

Agreement



Arlington Public Schools

PROCUREMENT OFFICE

2100 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123

Website: www.apsva.us

Subject: Contract 13FY21-C Construction Manager Advisory Services for Various Arlington Public Schools Construction Projects

Contract 13FY21-C (“Contract 13FY21-C” or “Contract”), for the provision of Construction Manager Advisory Services for Various Arlington Public Schools Construction Projects (“the Work”) is entered into as of the date the Procurement Agent signs this Agreement, this 16th day of November, 2022; by and between McDonough Bolyard Peck, Inc. (d/b/a MBP), located at 3040 Williams Drive, Suite 300, Fairfax, VA 22031, hereinafter called “CMA” and Arlington County School Board, operating as Arlington Public School hereinafter called “APS” or “Owner.”

1. Contract Term

The initial term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on February 28, 2023 (‘Initial Contract Term’), unless otherwise stated as provided in the Contract Documents.

The Contract may be renewed for a term not to exceed one (1) year (‘Renewal Contract Term’) by written notice given by APS at any time prior to thirty (30) Days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of APS has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed three (3) additional one-year periods at the same terms and conditions.

Unless directed otherwise by APS, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued, but must be completed no later than six (6) months following expiration of the Initial Contract Term or the final Renewal Contract Term.

2. Contract Price Adjustment

The CMA agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Agent. Upon receipt of the CMA’s request, APS shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the CMA. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.

The request for an adjustment in the price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the adjustment requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)

The request must be received at least thirty (30) days prior to the effective date of the expiration of the Initial Contract Term or Renewal Contract Term and shall become effective only upon approval by the Procurement Agent. The adjusted price shall not apply to orders received by the CMA prior to the effective date of the approved increased price. Orders placed via Purchase Order, shall be considered to have been received by the CMA after the fifth (5th) calendar day following the date issuance. The Procurement Agent may cancel, without liability to either party, any portion of the Contract affected by the requested adjustment and any materials, supplies or Services undelivered at the time of such cancellation.

3. Scope of Work

The CMA agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified CMA to provide and implement the Work. The Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by APS and the CMA to be necessary to complete the Work. It shall be the CMA's responsibility, at the CMA's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the CMA's responsibility to manage the details and execution of its Work. The CMA shall be responsible for providing the Work.

4. Contract Amount

APS will pay the CMA in accordance with the hourly rates shown in Attachment B – Fee Schedule, for the staff classifications who may be required to perform work under this Contract. The hourly rates shall not be subject to change during the Initial Contract Term. When the Contactor provides a price to perform work under this Contract, the CMA shall provide a breakdown showing the hourly rates charged and the number of hours worked by each staff classification.

5. Documents

The Contract consists of the following documents ("Contract Documents"): all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, APS shall determine the provision having precedence.

- 1 Agreement #13FY21 and all modifications properly incorporated into the Agreement
- 2 Attachment A - Scope of Work
- 3 Attachment B - Fee Schedule
- 4 Attachment C - Contractor (CMA) Certification Regarding Criminal Convictions
- 5 Attachment D - Contract Terms & Conditions
- 6 Attachment E – Non-Disclosure and Data Security Agreement
- 7 Attachment F - Certificate(s) of Insurance

The following are incorporated by reference:

- 8 The Request for Proposal (RFP) and all Addenda, and
- 9 The Proposal Response from the CMA

Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Contract between APS and the CMA. APS and the CMA agree that no representative or agent of either of them has made any representation or promise with respect to this Contract which is not contained in the Contract Documents. The Contract Documents are referred to herein below as the "Contract."

6. Definitions

All words and terms shall have the meanings and terms assigned to them in the Contract Documents unless a different meaning is clear from the context.

7. Right to Terminate Contract

APS has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Terms and Conditions.

8. Payment Procedures

CMA shall submit invoices for its Work, and such invoices will be processed by APS, all in accordance with the provisions of the Terms and Conditions.

9. Assignments

This Contract is not assignable by CMA without the express written consent of APS, and APS shall be under no obligation to grant such consent. Sale, assignment, or transfer of a controlling interest in the CMA shall be deemed an assignment for purposes of this provision and shall be grounds for termination of this Contract if consent of APS is not obtained. It is understood by APS that CMA may use subcontractors for performance of parts of the Work. However, it is expected that CMA will be performing the Work and subcontracting of all or substantially all the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

10. Notices

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

To the CMA: Michael Bagshaw, PE, CCM, LEED AP
Vice President, Building Services Leader
McDonough Bolyard Peck, Inc. (d/b/a MBP),
3040 Williams Drive, Suite 300,
Fairfax, VA 22031
mbagshaw@mbpce.com

To APS: Ms. Robin Hodges
APS Project Officer, Office of Design and Construction
Arlington Public Schools
2110 South Taylor Street.
Arlington, Virginia 22206
robin.hodges@apsva.us

And David J. Webb, C.P.M.
Procurement Director / Procurement Agent
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
david.webb@apsva.us

11. Binding Agreement

APS and the CMA 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.

The Work shall be performed in accordance with the above-referenced Contract Documents and is the complete agreement between APS and the CMA and may not be altered except by written amendment signed by APS and the CMA in compliance with the requirements of the Contract Documents.

The signatures of APS and the CMA, or their authorized representatives, are set out below in acknowledgment and acceptance of this Contract.

IN WITNESS WHEREOF, APS and CMA have executed this Agreement as of the date written above.

Acceptance:

Arlington Public Schools

Authorized
Signature:

David J. Webb

Printed Name

David J. Webb, C.P.M.

Title:

Procurement Director/Agent

Date:

November 16, 2022

McDonough Bolyard Peck, Inc. (d/b/a MBP)

Authorized
Signature:



Printed Name:

Michael Bagshaw, PE, CCM,
LEED AP

Title:

Vice President, Building Services
Leader

Date:

09/29/2022

Attachment A

Scope of Work

CONSTRUCTION MANAGER ADVISOR (CMA) STANDARD SCOPE OF WORK

The Scope of Work contains the standard services the Construction Manager Advisor (CMA) is to provide on individual construction projects (Projects). The delivery method used for the Projects will either be Design-Bid-Build (DBB) or Construction Management at Risk (CMR). Regardless of the delivery method, the entity performing the construction services is referred to in this Scope of Work as the General Contractor (GC). The Scope of Work for the Projects is divided into four sections: (I.) CMA Responsibilities, (II.) Pre-Construction Services, (III.) Construction Services, and (IV.) Staff Augmentation Services. Section (I.) CMA Responsibilities include general responsibilities applicable to all remaining sections.

The extent of services varies depending on the delivery method used. If a certain element of scope applies only to a specific delivery method the paragraph will be preceded by either a DBB or CMR identifier. If no identifier is indicated, it applies to both delivery methods.

APS anticipates that a variety of CMA services shall be required. When services for a Project is solicited, APS will identify the delivery method and scope for each proposed Project utilizing a CMA Proposal Scoping Sheet. A sample of a CMA Proposal Scoping Sheet is provided as Appendix H.

I. CMA RESPONSIBILITIES.

- A. General Responsibilities.** The CMA is responsible for providing the management, quality control, budget control, schedule control, and administrative tasks needed to perform the services on each individual construction project (Project) in an expeditious and economical manner.
- B. Services to be provided.** The CMA shall provide professional, technical, administrative, and clerical personnel as needed to complete a Project. The services described or specified shall not constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The lump sum prices offered for a Project shall include all services described in the Project's Scope of Work.
- C. CMA Staff.** The CMA shall assign and dedicate personnel and/or subcontractors to a Project sufficient in number, and with the requisite expertise and experience, to perform the duties described in the Project. Having adequate CMA staff at all phases of a Project is a requirement of the Contract and is the responsibility of the CMA. APS has the right to request additional staff with requisite experience be added to the Work at any time at no cost to APS if, in its sole discretion, it feels the Project is under or incorrectly staffed; said supplemental staff shall be provided at no additional cost to APS.
- D. Office Facilities and Transportation.** The CMA shall be provided office space onsite to accommodate the staffing provided. All facilities shall be provided including, power and lighting, HVAC, bathroom facilities, and furniture. The CMA shall be responsible for any other equipment or supplies required to execute the requirements of a Project contract, such as computers, printers, etc. The CMA shall be responsible to provide all site personnel with dedicated cellular service with voicemail. CMA staff shall provide their own vehicles for visits to project sites and other times when they require a vehicle throughout the duration of the Project.
- E. Limitations on Authority.** The CMA shall provide recommendations on the following items for APS approval and authorization:
- Deviations from the Construction Contract Documents.
 - Substitutions of materials or equipment.
 - Obligation of expenditure of APS funds.
 - Initiation of any action unilaterally which shall create a financial obligation, time delay or extension, or impact the Project quality.

F. Disposition of Materials. Upon termination or completion of all Work under the Contract, the CMA shall dispose of all excess materials and debris it produced during the performance of the Contract as directed by APS, or as specified in other provisions of the Contract Documents. All materials produced or required to be delivered under the Contract become and remain the property of APS at the time of their creation or delivery.

G. Building Information Modeling. The CMA shall be familiar with the BIM model in Revit.

II. PART 1 - PRE-CONSTRUCTION PHASE SERVICES (for either CMR/DBB delivery methods)

A. General CMA Responsibilities. During the Pre-Construction Phase, the CMA shall expeditiously review the design documents. Design submissions within the Pre-Construction Phase include concept design, schematic design, design development, 65% Construction Documents, 95% Construction Documents, and 100% Construction Documents. The CMA shall work with the A/E, APS, and APS consultants in a cooperative team effort to thoroughly review the documents and provide a complete bid package(s). As part of the A/E's planning effort, the CMA shall participate with APS and the A/E in advising a potential "Early Start" for construction packages and phasing of the multiple project components.

B. Document Review General. The CMA shall participate in all A/E document reviews including, but not limited to, APS, Regulatory, ADA, and Constructability reviews. The CMA shall advise APS of any observed defects, conflicts, ambiguities, discrepancies, or lack of clarity in contract documents, and/or the applicability of proprietary materials or processes. The design documents are being prepared by the A/E and the CMA does not have responsibility for the final design

1. **Submissions.** The CMA shall expeditiously conduct reviews appropriate to the level of document development. The CMA shall perform document reviews on all A/E submissions. Traditional design is divided into Concept, Schematic, Design Development, and Construction Document Phases. Each submission may require multiple revisions and reviews before approval by APS. The CMA reviews shall be for the purpose of advising on all design, constructability, and maintainability issues including but not limited to Site use and improvements, selection of materials, availability of long-lead items, building systems and equipment, and construction phasing. The CMA shall perform design reviews of all building systems, including but not limited to, sprinkler systems, fire alarm systems, egress (safety) requirements, and security systems for conformance with APS project requirements. The CMA shall also perform technical and code review of all drawings.
2. **Building Envelope & Commissioning Review.** APS shall use term contract consultants to conduct Design Document reviews and provide comments. The CMA shall assist APS in coordinating these reviews and tracking action items.
3. **Meetings.** For all document submissions from the A/E, the CMA shall attend and participate in a minimum of ten (10) design review meetings, assume 6 hours per meeting.
4. **Types of Document Reviews.** APS requires that A/E document submissions undergo the following general types of document review.
 - (a) **APS Review.** APS's Design & Construction office and other various APS Departments perform a review to ensure that the Design Documents satisfy established functional and space requirements of the Project. The CMA shall assist APS in conducting these reviews. This review shall include, but is not limited to erosion and sediment controls, stormwater management, LEED/sustainability, construction phasing, and occupied construction, as applicable.
 - (b) **Constructability Review.** The CMA is responsible for expeditiously conducting the constructability review. The required primary elements of the CMA's constructability review are:
 - Drawings are complete and coordinated among disciplines.

- Materials, processes, equipment, and labor are available, non-proprietary, and appropriate according to best industry practice and LEED requirements.
- Defects, conflicts, overlaps, ambiguities, or lack of clarity in documents are identified for correction.
- Planning for use of the Site accommodates access, logistics, phasing, and storage.
- Existing conditions are shown correctly and adequately.
- Protection of historic features to be preserved is adequate.
- Incorporation of new systems preserves without damage designated historic fabric and features.
- Requirements of APS design requirements.
- All required construction work is included in the Contract Documents.
- Construction details are workable.
- General Conditions Items are properly addressed.

C. Document Review Software. The CMA shall provide, administer and maintain a design phase quality control software, such as Dr. Checks, in order to document, track, and manage all design comments/input to ensure they are resolved, responded to, and incorporated into the documents as required for all document submissions from the A/E. The CMA is responsible for:

1. **Entering** all comments in the software at each Design Phase, including but not limited to the GC's, APS Design and Construction staff, APS internal reviewers, AE's, their consultants.
2. Entering all responses to comments for all APS staff. All other parties shall be provided access to enter their own responses
3. **Monitoring** the A/E team responses to ensure they are providing a sufficient response to each issue in the software. If the CMA observes or anticipates delays to the design review process and schedule, it is required to recommend recovery actions to the APS Project Manager to mitigate the delays and implement approved, remedial measures.
4. **Back checking** intermediate and final responses to ensure they are included in the Construction Phase bid documents.
5. **Providing a summary report** at the completion of each Design Phase, which includes a list of project documents (Project Manual and Drawings), record design review comments and responses, the CMA's cost estimate, and all Progress Document Reviews.

D. Cost Management.

- **DBB:** The CMA shall prepare a complete Cost Study at the end of each phase of the design; this includes the concept, schematic, design development, 65% Construction Documents, and 95% Construction Document phases. The CMA's cost estimate shall be used to determine whether the A/E has met their contractual obligation to design the Project within the budget. During development of the Cost Study, the CMA shall work closely with the A/E to understand the various aspects of the design and components of the Project. Format to be provided by APS.

Cost Studies shall include the following:

1. Detailed Estimate – showing work items and the methodology for establishing the value for each item. Estimates shall be in a format acceptable to APS.
2. Contingency – contingency shall be included in every cost study.
3. Escalation – escalation costs/factors shall be considered and identified
4. Pricing of alternative design options
5. Clarifications and Qualifications indicating any specific assumptions made in the development of the estimate
6. Identification of all documents used in the development of the Cost Study
7. Value analysis options including the associated cost savings or added costs and any benefits/disadvantages related to each option
8. Identification of Project Schedule demands that significantly affect Project cost
9. Comparison to previous estimates and the reasons for any differences

The A/E is also required to provide a cost estimate at the end of each design phase. The CMA shall work with the A/E to reconcile the cost estimates of the CMA and A/E and ensure that both estimates are based on the same scope and assumptions. Any deviation between the scope and assumptions shall be reported to APS. Following APS approval of the reconciled cost estimate the CMA shall prepare an expenditure-forecast schedule (Project cash flow) based on the cost estimates. If it appears that the construction cost estimate may exceed the latest approved Project budget the CMA shall make recommendations for corrective action to APS. The CMA shall provide timely advice to APS on cost reducing alternatives which can be employed without impairing the overall quality level of the projects and participate in all cost reduction work sessions conducted by APS.

After the CMA develops the first Project cost estimate based on its review of the A/E drawings and commentary, and after each successive design phase Project cost estimate and cost reconciliation, the CMA shall produce and maintain a Trending Log to track and show the cost impact to the estimate of Project decisions made during the design phase. The CMA shall update the Trending Log and distribute it to the Project team (APS, A/E, etc.) at least every two weeks up until the start of the Construction Document phase, and weekly from the start of Construction Documents (“Plans and Specifications”) until the Construction Documents are approved for construction.

- **CMR:** The GC shall provide timely advice to APS on cost reducing alternatives which can be employed without impairing the overall quality level or schedule of the projects. The CMA shall not participate in this aspect of the project.

E. Schedule Control.

- **DBB:** Immediately following CMA selection, a Project Schedule, inclusive of both Part 1 (Pre-Construction) and Part 2 (Construction) Work, shall be developed by the CMA. The CMA shall consult APS, the A/E, governing entities, and other Project stakeholders to understand all Project activities and projected timelines. At minimum, the Project Schedule shall be updated monthly thereafter. This Project Schedule shall include, at a minimum, activities for: developing Drawings and Specifications for the various stages of design, CMA estimating activities, preliminary Project construction activities, permitting and other regulatory reviews, various V/E and systems analysis activities, key APS and Project team decisions, and Project milestones.

F. Staging, Phasing, and Logistic Review.

- **DBB:** The CMA shall work with APS and the A/E to establish the limits of construction, routes for deliveries, staging areas, parking areas for construction personnel and/or staff, working hours, pedestrian/vehicular access and egress, erosion and sediment controls, stormwater management, tree protection/preservation, and any other items that affect the areas adjacent to the Project site so as to limit the impact of construction activities to adjacent areas or operations while minimizing Project costs given the Site constraints, including all conditions of the Use Permit. The CMA shall also review the above items as they relate to each phase of the project to verify that all elements are accounted for during each phase of the project.

G. Cash Flow Forecasts.

- **DBB:** The CMA shall provide, at APS’s request, forecasts on anticipated billings for the Project. Such forecasts are for planning purposes only and shall not in any way dictate the actual billings or payments made during construction.
- **CMR:** The GC shall provide forecasts on anticipated billings for the Project. The CMA shall review against the Project Schedule and provide recommendations.

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H. Value Engineering (VE).

- **DBB:** The CMA shall, after a complete review of the Project program and understanding of the intent of APS and the A/E, provide VE services as described below and offer cost savings suggestions and best value recommendations to APS. All recommendations must be fully reviewed with APS and approved

prior to implementation. APS views VE as an ongoing process. The CMA is expected, therefore, to be pro-active and participate on an ongoing basis relative to VE ideas.

The CMA takes the lead on this VE effort inclusive of compiling all VE ideas from all Project Team members (A/E, APS, and consultants), determining the applicable dollar value of each and conducting the VE session with the Project Team at which time the team makes its recommendations to APS. When the CMA documents the VE ideas, the CMA is to show how the dollar values were derived for each VE item; that is, documentation of the detailed cost of the Work as originally designed per the current estimate and the detailed estimate of the VE item to determine what cost savings, if any, is projected.

VE efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. VE studies shall include life cycle cost analysis as may be required to achieve an appropriate balance between costs, aesthetics, and function. VE efforts shall also take into consideration applicable constructability issues. The CMA shall notify, in writing, APS upon observing any features in the design that appear to be ambiguous, confusing, conflicting, or erroneous. All VE studies must be provided on a timely basis within the design schedule. VE studies shall be continuous as the design is being developed. The CMA shall maintain a VE log inclusive of VE item description, cost, and Project Team's recommendation (accepted, pending, rejected).

There shall be a major VE study at the Design Development (DD) submission (utilizing the DD documents) which shall include, but not be limited to, the items noted below, conducted and/or provided by the CMA. Although the major VE session is expected at DD, it is not intended to be the only VE discussion; rather it is anticipated that most of the potential VE savings be identified prior to the DD documents:

1. Develop VE concepts for consideration at the session noted in (2) below (it is anticipated that the A/E shall be concurrently conducting a similar activity).
2. Brainstorming session(s) with design team.
3. Written cost studies shall be produced and submitted to APS within one (1) week of the final brainstorming session and shall include the original cost of the VE item based on the original design and the cost of the VE item to identify the cost savings or add for each item;
4. Formal presentation of the study to be conducted by the CMA with the Project Team at which time APS shall make its VE decisions; it is anticipated that this presentation shall be a 1-day effort; and,
5. Formal submission of the VE study document inclusive of a summary of VE items, applicable cost savings, selected items, and their corresponding cost savings.

The CMA shall also conduct VE studies during the remainder of the Pre-Construction Phase Services to evaluate specific items as requested by APS.

The CMA is to anticipate the need for VE as part of the design schedule; that is, at the commencement of each design phase and the determination of the due dates for the design submittal and associated cost estimate and reconciliation.

Note: As noted above, VE relates to the achievement of an appropriate balance between costs, aesthetics, and function. Based on this, VE should be conducted at each design submittal regardless of whether the Project costs are within the designated Project budget; that is, the Project Team needs to confirm that APS is getting the best "value."

- **CMR:** The GC shall provide VE services and offer cost savings suggestions and best value recommendations to APS. The CMA shall not participate in this aspect of the project.

I. Use and Building Permits.

- **DBB:** The CMA shall assist in preparing documents for Use Permit and Building Permit submission and in obtaining Use Permit and Building Permit approval from the Arlington County Government. The CMA

shall complete APS' Use Permit Matrix Template per the conditions for the project once finalized, and be responsible for updating the matrix monthly to the APS' PM.

- **CMR:** The GC shall assist in obtaining Use Permit and Building Permit approval. The CMA shall not participate in this aspect of the project.

J. Procurement Services.

- **DBB:** The CMA shall assist APS and the A/E with pre-qualification of GC's, if pre-qualification is a requirement, . The pre-qualification process shall include assisting with the Request for Qualifications (RFQ) solicitation, review of qualifications, and short listing of approved GCs. The CMA shall also assist APS and the A/E with Invitation to Bid (ITB) solicitation, site visits, pre-Bid conference, solicitation addenda, evaluation of bids from pre-qualified GCs, review of proposed subcontractors, and any negotiation with the apparent low bidder that may be required. The CMA shall also participate in outreach to the contracting community to help ensure adequate bid coverage.
- **CMR:** The CMA shall assist with reviewing bid packages and with ensuring bid package coverage. The CMA shall be a full participant in the qualification, evaluation, and selection of trade package Subcontractors. The CMA shall also assist with evaluation and provide recommendations regarding the GMP from the CMR.

The CMR shall provide the services described here including, but not limited to, the following. The CMA shall assist as noted:

- (a) **Procurement Schedule.** The CMR shall expeditiously prepare a Procurement Phase plan and estimated procurement schedule, to include all planned Subcontractor packages, any anticipated groupings of packages, all potential Offerors and/or Bidders listed by package, and all activities necessary to award all construction Subcontractor, equipment, and material contracts including Pre-Proposal and Pre-Bid Conferences. The CMA shall review and provide recommendations for improvements.
- (b) **Long Lead Items.** The CMR shall identify, expedite, and coordinate with all Subcontractors and/or suppliers the ordering and delivery of any materials requiring a long lead time and/or mock-ups to review technical and aesthetic criteria. Long lead items are defined as items which may affect the orderly and timely completion of the Project or any component thereof. The CMA shall review and provide recommendations for improvements.
- (c) **Prequalification.** The CMR shall administer the prequalification of prospective Subcontractors for certain critical construction packages, subject to final approval by APS. Prequalification criteria shall include experience, past performance, financial capability, technical capability, and quality capability. The CMA shall review and provide recommendations for improvements.
- (d) **Marketing.** The CMR shall procure Subcontractor packages by publicly advertised, competitive sealed bidding to the maximum extent practicable. In addition, the CMR shall canvas the market to evaluate contractor interest and prepare a source list of potential equipment and material vendors and construction Subcontractors for APS. The CMR shall document all contacts made as part of this process. At the request of APS, the CMR shall suggest strategies for expanding competition by stimulating more contractor interest. The CMA shall review and provide recommendations for improvements.
- (e) **Pre-proposal and/or Pre-bid Conference(s).** The CMA shall participate in the Pre-proposal and/or Pre-bid Conference(s) for the benefit of potential construction Subcontractors. The CMR shall schedule the meeting(s), publicize the meeting(s), prepare agendas, and record minutes.
- (f) **Site Visits.** The CMR shall conduct Site visit(s) for the benefit of potential construction Subcontractors. The CMR shall be responsible for scheduling and/or publicizing the visit(s). The CMA shall participate as necessary with site visits.

- (g) **Addenda /Amendments.** The A/E shall prepare Construction Document addenda/amendments, with the assistance of the CMR and APS, for the construction Subcontractors as necessary and in response to the CMR's request for information and/or clarification. The CMA shall assist as necessary in the preparation of Construction Document addenda/amendments.
- (h) **Bid/Proposal Evaluation.** The CMR shall prepare technical analyses of Subcontractor bids and proposals, compare, and evaluate the bids and proposals, and make recommendations to APS regarding award by the CMR of the equipment and material contracts, Construction Subcontracts, and any additive bid items. The CMA shall assist in review and evaluation of bids and provide recommendations to APS regarding award of subcontracts.
- (i) **Negotiation.** The CMR shall provide all support and conduct equipment, material, and construction Subcontractor negotiations, if necessary, before finalizing the corresponding Subcontract(s). The CMA shall assist APS in subcontractor negotiations with the CMR.
- (j) **Distributing Information.** The CMR shall distribute all information to potential Subcontractors as required for marketing. The CMA shall not participate in this aspect of the project.

III. PART 2 - CONSTRUCTION PHASE SERVICES.

A. General CMA Services. The CMA shall provide full time onsite personnel during the construction phase to monitor the performance of the GC in execution of the contract. The CMA shall monitor the Work to be performed by the GC and Subcontractors through to Project completion and final acceptance, including punchlist verification. The CMA shall monitor the Project schedule and the Work in strict compliance with the Contract Documents.

The CMA shall advise APS if work is not being executed promptly or if corrective work is required, whenever such action may be necessary in its opinion to ensure the proper execution of the Contract Documents and/or to protect the interests of APS. The CMA shall also be required to be familiar with and use all project management software used by the project team.

The following is a partial list of Construction Phase Contract administration activities that the CMA shall perform in cooperation with the A/E and Commissioning Agent:

1. Keeping project records
2. Reporting progress monthly
3. Reviewing schedules to ensure compliance with the Project Schedule
4. Conducting meetings
5. Monitoring processing of submittals
6. Reviewing in-progress payments
7. Monitoring GC compliance with GC safety plan
8. General monitoring and inspecting for contract compliance and quality
9. Scheduling, coordinating, and monitoring 3rd party testing and inspections
10. Confirming existing conditions
11. Reviewing Subcontractor requests for information (RFIs) and A/E answers
12. Reviewing, managing, and negotiating GC change orders
13. Processing Subcontractor contract change orders
14. Maintaining posted set of drawings and specifications
15. Monitoring GC photographic services
16. Reviewing and monitoring of construction sequencing and phasing
17. Coordinating construction phasing with APS staff and building occupants
18. Tracking of Use Permit conditions and submissions to county
19. Reviewing and tracking of LEED documentation
20. Reviewing Coordination Drawings

21. Assisting with Community liaison activities
22. Assisting with procurement of permits
23. Coordinating and monitoring AHJ inspections
24. Monitoring and tracking inspection and certificate of occupancy approvals
25. Monitoring contractor compliance with Arlington County erosion and sediment controls and stormwater management
26. Monitoring GC compliance with safety and quality control plans
27. Coordinating with APS forces, vendors, GCs, and consultants
28. Assisting with Extended Transition to Operations Protocol (eTOP) integration

B. Record Keeping. The CMA shall maintain at the Project Site, on a current basis, one record copy of all Contract Documents and records, including copies of all correspondence, submittals, progress reports, inspection reports, and related documentation throughout the duration of construction. The CMA shall maintain the hard copy paper and computer files according to a filing system provided by or agreeable to APS. The CMA shall turn these documents and files over to APS for record purposes as a condition precedent to close out of the Construction Phase Contract. The CMA shall use APS contract and document management software for record keeping. Examples of documents and files to be maintained (but not limited to) are:

1. Correspondence
2. Annotated submittals, including approved shop drawings, product data, and samples
3. Formal and pending Construction Phase Contract Change Orders and directives with documentation
4. Value engineering change proposals
5. Claims and supporting documentation
6. Minutes from progress meetings
7. Budget records to include invoices and supporting documentation
8. Documentation of all clarifications and decisions
9. Documentation of all dust, noise, fumes or vibrations complaints and their resolution
10. Inspection and progress reports
11. CMA's monthly status reports
12. GC's monthly status reports
13. Drawings and Specifications updated on a current basis to record changes and selections made
14. Addenda and Modifications
15. Phone logs and memos
16. Expense records
17. Project photographs
18. Commissioning paperwork and certifications
19. Subcontractor criminal certifications
20. Security badge log
21. Project Schedule update
22. Project closeout implementation

C. Progress Reporting. The CMA shall keep accurate and detailed written records of Project progress during all stages of construction. The CMA shall prepare progress reports in the format and frequency required by APS, which shall include information on each Subcontractor and its work, as well as the entire Project. APS shall provide or approve formats for periodic status reports, including daily, weekly, monthly, and periodic reports. At a minimum the CMA shall be responsible for providing the following:

1. **Daily Reports:** The CMA shall maintain a detailed daily diary of all events that occur at the Site or elsewhere, which affect, or may be expected to affect, Project cost, quality, scope, or progress. Report shall contain at a minimum a record of the weather, each Subcontractor's work on the site, number of workers, identification of equipment and deliveries, work accomplished, problems encountered, and other similar relevant data as APS may require.
2. **Weekly Reports:** The CMA shall submit weekly reports to APS and A/E on the status of construction, including updated copies of all logs maintained at the site for Subcontractor and Construction Phase Contract Change Orders, claims, submittals, etc.

- 3. Monthly Reports:** The CMA shall submit monthly reports by the 5th Working Day of each month in an electronic format as one combined pdf, including the following information:
- (a) A review and analysis of the GC's monthly project schedule update
 - (b) Inspection status report which lists all inspections the Contract Documents require, trade inspections, list of failed inspections and their reasons
 - (c) Deficiency Log shall include all deficiencies for the Project observed by the CMA. Be sure to include the 3rd Party Inspections, HVAC Cxing, Sound/PA/Intercom Cxing, Building Envelope, Stormwater Management and all other deficiencies, delays, and omissions
 - (d) Progress Photos, shall include timestamp and location description documenting ongoing work during the reporting period
 - (e) Updated Owner Exposure Log, template to be provided by APS

D. Shared Cloud-Based Software. The CMA shall keep all records in a cloud-based software (like SharePoint or Dropbox) and APS shall have access for the duration of the Contract. All records shall be turned over to APS at completion of the Contract.

E. Schedule Control. The GC shall be wholly responsible for the schedule and ensuring the project schedule is maintained and executed. The GC shall generate a baseline CPM schedule and monthly CPM schedule updates. The CMA is required to:

1. Continuously monitor actual progress against the Project Schedule and identify any delays or potential delays. If the CMA observes or anticipates delays, it is required to recommend recovery actions to APS's Project Manager
2. Review and provide comment on the Project CPM Schedule, monthly CPM Schedule Updates, and Recovery Schedules. The CMA shall also provide recommendations for delay mitigation, if necessary.

F. Meetings. The CMA shall create the agenda, coordinate location/time, organize the invitations, conduct, prepare and promptly distribute minutes within three (3) days for the following:

1. Preconstruction Conference
2. Progress Meetings
3. Owner Meetings
4. Other meetings that APS deems necessary to discuss such matters as procedures and scheduling.

The CMA shall participate in all required meetings, including meetings with A/E, GC and subcontractors, school staff and operating personnel, county inspectors, and the community. The CMA shall also review all meeting minutes provided by others to ensure accuracy and completeness.

G. Safety. The CMA shall review and become familiar with the GC's safety program, monitor the implementation, and advise APS if it becomes aware that the safety program is not being adhered to or enforced. While on site, the CMA shall conform to the GC's health and site safety requirements and programs and perform its services in a safe manner.

H. Inspection. The CMA shall inspect the GC's work for conformance with requirements of the Contract Documents (including the Drawings and Specifications, subsequent Contract Change Orders, and approved submittals). The CMA shall coordinate with APS third party inspectors and Arlington County inspectors.

Throughout construction the CMA shall maintain an up-to-date list, whether observed by the CMA or reported by others, of defects, deficiencies, delays, and omissions as well as corrective actions taken. The CMA shall provide general site quality oversight, monitor GC compliance with their quality control program, review GC and consultant deficiency logs, and monitor corrective action. The CMA shall also produce and maintain a county inspection matrix that tracks all relevant trade and building permits, as well as Use Permit conditions, that must be completed or approved, in order to gain all Certificates of Occupancy associated with the project.

I. Monitor Testing. The CMA shall contract with an approved 3rd Party testing and inspection agency for all testing and inspections as required by Arlington County's Special Structural Inspection (SSI) requirements. The

CMA shall identify all tests and inspections required by the Contract Documents and SSI requirements to be performed by the 3rd Party agency, prepare a complete testing and inspection schedule, and provide this information to the GC for inclusion in the Project Schedule. The CMA's responsibilities regarding testing and inspection shall include:

1. Coordination with GC and testing/inspection agency for scheduling of tests and inspections.
2. Witnessing required tests and inspections to verify they are conducted properly and as scheduled.
3. Reviewing test/inspection and retesting/re-inspection results and documenting with Contract Documents.
4. Retaining test/inspection and retesting/re-inspection records
5. Summarizing significant test and inspection results in progress reports.
6. Submission of test and inspection reports to project team and AHJ
7. Notifying immediately APS of test and inspection failures and, with A/E, planning corrective actions
8. Maintaining a Deficiency Log of corrective actions.
9. Overseeing corrective actions and retesting/re-inspection until issue resolution.

J. Requests for Information (RFI). The CMA shall coordinate responses from the A/E and APS to the GC's requests for information. The CMA shall consult with the A/E and APS on technical matters, including requests for interpretations of the meaning and intent of the Drawings and Specifications, or with APS on administrative matters. The CMA is responsible for facilitating information requests to keep response times to a minimum. The CMA shall maintain copies of the final answers to information requests as part of the Project records.

K. APS Furnished Materials and Equipment (FFE).

- **DBB:** The CMA shall arrange for the delivery, storage, and security for APS furnished materials and equipment.
- **CMR:** The CMR shall arrange for the delivery, storage, and security for APS furnished materials and equipment. The CMA shall coordinate APS furnished material, equipment, vendors, consultants as needed

L. SWM Certification.

- **DBB:** An onsite CMA team member shall hold and maintain for the duration of the Project the Virginia Department of Environmental Quality (VDEQ) Erosion and Sediment Control (E&SC) and Storm Water Management (SWM) inspector certification. Per the certification, this member shall monitor proper record keeping of the Stormwater Pollution Prevention Plan (SWPPP) by the GC, participate in the GC's self-inspections of the Site at least every four (4) days, and monitor compliance with APS' Municipal Separate Storm Sewer System (MS4) Permit as it relates to Site storm water runoff control and proper E&SC. The GC shall provide on-Site personnel certified for and designated as the Registered Land Disturber (RLD). The GC shall be responsible for SWPPP submission and compliance, and the regular site inspections required, as well as installation and maintenance of all erosion and sediment controls.
- **CMR:** The GC shall hold and maintain for the duration of the Project the Virginia Department of Environmental Quality (VDEQ) Erosion and Sediment Control (E&SC) and Storm Water Management (SWM) inspector certification. Per the certification, this member shall ensure proper record keeping of the Stormwater Pollution Prevention Plan (SWPPP) by the GC, conduct self-inspections of the Site at least every four (4) days, and ensure compliance with APS' Municipal Separate Storm Sewer System (MS4) Permit as it relates to Site storm water runoff control and proper E&SC. The CMR shall also provide on-Site personnel certified for and designated as the Registered Land Disturber (RLD). The CMA shall generally monitor SWPPP and MS4 compliance.

M. Contract Change Orders. The CMA shall issue all such change directives to the GC as are required, upon direction from APS.

The CMA, with assistance from the A/E and APS, shall have primary responsibility for review and negotiation of all proposed change orders. The CMA shall maintain an Owner Exposure Log (template provided by APS) which includes all known and potential change orders, as well as independent estimates for each, to track total APS exposure. Once change orders have been negotiated, the CMA shall collect them into change order packages for final signature of the GC, A/E, and APS.

- N. Photography.** The GC is responsible for procuring at its expense construction photographs of items that may be the subject of Subcontractor claims, or that require documentation. The GC shall also provide preconstruction photographs, periodic construction photographs, and other Owner-directed construction photographs.

Before commencement of demolition, the GC shall take preconstruction photographs of the Project site and surrounding properties, including existing items to remain during construction, from different vantage points, as directed by the Owner and as required by the Use Permit. The CMA shall accompany the GC during preconstruction photography to ensure all relevant conditions are documented.

The GC shall provide periodic construction photographs showing the full scope of ongoing Work; these shall be no less than twenty (20) photographs monthly. From time to time, the Owner or Owner's Representative shall instruct the GC about number and frequency of photographs and general directions on vantage points. Photographs shall be in electronic format, organized and identified by location and/or trade, and date. Photographs in electronic format shall be turned over for record purposes at Project close-out.

The CMA shall monitor project photography, review albums provided for completeness of record, and ensure project archive is being maintained.

- O. Project Commissioning.** APS shall engage 3rd party commissioning agents (CxA) to conduct enhanced commissioning of building systems. Prior to this, the GC shall coordinate a systematic process to ensure that the mechanical, electrical and plumbing (MEP), audio-visual, security, communications, and all other systems are fully functional in accordance with the design intent generated by the Contract Documents and APS's operational needs, and the personnel charged with maintaining and operating them are trained (not merely familiarized) to perform operation and maintenance. The GC shall ensure all necessary approvals exist prior to equipment procurement and subsequent installation. The GC shall coordinate and chair pre-installation meetings for major MEP, structural and building envelope as well as other systems and equipment. The GC shall coordinate and participate, along with the A/E, in each Subcontractor's initial equipment testing and final systems testing, start-up demonstrations, and training for utilities, operational systems, and equipment with the A/E, Construction Manager Advisor and APS' operations and maintenance personnel. The GC shall prepare all minutes of these items and prepare documentation of the actions, activities, and results obtained. All training shall be video-taped, and tapes shall be provided to APS as a component of the Operations and Maintenance Manuals.

The CMA shall coordinate CxA as needed, attend, and participate in commissioning meetings, and monitor commissioning deficiency reports to ensure resolution of issues. The CMA shall track all commissioning activities to ensure they occur in a complete and timely fashion.

- P. Extended Transition to Operations Protocol (eTOP).** The CMA shall monitor the CMR/GC's compliance with eTOP requirements, including timely and thorough completion.
- Q. Project Closeout.** As a condition precedent to Final Completion and final payment, the GC is responsible for compliance with all contract closeout requirements, including punchlist completion.

The CMA shall monitor all closeout activities for timely completion by the GC via a closeout matrix which shall track all warranties, Operations & Maintenance manuals, final TAB report, APS turnover items, APS training, As-built drawings and specifications, and any other closeout items or documents required by contract. The CMA shall also monitor punchlist completion and assist in punchlist verification.

- R. Progress Payments.** The CMA shall review GC schedule of values for completeness, accuracy, and for practical use during review of payment applications. The CMA shall also review and provide comment on all GC payment applications, in conjunction with the A/E, to ensure proper billing of scheduled values monthly.

S. Submittal Review. The CMA shall generally track the submittal submission and review process for timely processing in accord with contract requirements. The CMA shall review the GC's submittal schedule for completeness and accuracy.

IV. STAFF AUGMENTATION SERVICES

A. General. As a Project, APS may require the CMA to provide staff augmentation services to assist APS manage its portfolio of Capital Improvement Plan (CIP) projects. These services shall be provided on an as needed basis. During a staff augmentation Project, CMA staff will be located on site in the offices of APS' Department of Facilities and Operations under the general oversight of APS staff with the required oversight of the CMA's Project Executive.

B. Typical Responsibilities. (including, but not limited to)

1. Participate in selection of consultants to perform work for a capital project. Consultants may include, but not be limited to architects, engineers, commissioning agents, and third-party testing agents.
2. Solicit proposals and process purchase order for all consultants, GC, and vendors required for a specific capital project. Solicit and process change order documentation for all parties as needed. Review and process all associated invoices.
3. Develop capital project schedules, including design and general construction timelines. Ensure that all consultants are made aware of the schedule and adhere to it.
4. Develop capital project budget, including both soft costs, hard construction costs, and contingency. Update budget, at a minimum monthly, and ensure that capital project remains within the funding available.
5. Attend all applicable APS staff meetings, provide regular reports to APS Department leadership as required.
6. Manage the consultant team during all capital project phases including planning, design, construction, and closeout to ensure quality deliverables are provided in accordance with milestone dates. Schedule and participate in all capital project team meetings.
7. As applicable, manage the public design committee process with the Building Level Planning Committee (BLPC), Public Facilities Review Committee (PFRC), and the general public in partnership with APS staff. Serve as liaison to the public for the duration of the capital project.
8. Coordinate with APS offices including Maintenance, Plant Operations, Transportation, and others to ensure their advice and standards are appropriately reflected in consultant deliverables and that they have participation in the development and sign off on punch list items.
9. Coordinate with appropriate school building leadership and central office staff to ensure that their advice, standards, and preferences are properly reflected to the extent possible within budget and other constraints.
10. Review the design deliverable documents produced by consultants for completeness, accuracy, and inter-discipline coordination.
11. Schedule and manage all design reviews during the design phase. Schedule and manage the focused design review meetings at the end of each phase of design with APS staff and consultants. Manage APS' document quality control procedures associated with the design review comments to ensure response to comments are documented and relevant comments are incorporated into the construction documents.

12. Serve as APS liaison and work with Arlington County (County) staff during the permitting process. Oversee permit submissions from consultants and/or APS staff to ensure quality and timely submissions. Maintain general building permit and Use Permit tracking matrices to ensure thorough and timely submissions.
13. Develop pre-qualification and solicitation documents in conjunction with the APS procurement staff for GC selection. Assist in GC selection process.
14. Reviewing APS consultant's requests for payments for alignment to actual progress and recommending approval or modification.
15. Set up capital project management software for all consultants and GC. Provide training to all consultants and GC on task processes and procedures. Ensure all parties are adhering to procedures and monitor documentation.
16. Attend and participate in all construction progress, commissioning and other site meetings as required.
17. Review GC schedules to ensure achievement of milestone dates.
18. Review GC change orders and participate in change order negotiations.
19. Manage furniture, furnishings, and equipment (FF&E) selection, procurement, and installation.
20. Provide oversight of GC work onsite, in conjunction with consultants to ensure GC quality and compliance with contract documents.
21. Work with County departments to ensure successful inspections and timely issuance of Certificate of Occupancy. Manage occupancy matrix to ensure all elements required for timely occupancy are provided.
22. Manage all facets of move into facility, including selection of moving contractor, securing of all materials and equipment needed for move, and scheduling of the moves.
23. Manage closeout and ensure that all closeout documentation, such as as-built documentation, Operations & Maintenance manuals, and warranties are complete and accurate. Maintain closeout matrix to track all elements required for complete task closeout.
24. Ensure successful turnover of facility to APS Maintenance, including turnover of closeout documents, fully operational Extended Transition to Operations (ETOP) system, and adequate training and demonstration for building systems.

Attachment B

Fee Schedule

Hourly Rates:

The hourly rates shall not be subject to change during the Initial Contract Term. Should the Contract be extended (“Renewal Contract Term(s)”), any changes in the hourly rates shall be in accordance with Section 2 of the Agreement, Contract Price Adjustment.

Item No.	Staff Classification	Hourly Rate Date Agreement Signed by Procurement Agent – February 28, 2023
1	Project Executive	\$215.00
2	Senior Project Manager	\$188.13
3	Project Manager	\$142.98
4	Project Engineer	\$115.03
5	Senior Cost Estimator	\$188.13
6	Cost Estimator	\$134.38
7	Scheduler	\$134.38

Travel Costs:

See Contract Terms and Conditions Section 9 Reimbursable Travel-Related Expenses.

Motor Mileage:

See Contract Terms and Conditions Section 9 Reimbursable Travel-Related Expenses.

Other Reimbursable Costs:

See Contract Terms and Conditions Section 8 Reimbursable Expenses.

Arlington Public Schools
Request for Proposal (RFP) 13FY21,



VII. Appendix C

Contractor (CMA) Certification Regarding Criminal Convictions

The completed form from the CMA 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 the CMA, its employees, its sub-contractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. A sexually violent offense as defined in Va. Code Ann. § 9.1-902;
3. Any of the offense listed below occurring on or after July 1, 2006 in which the offender was more than three years older than the victim, when the offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan to commit, (i) abduction or kidnaping in violation of Va. Code Ann. § 18.2-47 or § 18.2-48, (ii) burglary in violation of Va. Code Ann. § 18.2-89, (iii) entering a dwelling house with intent to commit crimes in violation of Va. Code Ann. § 18.2-90 or Va. Code Ann. § 18.2-91, or (iv) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2., or (v) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof:
 - a. Rape of a child under 13 in violation of Va. Code Ann. § 18.2-61;
 - b. Forcible sodomy with a child under 13 in violation of Va. Code Ann. § 18.2-67.1; or
 - c. Object sexual penetration with a child under 13 in violation of Va. Code Ann. § 18.2-67.2; or
4. A conviction for a crime of moral turpitude.

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.

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.

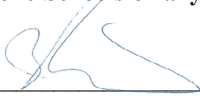
MBP

 Name of Offeror
 3040 Williams Drive, Suite 300

 Fairfax, VA 22031

 Address of Offeror
 703-641-9088

 Telephone



 Signature
 Michael Bagshaw, PE, CCM, LEED AP,
 Vice President, Building Services Leader

 Name and Title (please type or print)

 January 22, 2021

 Date

Attachment D

Contract Terms and Conditions

1. Standard of Care
In the performance or furnishing of services hereunder, the CMA and all its agents, shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of the Work.
2. Responsibility of the CMA
The CMA shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by the CMA under this Contract. The CMA shall, without additional compensation, correct, or revise any errors or deficiencies that significantly affect the production environment, as determined by the Project Officer, which are discovered within a twelve-month period of final completion of Work.
3. Responsibility for Claims and Liabilities
APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The CMA shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.
4. Payment
CMA will be paid upon satisfactory completion and acceptance of each task and upon the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract. APS will pay the CMA within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the Project Officer. The number of the Purchase Order shall appear on all invoices.
5. APS Project Officer
The performance of the CMA is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington APS department requesting the Work under this Contract. However, it shall be the responsibility of the CMA to manage the details of the execution and performance of its work under the Contract Documents.
6. Adjustments for Change in Scope
APS may order changes in the Work within the general scope of the Work consisting of additions, deletions, or other revisions. No claim may be made by the CMA that the scope of the Work or of the CMA's services has been changed requiring adjustments to the amount of compensation due the CMA unless such adjustments have been made by a written amendment to the Contract signed by APS and the CMA. If the CMA believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the CMA, the CMA must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The CMA's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The CMA will not be compensated for performing any work unless a Proposal complying with this subsection has been submitted in the time specified above and a written amendment has been signed by APS and the CMA and a Purchase Order is issued covering the cost of the services to be provided under the amendment.
7. Additional Services
The CMA shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by APS and the CMA and a Purchase Order is issued covering the expected cost of such services.

APS may determine the need for additional work by the CMA. Upon a request from APS, the CMA shall prepare a cost proposal for any such work. No Additional Services shall be performed unless a written amendment to this Contract has been executed by both parties.

8. Reimbursable Expenses

Reimbursable expenses include expenses incurred by the CMA (including consultants) in performing a Project. A maximum of three percent (3%) markup may be applied to reimbursable expenses, except for expense of reproduction of drawings, specifications, and other documents, to which no markup may be applied.

The following expenses incurred by the CMA, and its subcontractors and consultants, in performing its responsibilities under the Contract will be reimbursed:

- A. Reproduction, incurred by the CMA using the APS authorized reproduction service providers, of drawings, specifications, and other documents, as required for formal submission to APS or the Arlington County offices. Reproduction services shall be authorized by APS prior to execution of this service.
- B. Models requested by APS.

The cost of any required training materials shall be included in the hourly rates. APS will not pay separately for training materials.

If a CMA has expenses which they deem to be reimbursable in nature outside the items noted above, the CMA shall bring these items to the attention of the Project Officer prior to the final negotiation of the CMAs fees for a Project and also provide justification for consideration to the Project Officer for approval on such expenses.

9. Reimbursable Travel-Related Expenses

All local travel-related expenses (mileage, parking, bike or car rental; communications and Internet connectivity; meals and entertainment,) shall be included in the Loaded Hourly Rates of the Work for APS. Local travel is travel commencing inside Virginia, Maryland, and the District of Columbia and finishing inside of Virginia, Maryland, and the District Columbia.

Long distance travel, as authorized by APS, is a reimbursable expense. Long distance travel is considered to be travel commencing inside Virginia, Maryland, and the District of Columbia and finishing outside of Virginia, Maryland and the District Columbia. In these circumstances, travel expenses will be reimbursed in accordance with the GSA Per Diem Rates for the location visited. Mode of transportation shall be the most economic available without upgrades in class or accommodation. APS shall not approve any request for reimbursement of unauthorized long-distance travel.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in firm fixed price:

- 1. Alcoholic beverages;
- 2. Personal phone calls;
- 3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling);
- 4. Personal expenses (i.e. laundry, valet, haircuts);
- 5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars;
- 6. Auto repairs, maintenance, and insurance costs for personal vehicles;
- 7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.

If a CMA has expenses which they deem to be reimbursable in nature outside the items noted above, the CMA shall bring these items to the attention of the Project Officer prior to the final negotiation of the CMA's fees for a Project and also provide justification for consideration to the Project Officer for approval on such expenses.

10. Payment of Subcontractors*

The CMA is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from APS attributable to the work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The CMA is obligated to pay interest to the subcontractor on all amounts owed by the CMA that remain unpaid after seven (7) calendar days following receipt by the CMA of payment from APS for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The CMA shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The CMA's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

11. Non-Appropriation*

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by Arlington County School Board (School Board). In the event of non-appropriation of funds by the School Board for the goods or services provided under this Contract, or substitutes for such goods or services which are as advanced or more advanced in their technology, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the CMA on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination specified in APS's written notice.

12. APS Purchase Order Requirement*

APS purchases are authorized only if an APS Purchase Order ("Purchase Order") is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the CMA by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Procurement Agent. CMAs providing goods or services without a signed Purchase Order do so at their own risk and expense.

13. Replacement or Augmentation of Key Personnel and Subcontractors

The key personnel and subcontractors submitted by the CMA in its Proposal and thereafter accepted by APS are considered essential to the CMA's qualifications. The CMA may not replace, substitute or augment any key personnel or subcontractor without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS.

Additionally, the CMA shall not remove or replace the approved key personnel or subcontractor without written approval of APS. In cases of the approved key personnel or subcontractor's prolonged illness or other extended

leave of absence, CMA shall provide an interim key personnel or subcontractor whose continued work on the Work shall be subject to approval by APS.

In the event of the key personnel or subcontractor's resignation or termination from the CMA's employment, the CMA shall replace the key personnel or subcontractor with an individual with similar qualifications and experience and only with APS' prior written approval.

Any replacement or substitution of key personnel or subcontractor shall be provided at no cost to APS, including an up to thirty (30) day transition period. APS may deem repeated failure or excessive delay by the CMA to provide qualified personnel, or qualified replacement personnel, sufficient reason to terminate the Contract in whole or in part.

14. Project Staff

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by the CMA. If APS reasonably rejects staff or subcontractors, the CMA must provide replacement staff or subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the CMA's employees, and employees of any of its subcontractors, shall be the sole responsibility of the CMA. APS reserves the right to remove immediately any staff or subcontractor at any time during the duration of the Contract if it determines, in its sole discretion, that the employee is not of the level of competence or ability required, is incompetent, careless, or not working in harmony with others, or if the staff or subcontractor is for any other reason found to be unsuitable for the Work. APS reserves the right to reject suggested staff or subcontractor who, in its sole discretion, is not adequately qualified to perform the work. APS may request replacement staff or subcontractor when, in its sole discretion, the one currently in an assignment is not adequately qualified to perform the work.

15. Supervision by CMA

The CMA shall enforce strict discipline and good order among the workers performing the CMA's Work and shall only employ on the Work persons reasonably proficient in the work assigned.

16. Employment Discrimination by CMA Prohibited*

During the performance of this Contract, the CMA agrees as follows:

- A. The CMA will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CMA. The CMA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The CMA, in all solicitations or advertisements for employees placed by or on behalf of the CMA, will state that such CMA is an Equal Opportunity Employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The CMA will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The CMA will include the provisions of the foregoing subsections in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.

17. Employment of Unauthorized Aliens Prohibited*

In accordance with §2.2-4311.1 of the Virginia Code, the CMA acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

18. Drug-Free Workplace to be Maintained by CMA*

During the performance of the Work pursuant to this Contract, the CMA agrees to (i) provide a drug-free workplace for the CMA's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the CMA's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the CMA that the CMA maintains a drug-free workplace; and (iv) 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 or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a CMA by APS in accordance with the Procurement Resolution, the employees of which CMA 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.

19. Termination for Cause, Including Breach and Default; Cure

The Contract shall remain in force for the Initial Contract Term or any Renewal Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the CMA has met all requirements and conditions relating to the Work under the Contract Documents including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the CMA is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the CMA has failed to perform satisfactorily, then APS will give the CMA written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the CMA fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the CMA's failure to provide satisfactory Contract performance. Upon such termination, the CMA may apply for compensation for Contract services satisfactorily performed by the CMA, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). To be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the CMA of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the CMA (unless APS in its discretion provides for an opportunity to cure) and the CMA shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the CMA shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the CMA or its subcontractors. Such costs shall be either deducted from any amount due the CMA or shall be promptly paid by the CMA to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contactor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the CMA under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the CMA shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials,

services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the CMA.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

20. Termination for the Convenience of APS

The performance of work under this Contract may be terminated by the Procurement Agent in whole or in part whenever the Procurement Agent shall determine that such termination is in APS' best interest. Any such termination shall be effected by the delivery to the CMA of a written notice of termination at least fifteen (15) calendar days before the date of termination, specifying the extent to which performance of the Work under this Contract is terminated and the date upon which such termination becomes effective. The CMA will be entitled to receive compensation for all Contract services satisfactorily performed by the CMA and allocable to the Contract and accepted by APS prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the CMA shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to APS; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

21. Indemnification* (Note: Virginia does not permit a public body to agree to the indemnification of others, cross indemnity provisions are not acceptable). The CMA covenants for itself, its employees, and subcontractors to save, 7 hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively and including APS the "APS Indemnitees" for purposes of this section) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including but not limited to court costs reasonable attorney's fees, and costs of litigation including but not limited to expert witness fees and costs), charges, liability, demands or exposure, however caused unless caused by an APS Indemnatee, resulting from, arising out of, or in any way connected with the CMA's acts or omissions or errors in performance or nonperformance of its Work, whether such act or omission or error is attributable to CMA, any of its subcontractors or material suppliers, or anyone directly or indirectly employed by the CMA for performance of the Work. 7 This duty to save, 7 hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this section is brought against an APS Indemnatee, then upon written notice from APS to the CMA, CMA shall have the option to elect, at CMA's sole discretion and expense, to resist or defend such action or proceeding by counsel approved by APS or the APS Indemnatee in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same. CMA shall be under no obligation to elect to resist or defend such action and may elect to allow APS or the APS Indemnatee to so resist or defend, subject to the indemnification obligations set forth herein.

If, after Notice by APS, the CMA elects not to resist or defend or fails or refuses to save, 7 hold harmless and/or indemnify APS or the APS Indemnatee, the CMA shall be liable for and reimburse APS or the APS Indemnatee for any and all expenses, including but not limited to, court costs, reasonable attorneys' fees, and costs of litigation including but not limited to expert witness fees and costs, incurred and settlements or payments made. The CMA shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to CMA under this Contract.

CMA understands and agrees that it is CMA's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of CMA's insurance to fully fund any indemnification shall not relieve the CMA of any obligation assumed under this indemnification.

22. Intellectual Property Indemnification*

The CMA warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The CMA further covenants for itself, its employees, and subcontractors to save, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees (collectively and including APS the "APS Indemnitees" for purposes of this section) from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including but not limited to court costs, reasonable attorneys' fees, and costs of litigation including but not limited to expert witness fees and costs), charges, liability, or exposure, however caused unless knowingly caused by an APS Indemnitee, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS or an APS Indemnitee without knowledge of the intellectual property right. If the CMA, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work or materials in any way involved with the Work. This duty to save, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the CMA elects not to resist or defend or fails or refuses to fulfill its obligations contained in this section, the CMA shall be liable for and reimburse APS or the APS Indemnitee for any and all expenses, including but not limited to, court costs, reasonable attorneys' fees, costs of litigation including but not limited to expert witness fees and costs, incurred and any settlements or payments made. The CMA shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to CMA under this Contract

23. Copyright

The CMA hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in all copyrightable works created pursuant to this Contract. The CMA further agrees to execute such documents as APS may request to affect such transfer or assignment.

Further, the CMA agrees that the rights granted to APS by this subsection are irrevocable. Notwithstanding anything else in this Contract, the CMA's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this subsection. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" subsection.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this subsection as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

24. Ownership and Return of Records

This Contract confers no ownership rights to the CMA nor any rights or interests to use or disclose APS' data or inputs.

The CMA agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the CMA or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The CMA shall not use, willingly allow,

or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the CMA agrees that the Records are confidential records and neither the Records nor their contents shall be released by the CMA, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The CMA agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the CMA shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The CMA agrees to include the provisions of this section as part of any contract or agreement the CMA enters into with subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

25. Confidential Information

The CMA, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person's, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The CMA shall take reasonable measures to ensure that all its employees, agents, and subcontractors are informed of, and abide by, this requirement.

All student data is considered to be confidential under any resulting Contract as well as under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records, and will only be released in accordance with the applicable laws and regulations. Student data shall include all metadata, forms, logs, cookies, tracking pixels, user content, and Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. All student data received by the CMA shall be maintained by the CMA in a secure location, in accordance with the Student Data Usage and Privacy Agreement.

The CMA also agrees that it will not directly or indirectly use or facilitate the use or dissemination of student data (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 officially assigned duties pursuant to any resulting Contract. CMA is aware that unauthorized use or disclosure of student data is prohibited and, in addition, may also constitute a violation of Virginia law (e. g. the Government Data Collection and Dissemination Practice Act, formerly called the Privacy Protection Act, VA Code §2.2-3800 et seq., and the Secrecy of Information Act, VA Code §58.1-3, which may be punishable by a jail sentence of up to six (6) months and/or a fine of up to \$1,000,000.).

26. HIPAA Compliance

The CMA shall comply with all applicable legislative and regulatory requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C. F. R. §164.502(e) and §164.504(e), the CMA shall be designated a Business Associate pursuant and will be required to execute an APS Business Associate Agreement. If CMA engages a subcontractor or subcontractors in the performance of the Scope of Work under any resulting Contract, the CMA shall enter into an agreement with each of its subcontractors pursuant to 45 C. F. R. §164.3082(b) and the Health Information Technology for Economic and Clinic Health (HITECH) Act §13401 that is appropriate and sufficient to require each subcontractor to protect the Protected Health Information (PHI) to the same extent required of CMA under APS's Business Associate Agreement and in a form approved by APS. HITECH defines PHI as individually identifiable and maintained by a covered health care provider, health plan, or health care clearinghouse. See 45 C.F.R 160.103 and 164.501.

The CMA shall ensure that its subcontractors notify the CMA, immediately, of any breaches in security regarding the PHI.

The CMA takes full responsibility for any failure to execute the appropriate agreements with its subcontractors to comply with the existing and or future regulations of HIPAA and/or HITECH and shall indemnify APS in accordance with the Indemnification clause in this section.

The CMA will not be provided with PHI under this Contract and any access to PHI would be incidental, not requiring a Business Associate Agreement, as defined under HIPAA or HITECH, to be executed with the CMA.

27. Data Security

The CMA agrees that it shall hold all APS data obtained or accessed as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If subcontractors of the CMA are performing work under this Contract on APS-owned property, then such r subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to APS data.

The CMA shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state, and federal laws or regulatory requirements concerning data privacy and security. The CMA shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) APS' Non-Disclosure and Data Security Agreement (NDA). The CMA shall require that an authorized CMA designee or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as Attachment D) prior to performing any work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (b) Use of Data. The CMA shall ensure that the use, distribution, disclosure, or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited unless such other use is agreed to in writing by the parties. The CMA will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this Data Security and Protection provision or any NDA.
- (c) Data Protection. The CMA agrees that it will protect APS Information in compliance with all applicable APS security and resources policies, as well as local, state, and federal laws and regulatory requirements concerning data privacy and security, as applicable, and no less rigorously than it protects its own data, proprietary, and/or confidential information. The CMA agrees that it will comply with the Government Data Collection and Dissemination Practices Act, Chapter 38 of Title 2.2 of the Code of Virginia (i.e., Va. Code § 2.2-3800 et seq.), and the Virginia Freedom of Information Act (i.e., Va. Code § 3700 et seq.), as applicable. The CMA must provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan(s). If requested by APS, and, to the extent applicable, the CMA must provide, on an annual basis, results of an internal Information Security Risk Assessment.

- (d) Data Sharing. Except as otherwise specifically provided for in this Contract, the CMA agrees that it shall not share, disclose, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (e) Security Requirements. The CMA shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The CMA certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers, or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.
- (f) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the CMA shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the CMA. The CMA shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Contract and shall certify completion of this task, in writing, to Project Officer.
- (g) Notification of Security Incidents. The CMA agrees to notify the APS Chief Information Officer and Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (h) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the CMA and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the CMA a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

28. Ethics in Public Contracting*

This Contract incorporates by reference Article 9 of the Procurement 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 CMA 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 Offeror, supplier, manufacturer, or subcontractor 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.

29. APS Employees*

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

30. Force Majeure

The CMA shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, epidemics, pandemics, or other public health emergency declared by governmental authority to the extent the impact of such epidemic, pandemic or public health emergency is shown to affect the CMA's performance of its Work directly, or an act of God beyond control of the CMA, and outside and beyond the scope of the CMA's then

current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, epidemics, pandemics, or other public health emergency declared by governmental authority to the extent the impact of such epidemic, pandemic or public health emergency is shown to affect any obligation of APS, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner

No such extension of time shall be deemed a waiver by APS of its right to terminate the Contract for abandonment or delay by the CMA as herein provided or to relieve the CMA from full responsibility for performance of his obligations hereunder.

31. Authority to Transact Business*

The CMA shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a CMA in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

32. Relation to APS*

The CMA will be legally considered as an independent contractor and neither the CMA nor its employees will, under any circumstances, be considered employees, servants, or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the CMA, its employees, servants, or agents. APS will not withhold payments to the CMA for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the CMA. Furthermore, APS will not provide to the CMA any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

33. Antitrust

By entering into this Contract, the CMA conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the CMA may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by APS under this Contract.

34. Report Standards

Reports or written material prepared by the CMA in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the CMA.

When submitting documents to APS, The CMA shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper.
- All submittals must be in the required tabular format in a binder.
- Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable).
- The use of plastic covers or dividers should be avoided; and

- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

35. Audit

The CMA agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Renewal Contract Term. If the CMA wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the CMA shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

36. Amendments

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the CMA and APS

37. Arlington Public Schools Procurement Resolution and Policies*

Notwithstanding any provision to the contrary herein, no provision of the Procurement Resolution or any applicable APS policy is waived in whole or in part.

38. Dispute Resolution*

All disputes arising under this Contract, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the Work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Procurement Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Procurement Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Procurement Resolution, incorporated herein by reference. A copy of the Procurement Resolution is available upon request from the Office of the Procurement Agent. The CMA shall not cause a delay in the Work pending a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

39. Applicable Law, Forum, Venue and Jurisdiction*

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, the CMA shall comply with applicable federal, state, and local laws, ordinances, and regulations.

40. Arbitration

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

41. Nonexclusivity of Remedies

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

42. No Waiver

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

43. Severability

The sections, subsections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Contract shall be declared invalid by the valid

judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and sections of this Contract.

44. No Waiver of Sovereign Immunity*

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

45. Survival of Terms

In addition to any numbered section in this Contract which specifically state that the term, paragraph or subsection survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: Indemnification; Relation to APS; Ownership and Return of Records; Audit; Copyright; Intellectual Property Indemnification; Confidential Information, and Data Security and Protection.

46. Headings

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the section to which the heading refers.

47. Ambiguities

Each party and its counsel have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

48. Non-Discrimination Notice*

APS does not discriminate against faith-based organizations.

49. Insurance Requirements

The CMA shall provide to the Procurement Agent a Certificate of Insurance(s) indicating that the CMA has in force the coverage below prior to the start of any Work under this Contract and upon any Contract Renewal Periods. The CMA shall maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, rating of "A-" or better and a financial size of "Class VII" or better in A.M. Best Co., and acceptable to APS. Confirmation of the A.M. Best Co. rating would need to be provided to APS in writing not less than on an annual basis. that the minimum insurance coverage shall be:

- (1) Workers Compensation (if applicable)- Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employer's liability with limits of \$100,000 aggregate limit.
- (2) Commercial General Liability - \$1,000,000 per occurrence limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury. The general aggregate limit shall apply to this Contract. The following coverages shall be covered by the general liability insurance policy and shown on the certificate of insurance:
 - (a) General Liability
 - (b) Premises and Operations
 - (c) Completed Operations
 - (d) Contractual Liability
- (3) Automobile Liability - \$1,000,000 per occurrence / \$1,500,000 general aggregate
- (4) Cyber Liability Insurance – \$2,000,000 per occurrence, \$2,000,000 general aggregate.

- (5) Professional Liability - \$1,000,000 per occurrence, \$3,000,000 general aggregate.
- (6) If the limits of insurance lines do not meet the coverage limits (both per occurrence and aggregate) that are required, the use of excess/umbrella insurance is permitted to satisfy any deficiency. If excess/umbrella insurance is used it must meet the following requirements:
- (a) The excess/umbrella policy shall state limits that meet all coverage needs for all of the lines with deficient coverage. This applies to both per occurrence and aggregate limits that are deficient. If there are multiple insurance coverages that are deficient, the per occurrence and aggregate limits of the excess / umbrella policy must be enough to cover all of the lines that are deficient from both a per occurrence and aggregate level
 - (b) Excess/umbrella coverage shall be written on a per occurrence basis and shall have aggregate limits sufficient to satisfy any deficiency to which it may be applied.
 - (c) All lines that are deficient of coverage shall be listed and the limits that are devoted to those lines shall be listed (both per occurrence and aggregate).
 - (d) All insurance limits (excess/umbrella & other required lines of insurance) are subject to review prior to the approval of the use of such coverage.
 - (e) Excess/umbrella shall not be used to satisfy statutory limits (i.e. Worker's Compensation).
- (7) Arlington Public Schools, its officers, elected and appointed officials, employees, and agents, are to be named as an additional insured under all coverages except Workers' Compensation, Cyber Liability, and Professional liability, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage for additional insureds afforded under this subsection shall be primary as respects APS, its officers, elected and appointed officials, agents, and employees. The following definition of the term "APS" applies to all policies issued under the Contract: "Arlington County School Board and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the School Board of Arlington Public Schools, Virginia, or one in which controlling interest is vested in Arlington Public Schools".
- (8) Cancellation - General Liability, Auto Liability, Workers Compensation, and Umbrella insurance policies required by this Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until forty-five (45) days prior written notice has been given to the Procurement Agent, Arlington Public Schools, Virginia." The Professional Liability Insurance policy shall provide 30-days advance written notice for cancellation or nonrenewal of coverage, except for cancellation due to nonpayment of premiums for which 15-days notice shall be given. If there is a material change or reduction in coverage the CMA shall notify the Procurement Agent immediately upon CMA's notification from the insurer. Any policy on which the CMA has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and APS notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

APS will consider claims made insurance coverage on a case-by-case basis APS reserves the right to accept or deny the use of Claims Made Insurance coverage at any time.

If the liability insurance purchased by CMA has been issued on a "claims made" basis, the CMA must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. CMA must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two (2) years after final payment for the Contract for General Liability policies five (5) years for Professional Liability & Cyber policies. This certificate shall evidence a "retroactive date" no later than the beginning of the CMA's work under this Contract.

Or

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

If claims made insurance is utilized by CMA and or their subcontractors and a claim occurs that relates back to the CMA's services. CMA and or their subcontractors will indemnify and hold APS harmless of all losses regardless of whether they have insurance coverage in place or not.

- (9) Contract Identification - The insurance certificate shall state this Contract's number and title.

The CMA must disclose the amount of any deductible or self-insurance component applicable to the General Liability and Automobile Liability, or any other policies required herein, if any. APS reserves the right to request additional information to determine if the CMA has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, APS may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for APS.

The CMA shall require all subcontractors to maintain the same lines and limits of coverage during the term of this Contract, in the same form and manner as specified for the CMA. The CMA shall furnish subcontractors' certificates of insurance to APS immediately upon request by APS.

No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the CMA from any liability or obligation imposed upon the CMA by the provisions of the Contract Documents.

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

The CMA shall be as fully responsible to APS for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the CMA may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the CMA can demonstrate financial capacity and the alternative coverage's are submitted to and acceptable to APS. The CMA must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

50. Accessibility of Web Site*

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the CMA shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled

“Accessibility of State and Local Government Websites to People with Disabilities.” The document is located at: <http://www.ada.gov/websites2.htm>.

51. Arlington County Business License

The CMA must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this Contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

52. Failure to Deliver

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the CMA responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

53. Subcontracts

The CMA shall not enter into any subcontract with any subcontractor who has been suspended or debarred from doing federal, state, or local government work for any reason.

The CMA shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the CMA.

The CMA shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Contract insofar as they are applicable to the Work of subcontractors.

Nothing contained in this Contract shall create any contractual relationship between any subcontractor and APS.

54. Non-Endorsement Clause for Contracts and Agreements

APS may be identified as a “Participant” in the Work with the following statement added: “This shall not constitute an endorsement of any products or services”. For further information, please contact the APS Department of Schools and Community Relations.

55. Advertising and Use of Proprietary Marks or Logos

CMA shall not use the name of APS or any authorized user or refer to APS or any authorized user, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS or such authorized user. In no event may CMA use a proprietary mark of APS or an authorized user without receiving the prior written consent of APS or the authorized user.

56. Extension of Contract Term

The Procurement Office, at its sole and absolute discretion, may extend the Contract Term or final Renewal Contract Term of the resultant Contract for a period of not more than six (6) months, unless specifically stated otherwise in the solicitation.

57. Student Data Usage and Privacy Agreement (Intentionally Deleted)

58. CMA Certification Regarding Criminal Convictions*

All contracts with APS, where the CMA or its employees, or its subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the CMA to certify that neither it nor any of its employees nor any of its subcontractors’ nor any of its subcontractors’ employees, who will have direct contact with students, have been:

- (1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,
- (2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:
 - (a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),
 - (b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,
 - (c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or
 - (d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

This requirement is applicable without exception for a person convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902, but for all other offenses set forth above this requirement does not apply unless the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of:

- (a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,
- (b) abduction with intent to extort money of for immoral purpose in violation of Va. Code Ann. § 18.2-48,
- (c) burglary in violation of Va. Code Ann. § 18.2-89,
- (d) entering a dwelling house with intent to commit murder, rape, robbery, or arson in violation of Va. Code Ann. § 18.2-90,
- (e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or
- (f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

The CMA certification covers its employees, its subcontractors, and the employees thereof. (Submit completed Appendix A).

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

59. Cooperative Contract for Use by Other Public Bodies (Intentionally Deleted)

60. CMA Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor*

As a condition of awarding a Contract, or Contract Renewal, the CMA acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the CMA knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

61. CMA Selection and Award of Individual Projects

APS may award a Project to any selected CMA. It is the intent of APS to allocate Projects in an approximately equal rotation among all CMAs. Selection of the CMA and award of a Project will, however, be based on the following criteria as applicable to the Project:

- a. Location of Work and the type of Work being performed.
- b. Evaluation of past and current performance on a project size, manpower availability, construction management challenges, responsiveness, performance or capabilities, and design management requirements.
- c. Balancing of Projects dollar volume among CMAs.
- d. Price, as it relates to APS' independent cost estimate or offer from any other contractor.
- e. Other appropriate criteria as deemed in the best interest of APS.

Appendix E

Non-Disclosure and Data Security Agreement

The undersigned, an authorized agent of the CMA and on behalf of McDonough Bolyard Peck, Inc. (d/b/a MBP)___ (CMA) hereby agree that the CMA 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 CMA for testing, support, conversion or other services provided under APS (the “Work” 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 CMA 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”).

CMA 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 Work. CMA 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 CMA 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 Work. CMA 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.

CMA agrees to take reasonably strict and prudent security measures and industry best practices 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 reasonably strict and prudent security and access control consistent with industry best practices. Any Information that is accessible will not leave the CMA’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, CMA is responsible for the security of such storage device or paper files.

CMA 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. CMA 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. CMA 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 Non-Disclosure and Data Security Agreement, the APS Contract, APS policy, CMA's security policies, or any other breach of Work protocols. The CMA will fully cooperate with the APS to regain possession of any Information and to prevent its further disclosure, use or dissemination. The CMA also agrees, if requested, to promptly notify others of a suspected or actual breach.

CMA agrees that all duties and obligations enumerated in this Non-Disclosure and Data Security Agreement also extend to its employees, agents or subcontractors who are given access to APS Information. Breach of any of the above conditions by CMA's employees, agents or subcontractors shall be treated as a breach by CMA. CMA 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 Non-Disclosure and Data Security 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 CMA has reasonably strict and prudent administrative safeguards, disaster recovery and industry 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 and/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 Work, CMA agrees to return all APS Information to the APS Project Officer. These obligations remain in full force and effect throughout the Work and shall survive any termination of the APS Contract.

Authorized Signature:



Printed Name and Title:

Michael Bagshaw, PE, CCM, LEED AP

Date:

09/29/2022