operation, maintenance, use and removal of the SRPS shall be pursuant to the provisions of the Comprehensive Agreement.

**7.2. Ownership of SRPS.** Except as otherwise provided in the Comprehensive Agreement, Lessor acknowledges and agrees that (i) notwithstanding that the SRPS may be a fixture under applicable law, as between the Parties the SRPS shall be deemed to be personal property, (ii) Lessee is the exclusive owner and operator of the SRPS, and (iii) the SRPS may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Lessor with the fee interest or leasehold rights to the Property.

**7.3. Use of Leased Premises.** Lessee shall use the Leased Premises solely for the construction, installation, operation and maintenance of the SRPS and for no other uses.

**7.4. Quiet Enjoyment.** So long as there does not exist a Lessee Default as defined in the Comprehensive Agreement, Lessor agrees that, subject to the terms and conditions of this Lease and the Comprehensive Agreement, Lessee shall have the right to quietly use and enjoy the Leased Premises for the Term, without hindrance or molestation by Lessor or those claiming by, through or under Lessor.

**8. Non-Interference.** Lessor covenants and agrees that, during the Term, Lessor shall not place, nor allow the placement by others of, any additional equipment or structures on the roof of the Facility which either interfere with the construction, installation, operation or maintenance of the SPRS or materially and adversely affect the exposure of the SRPS to sunlight without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Lessee shall be under no obligation to consent to any placement of additional equipment or structures on the roof of the Facility which materially and adversely affect the exposure of the SRPS to sunlight.

**9. Lessor's Maintenance Obligations.** Except as otherwise provided in the Comprehensive Agreement, during the Term Lessor shall, at its sole cost and expense, maintain the Facility, including, without limitation, the roof and all mechanical and electrical systems serving the Facility, excluding the SPRS, in good operating condition and repair.

**10. Insurance.** Lessee shall provide all insurance as required by the Comprehensive Agreement.

**11. Taxes.**

**11.1. Taxes Paid by Lessee.** Lessee shall pay, on or before the due date thereof, all personal property taxes, business and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, levies, fees and charges of any kind which are assessed, levied, charged, confirmed, or imposed by any governmental authority due to Lessee's occupancy and use of the Leased Premises (or any portion or component thereof) or the ownership and use of the SRPS thereon.

**11.2. Taxes Paid by Lessor.** Lessor shall pay, on or before the due date thereof, all real estate taxes and assessments, payments in lieu of such taxes and assessments, and fees and charges of any kind which are assessed, levied, charged, confirmed, or imposed by any governmental authority on the Facility.

**12. Casualty and Condemnation.**

**12.1. Restoration by Lessor.** Notwithstanding anything to the contrary contained herein, in the event of a casualty to all or any part of the Facility, Lessor shall have no duty or liability to Lessee

to restore the Facility. If Lessor elects not to restore the Property, it shall give Lessee written notice of such election within one hundred eighty (180) days after the occurrence of such casualty and, upon its receipt of such notice, Lessee may, at its option, remove the remaining elements of the SRPS at its cost. In such event, Lessor shall have no liability to Lessee for damage to or loss of the SRPS, in whole or in part, and Lessor's sole liability to Lessee shall be payment for any power provided prior to the casualty at the established rates for which Lessor has not already paid.

**12.2. Condemnation Awards.** In the event of any condemnation, the impact on Lessee's interests shall be deemed a casualty and subject to the foregoing terms. Lessor shall be entitled to receive the entire award paid by the condemning authority for the Property, without deduction therefrom for any estate vested in Lessee by this Lease, and Lessee shall receive no part of such award. Notwithstanding the foregoing, Lessee may make a separate claim against the condemning authority, to the extent permitted by law, for Lessee's moving expenses, personal property and lost profits.

**13. Miscellaneous.**

(a) **Governing Law.** This Lease will be governed by the Laws of the Commonwealth of Virginia, without giving effect to principles of conflicts of laws.

(b) **Due Authorization.** Each Party represents and warrants to the other Party that it (i) has been duly authorized to enter into this Lease by all necessary action, and (ii) the execution and delivery of this Lease and the performance by such Party of its obligations hereunder will not result in a default under any agreement to which it is a party.

(c) **Entire Agreement; Amendments.** This Lease, the Comprehensive Agreement, and all exhibits, any written schedules, appendices, or Change Orders, constitute the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties relating to the subject matter hereof other than the Comprehensive Agreement and all terms and provisions therein.

(d) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing and signed by the waiving Party. No consent by either Party to, or waiver of a breach by either Party, whether express or implied, shall be construed to operate as or constitute a consent to or waiver of any other or subsequent or succeeding breach by either Party.

(e) **Remedies Cumulative.** No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(f) **Headings.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

(g) **Binding Effect.** This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

(h) **Counterparts.** This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

(i) **No Third-Party Beneficiaries**. Nothing in this Lease will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind other than as provided expressly in the Lease.

(j) **Time is of the Essence**. Time is of the essence of this Lease

(k) **Memorandum**. Lessor and Lessee agree that at the request of either, each will execute a short form memorandum of this Lease in form satisfactory for recording in the land registry or title records of Arlington County, Virginia. The Party seeking to record such Memorandum shall be responsible for all recording fees, taxes and other charges associated therewith.

[signature page to follow]

**IN WITNESS WHEREOF**, the Parties have executed this Lease on the day and year first above written.

**LESSOR:**

ARLINGTON COUNTY SCHOOL BOARD,  
operating as Arlington Public Schools  
a Virginia body politic

By: \_\_\_\_\_

Name:

Chair, Arlington County School Board

Date of Signature: \_\_\_\_\_

**LESSEE:**

[ \_\_\_\_\_ ]

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY AND ROOFTOP SURVEY DEPICTING  
LEASED PREMISES**

[TO BE ATTACHED and provided by Arlington Public Schools]

**EXHIBIT B**

**SITE PLAN OF PROPERTY DEPICTING (A) THE FACILITY AND THE LOCATION FOR  
CONDUITS ON THE FACILITY AND (B) THE LOCATIONS FOR INVERTER BOX AND  
CONSTRUCTION LAYDOWN AREAS**

[TO BE ATTACHED]]



**EXHIBIT C**

**COPY OF FACILITY FLOOR PLAN SHOWING INTERIOR ACCESS ROUTES**

[TO BE ATTACHED and provided by Arlington Public Schools]