



REQUEST FOR PROPOSALS
RFP# 1088210
Construction Manager At-Risk (CMAR)
White Flint West Transportation
May 7, 2018

Montgomery County, Maryland is soliciting proposals for the provision of the above-referenced services as outlined in this document.

One original and 3 copies of your proposal must be submitted in a sealed envelope/package no later than 3:00 pm on June 6, 2018 to the Office of Procurement, Rockville Center, 255 Rockville Pike, Suite 180, Rockville, Maryland 20850-4166. The sealed proposal package must be clearly marked with the solicitation number and proposal due date and time.

There will be an optional pre-submission conference at 2:00pm on May 16, 2018 at Public Safety Head Quarters Building, 100 Edison Park Drive, 4th Floor, in Gaithersburg Maryland.

The County **will not** accept proposals it receives by fax or e-mail.

Should you have any questions regarding the technical information or the scope of services contained in this solicitation, contact Marcelo Cortez, Chief of Transportation Construction Section at (240) 777-2099.

Should you have any questions regarding procurement information (i.e., terms and conditions) contained in this solicitation, contact Bob Norris at (240) 777-7296.

(The Office of Procurement will check one of the boxes below to indicate whether this RFP is a services contract, a Construction Contract, or neither)

This is a Services Contract (see Section A, Services Contract):		X
<input type="checkbox"/>	Non-Professional Services	
<input checked="" type="checkbox"/>	Professional Services	

and

This is a Construction Contract http://www.montgomerycountymd.gov/PrevailingWage :	X
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or

This is not a Services Contract (disregard Section A, Services Contract) and is not a Construction Contract:	
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Director
Office of Procurement

RFP #1088210
Notice to Offerors

**Request for Proposals # 1088210
for
Construction Manager At-Risk (CMAR)**

This solicitation may be subject to the County's Wage Requirements Law (WRL), which applies to service contracts.

- If this solicitation is subject to the WRL, then the appropriate space will be marked in the box denoting "This is a Services Contract", at the bottom of the RFP cover page
 - In this event, the "Wage Requirements for Services Contract Addendum" will apply to the resultant contract (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
- 1) In order to be compliant with the Wage Requirements Law an Offeror **must submit with its proposal** the following:
- (a) Completed Wage Requirements Certification form (**This form is contained in the PMMD-177 Web-link above**).
 - (b) If applicable, 501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance form (**This form is contained in the PMMD-177 Web-link above**).

Offeror's failure to complete and submit the required material information on the Wage Requirements form(s) may result in offeror's proposal being unacceptable and rejected.

NOTE: You can find the current mandatory payroll reporting requirements, and the wage rate per hour that a County contractor must pay to its employees, under Section 11B-33A of the County Code, at (www.montgomerycountymd.gov/WRL). The WRL is available at the same website.

If there is a need for sign-language interpretation and/or other special accommodations, it is requested that at least five (5) days advanced notice be provided to the County's Office of Procurement contact on page 1.

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Web-links for Documents and Forms

1. Central Vendor Registration System (www.mcipcc.net)
2. Frequently Asked Questions, Procurement (www.montgomerycountymd.gov/PRO/Information.html)
3. MD-SDAT (<http://dat.maryland.gov/businesses/Pages/default.aspx>) and (<http://dat.maryland.gov/businesses/Pages/Frequently-Asked-Forfeiture-Questions.aspx>).
4. Mid-Atlantic Purchasing Team Rider Clause (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-147B.pdf)
5. Minority Business Program & Offeror's Representation and Sample MFD Report of Payments Received (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf) (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-97.pdf)
6. Minority, Female, Disabled Person Participation Evaluation Points: Requirements and Examples (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/MFDCriteria.pdf)
7. Minority, Female, Disabled Person Program Information (www.montgomerycountymd.gov/MFD)
8. Minority, Female, Disabled Person Subcontractor Performance Plan (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf)
9. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-91.pdf)
10. Offeror's Certification of Cost & Price for Contracts Above \$100,000 (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-92.pdf)
11. Prevailing Wage Requirements for Construction Contract Addendum (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-185.pdf)
12. Prevailing Wage Requirements Information (www.montgomerycountymd.gov/PrevailingWage)
13. Solicitation Postings and Amendments (www.montgomerycountymd.gov/pro/solicitations.html)
14. Wage Requirement Law Payroll Reporting (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-183.pdf)
15. Wage Requirements Certification Form and 501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
16. Wage Requirements for Services Contracts Addendum (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
17. Wage Requirements Law Information (www.montgomerycountymd.gov/PRO/DBRC/WWRL.html)

Montgomery County, Maryland Acknowledgment Page

1. ACKNOWLEDGMENT

The offeror must include a signed acknowledgment that all the provisions, terms and conditions of this solicitation are agreeable to the offeror and may, at the County's option, be made applicable in any contract issued as a result of this solicitation. Offers that do not include such an acknowledgment may be rejected. Executing and returning (with the offer) the acknowledgment shown below will satisfy this requirement.

The undersigned agrees that all the provisions, terms and conditions of this solicitation may, at the County's option, be made applicable in any contract issued as a result of this solicitation.

Business Firm's Legal Name
(printed): _____
Printed Name and Title of
Person Authorized to Sign
Proposal: _____

Signature: _____

Date: _____

2. NAME AND SIGNATURE REQUIREMENTS FOR PROPOSALS AND CONTRACTS

The correct and full legal business name of the offeror must be used in proposals received and on all contracts issued as a result of this solicitation. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different. Corporations must have names that comply with State law, which requires a suffix indicating the corporate status of the business (e.g. Inc., Incorporated, etc.). Trade names may be indicated by individuals or corporations with the individual or corporate name followed by "t/a" (trading as) or "d/b/a" (doing business as), respectively. The offeror's signature on the proposal, contract, amendment(s) or related correspondence, must conform to the following:

All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of this offer or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the offeror or contractor.

3. ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

The Offeror acknowledges receipt of the following amendment(s) to the solicitation:

Amendment Number

Date

4. SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES

The following provisions are applicable to this solicitation:

4.1. Instructions:

4.1.1. Registered Vendor

4.1.1.1. The first step in doing business with Montgomery County is to become a registered vendor in the on-line Central Vendor Registration System (CVRS). Go to the following website to register: (www.mcipcc.net)

4.1.2. Acknowledgement

4.1.2.1. The offeror must include the signed Acknowledgment page indicating agreement with all the provisions, terms and conditions of this solicitation.

4.1.3. Optional Pre-Submission Conference

4.1.3.1. If a Pre-Submission Conference is held, it is recommended that prospective offerors attend this pre-submission conference. For information regarding the date, time, and place of the conference, please [see page 1](#) of this solicitation.

4.1.4. Proposals

4.1.4.1. Sealed proposals are due in the Office of Procurement, Rockville Center, 255 Rockville Pike, Suite 180, Rockville, MD 20850 4166. Proposals must be returned in a sealed envelope/package that is clearly marked with the RFP number, the proposal due date and time, and the individual/company's name. Proposals received after the date and time specified will not be considered and will be returned unopened to the offeror. The County will not be responsible for a proposal that is improperly addressed or identified.

4.1.5. Proposal Withdrawal/Modification

4.1.5.1. Proposals may be withdrawn or modified by the offeror upon receipt of a written request received before the specified due date and due time. Requests to withdraw or modify an offeror's proposal received after the specified due date and time will not be considered.

4.1.6. Questions

4.1.6.1. All technical and non-technical questions pertaining to this solicitation are to be directed to the individuals whose names are indicated on Page 1 of this solicitation.

4.1.6.2. The Office of Procurement has an electronic "Frequently Asked Questions" section on its website that may answer your questions:
(www.montgomerycountymd.gov/pro/information.html?t=proFAQList&i=2)

4.1.7. Obtaining Solicitation Amendments

4.1.7.1. What are they?

When the County determines that material changes to the solicitation document or material information needs to be disseminated to Offerors it will issue a formal amendment to a solicitation. However, not all solicitations will need an amendment. Any information given to an offeror in response to a request will be furnished to all offerors as an amendment to this solicitation, if such information is deemed necessary for the preparation of solicitations, or if the lack of such information would be detrimental to the uninformed offerors. Such amendments only, when issued by the Director, Office of Procurement, will be considered as being binding on the County.

4.1.7.2. How do I identify if a solicitation has an amendment?

Solicitation amendments will be posted on the Solicitation Postings page (www.montgomerycountymd.gov/pro/solicitations.html) and may occur any time prior to the proposal due date and time. As a courtesy, the Office of Procurement may email solicitation amendments to holders of record with valid email addresses. However, it is the responsibility of the offeror to frequently visit the Office of Procurement's website to obtain solicitation amendments. Amendments to construction solicitations may be mailed if there are plans or other documents that cannot be made available electronically.

4.1.7.3. What am I required to do for the Amendment?

An Offeror must send its acknowledgement of receipt of a solicitation amendment to the place designated in the solicitation amendment, and prior to the hour and date specified in the solicitation (as amended) for receipt of offers. This can be easily done in at least **one** of the following ways:

- 4.1.7.3.1. By filling-in the "Amendment Number" and "Date" of the amendment(s) on page 4 under the Acknowledgment of Solicitation Amendments title; or
- 4.1.7.3.2. By returning one signed copy of the amendment with the Offeror's response to the solicitation; or
- 4.1.7.3.3. By sending a signed copy of the amendment separately to the Office of Procurement

4.1.8. Maryland State Department of Assessments & Taxation (MD-SDAT)

- 4.1.8.1. Vendors doing business in the State of Maryland are required to be in 'Good Standing' with MD-SDAT; this may not be applicable for individuals, sole proprietorships or partnerships.
- 4.1.8.2. The County will require, if applicable, a copy of a Certificate of Good Standing from SDAT prior to entering in to a contact with your firm.
- 4.1.8.3. The County will verify this status on the MD-SDAT website.
- 4.1.8.4. If your firm has a 'Forfeit' status from MD-SDAT the County cannot enter into a contract with your firm until this status has been rectified with the MD-SDAT.
- 4.1.8.5. If this status is not rectified in a timely manner with MD-SDAT, then your firm maybe declared non-responsible and your proposal will be rejected.
- 4.1.8.6. Information can be found at: (<http://dat.maryland.gov/businesses/Pages/default.aspx>) and (<http://dat.maryland.gov/businesses/Pages/Frequently-Asked-Forfeiture-Questions.aspx>).

4.2. Conditions

4.2.1. Acceptance Time

- 4.2.1.1. By submission of a proposal under this solicitation, the offeror agrees that County has 180 days after the due date in order to accept the proposal. The County reserves the right to reject, as unacceptable, any offer that specifies less than 180 days of acceptance time. Upon mutual agreement between the County and the offeror, the acceptance time for the offeror's proposal may be extended.

4.2.2. Contract Documents

The following documents will be incorporated into the contract resulting from this solicitation:

- 4.2.2.1. General Conditions of Contract between County & Contractor (Section J)
- 4.2.2.2. Minority-owned Business Addendum to the General Conditions of Contract between County & Contractor and its companion document entitled, "Minority, Female, Disabled Person Subcontractor Performance Plan".
(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-91.pdf)
- 4.2.2.3. Offeror's Certification of Cost & Price (for contracts above \$100,000.)
(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-92.pdf)

- 4.2.2.4. Wage Requirements Law (WRL) for Services Addendum to the General Conditions of Contract between the County and Contractor and its companion documents entitled, "Wage Requirements Certification", and "501(c)(3) Non-profit Organization's Employee's Wage and Health Insurance Form".
(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
- 4.2.2.5. All representations and certifications listed in this document.
- 4.2.2.6. Mandatory Insurance Requirements.
- 4.2.2.7. Prevailing Wage Requirements (only for a construction contract between the County and Contractor).
(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-185.pdf)
- 4.2.3. Determination of Responsibility
 - 4.2.3.1. The Offeror has the burden of demonstrating, affirmatively, its responsibility in connection with this solicitation. A debarred potential offeror must automatically be considered non-responsible in connection with this solicitation. The County reserves the right to consider an offeror non-responsible who has previously failed to perform properly or to complete contracts, in a timely manner, or if investigation shows the offeror is unable to perform the requirements of the contract. An offeror may be requested at any time by the Director, Office of Procurement or the Using Department to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of an offeror to furnish requested information may constitute grounds for a finding of non-responsibility of the prospective offeror.
 - 4.2.3.2. The Director may deny the award, renewal, or assignment of a contract to or for any offeror who is in default of payment of any money due the County.
 - 4.2.3.3. The factors that may be considered in connection with a determination of responsibility include, but are not limited to:
 - 4.2.3.3.1. The ability, capacity, organization, facilities, and skill of the offeror to perform the contract or provide the goods, services, or construction ("work") required.
 - 4.2.3.3.2. The ability of the offeror to perform the contract or provide the work within the time specified without delay, interruption or interference.
 - 4.2.3.3.3. The integrity, reputation and experience of the offeror and its key personnel.
 - 4.2.3.3.4. The quality of performance of previous contracts or work for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility.
 - 4.2.3.3.5. The offeror's previous and existing compliance with laws and ordinances relating to the contract or work.
 - 4.2.3.3.6. The sufficiency of financial resources of the offeror to perform the contract or provide the work.
 - 4.2.3.3.7. The certification of an appropriate accounting system, if required by the contract type.
 - 4.2.3.3.8. Past debarment or suspension by the County or other governmental entity.
- 4.2.4. Joint Procurement
 - 4.2.4.1. The following entities within Montgomery County must be able to purchase directly from any contract resulting from this Solicitation:
 - 4.2.4.1.1. Maryland-National Capital Park & Planning Commission (M-NCPPC);
 - 4.2.4.1.2. Montgomery College (MC);
 - 4.2.4.1.3. Montgomery County Public Schools (MCPS);
 - 4.2.4.1.4. Montgomery County Revenue Authority;

- 4.2.4.1.5. Montgomery County Housing Opportunities Commission (HOC);
- 4.2.4.1.6. Washington Suburban Sanitary Commission (WSSC); and
- 4.2.4.1.7. Municipalities & Special Tax Districts in Montgomery County.
- 4.2.4.2. While this solicitation is prepared on behalf of Montgomery County, it is intended to apply for the benefit of the above-named entities as though they were expressly named throughout the document. Each of these entities may purchase from the successful offeror under the same prices and for the same work noted in the contract with Montgomery County, in accordance with each entity's respective laws and regulations. An entity may choose not to procure from the successful offeror at the entity's sole discretion. If one of the above-named entities elects to purchase under the contract, the price shall be determined by using unit costs and other pertinent costs that are provided in the offer or contract. Montgomery County shall not be held liable for any costs, payments, invoices, or damages incurred by the above jurisdictions. Each jurisdiction listed in this section will be solely responsible for and contract directly with the offeror under the jurisdiction's own procurement laws and regulations. ANY SPECIAL DISCOUNTS UNIQUE TO A PARTICULAR ENTITY (e.g. Montgomery County Public Schools educational discounts) SHOULD BE LISTED IN THE OFFER.
- 4.2.5. Late Proposals
 - 4.2.5.1. Proposals in response to this solicitation received after the due date and time specified in the solicitation are considered late and will not, under any circumstances, be considered for any award resulting from the Solicitation.
- 4.2.6. Minority, Female, Disabled Person Program Compliance
 - 4.2.6.1. Under County law, this solicitation is subject to the Montgomery County Code (Part II.Chapter 11B.Article XIV) and the Montgomery County Procurement Regulations (COMCOR 11B.00.01.07) regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
 - 4.2.6.2. Information regarding the County's MFD program can be found on the Office of Procurement website at: (www.montgomerycountymd.gov/MFD) Entitled "Minority-owned Business Addendum to the General Conditions of Contract between County and Contractor".
 - 4.2.6.3. The companion document entitled "Minority, Female, disabled Person Subcontractor Performance Plan" can be found on the Office of Procurement website at: (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf).
- 4.2.7. Montgomery County Code and Procurement Regulations
 - 4.2.7.1. The Montgomery County Code and the Montgomery County Procurement Regulations are applicable to this solicitation and any contract awarded pursuant to this solicitation.
- 4.2.8. Payment Terms
 - 4.2.8.1. The County's payment terms are net thirty (30) days.
 - 4.2.8.2. The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay

any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

4.2.9. Prevailing Wage (County Code Sections 11B-33-C and 20-75)

- 4.2.9.1. The Prevailing Wage Law applies to all construction contracts. Under County law, a County-financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements can be reviewed at: (www.montgomerycountymd.gov/PrevailingWage).
- 4.2.9.2. An aggrieved employee is a third-party beneficiary of this Contract and the employee may, by civil action, recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee.

4.2.10. Qualification of Offerors

- 4.2.10.1. Offerors may be required to furnish satisfactory evidence that they are qualified dealers or manufacturers of the items listed, or are regularly engaged in performing the services for which they are submitting a proposal, and that they maintain a regularly established place of business.
- 4.2.10.2. An authorized representative of the County may visit any prospective contractor's plant, place of business or place where the services are performed to determine ability, capacity, reliability, financial stability and other factor(s) necessary to perform the contract.
- 4.2.10.3. Upon the County's request, an offeror must submit information about its reputation, past performance, business and financial capability, and other factors to demonstrate that the offeror is capable of satisfying the County's needs and requirements for this solicitation.

4.2.11. Services Contract (County Code 11B-33A)

- 4.2.11.1. Under County law, a solicitation for a contractor to provide services is subject to the Montgomery County Code regarding compliance with certain wage requirements related to wage amounts that contractor must pay its employees. If an offeror fails to submit and complete the required material information on the **Wage Requirements Certification form**, its proposal may be deemed unacceptable and rejected under County law.
- 4.2.11.2. Information regarding the County's Wage Requirements Law (WRL) can be found on the Office of Procurement website at: (www.montgomerycountymd.gov/WRL). Contractor must comply with the "Wage Requirements Law (WRL) for Services Contracts Addendum to The General Conditions of Contract between County and Contractor", which can be found included with the **Wage Requirements Certification** form at the website below.
- 4.2.11.3. The companion document entitled "**Wage Requirements Certification**" form can be found on the Office of Procurement website at: (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf).

4.3. **Notices**

4.3.1. Proprietary & Confidential Information

- 4.3.1.1. This is to notify prospective offerors that the County has unlimited data rights regarding proposals submitted in response to its solicitations. "Unlimited data rights" means that Montgomery County has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display

publicly any information submitted by offerors in response to this or any solicitation issued by the County. However, information that is deemed to be confidential commercial or financial information, as defined by the Maryland Information Act (MPIA), Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601, will be exempted from disclosure if the offeror can show that release of such information would cause substantial competitive harm to the offeror.

- 4.3.1.2. It is the responsibility of the offeror to clearly identify each part of the offer that it believes is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with large boldface letters stating the words "confidential" or "proprietary." However, the County, by law, must apply the MPIA's requirements for public information disclosure deemed proprietary and confidential; therefore, even information marked as such by the Offeror may still require public disclosure.
- 4.3.1.3. The offeror agrees, with regard to any portion of the proposal that is not stamped as proprietary or confidential, that it expressly permits the County to deem it not to be proprietary or confidential, and to release the information to the public in accordance with the MPIA.
- 4.3.2. Protests
 - 4.3.2.1. Any Offeror who is aggrieved (see 4.3.2.5 below) may file a protest. Any Offeror who is aggrieved in connection with a formal solicitation must deliver a written protest to the Director, Office of Procurement: (a) within ten (10) days after the Director, Office of Procurement, publicly posts the proposed contract award, if the offeror seeks as a remedy the award of the contract or costs under Section 11B-36(h) of the Montgomery County Code, or (b) before the solicitation proposal submission due date and time, if the offeror seeks as a remedy the cancellation or amendment of the solicitation.
 - 4.3.2.2. Each protest must contain a protest filing fee in the amount of \$500 (US currency). If the fee is paid by check, the check must be made out to "Montgomery County Government".
 - 4.3.2.3. The Director, Office of Procurement, may return the filing fee to the protesting offeror, if the protest is sustained.
 - 4.3.2.4. The Director, Office of Procurement, must dismiss any protest not timely received.
 - 4.3.2.5. Only an offeror who is "aggrieved" may file a protest. "Aggrieved" means that the offeror who files the protest can demonstrate it may be eligible for an award of the contract if the protest is sustained.
 - 4.3.2.6. Each protest must contain the following:
 - 4.3.2.6.1. Identification of the solicitation;
 - 4.3.2.6.2. Offeror Name;
 - 4.3.2.6.3. Offeror Address;
 - 4.3.2.6.4. Offeror Email Address;
 - 4.3.2.6.5. Offeror Telephone Number;
 - 4.3.2.6.6. Statement supporting that the Offeror is aggrieved;
 - 4.3.2.6.7. Specification of all grounds for the protest;
 - 4.3.2.6.8. Submission of detailed facts and all relevant documents;
 - 4.3.2.6.9. Citation to relevant language in the solicitation, regulations, or law relied upon; and,
 - 4.3.2.6.10. All other matters which the Offeror contends support its protest
 - 4.3.2.7. The burden of production of all relevant evidence, data, and documents, and the burden of persuasion, to support the protest is on the offeror making the protest.

4.3.3. Public Posting

- 4.3.3.1. It is the responsibility of the offeror, per Section 3.2.2 of the Procurement Regulations, to keep informed of the current status of any proposed award for a contract in which the offeror is interested.
- 4.3.3.2. Of particular importance is the fact that the notice of a decision to make an award will be accomplished by a public posting of the proposed awardee(s).
- 4.3.3.3. Information regarding the proposed award under this solicitation, or any solicitation issued by the Montgomery County Office of Procurement, will be posted on Montgomery County's website at: (www.montgomerycountymd.gov/PRO/Awardee.html), and at the Office of Procurement, Rockville Center, 255 Rockville Pike, Ste. 180, Rockville, Maryland 20850.

4.3.4. Solicitation Preparation Expenses

- 4.3.4.1. All costs incurred in the preparation and submission of an offeror's proposal will be borne by the offeror and shall not be incurred in anticipation of receiving reimbursement from the County.

4.3.5. Tie Scoring

- 4.3.5.1. In case of a tie in the numerical Qualification and Selection Committee scoring, the tie will be resolved by offering the proposed contract to the offeror who has its principal place of business in Montgomery County, Maryland. If there is a tie between two or more offers, each of whom have its principal place of business in Montgomery County, Maryland, then the tie will be resolved in accordance with the criteria stated under Procurement Regulation 4.1.2.4(f); See Procurement Regulations at: (www.montgomerycountymd.gov/PRO/Laws.html)

4.3.6. Verbal Explanations

- 4.3.6.1. Verbal explanations or instructions given by a Montgomery County employee to an offeror in regard to this or any other solicitation will not be binding on the County.

END SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES

5. SECTION B - SCOPE OF SERVICES:

5.1. Introduction

The Montgomery County Department of Transportation (MCDOT) is seeking the services of qualified Contractors for a Construction Management at Risk (CMAR) contract as defined in the Code of Maryland Regulations (COMAR) 21.05.10.01. The contract will be procured using the "Request for Proposals" procurement method as defined in Procurement Regulation 4.1.2 and in accordance with Chapter 11B of the Montgomery County Code (COMCOR), Section 11B.00.01.04 "Source Selection Methods And Contract Types".

CMAR is a contracting method that involves the Contractor in the Design and Construction phases of a project. The intent is to form a partnership with the owner (MCDOT), the Designer working for MCDOT, and the Contractor.

The goals of partnership are to mitigate risk, improve the Construction schedule, streamline the design process, improve the decision making process with better information, and develop a project that adheres to the budget. An important role of the Contractor is to evaluate the constructability of the design plans to reduce risk in all phases with innovative approaches to meet budget goals. We anticipate the involvement of the Contractor will help reduce errors in design, improve the overall constructability of the project and support the Context Sensitive Solutions (CSS) process.

The Integrated Project Team (MCDOT, the Designer, and the Contractor) collaborate to deliver the project in less time, at a lower cost, and meet the project goals. The project team offers:

- Provision of information on Constructability, staging, and other Design input.
- The skills and knowledge to estimate the quantities of materials, labor, and equipment needed for Construction.
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the project and estimate costs, duration, and sequence of these tasks.
- An understanding of the availability, cost, and capacities of material, labor, and equipment.
- Experience with work in environmentally sensitive areas and experience with similar structure types under consideration for this project.
- The skills and knowledge to identify potential risks (including financial risks) and methods to mitigate them during the Design process.
- The skills to work collaboratively with MCDOT, the Designer, and the project stakeholders throughout the Design and Construction process.

A Contractor shall provide MCDOT with a preliminary cost estimating model for estimating project costs at various stages or for various scenarios. The accepted estimating model will serve as a basis for all Opinion of Probable Construction Cost (OPCC) estimates in the program and development of the Guaranteed Maximum Price (GMP) at agreed upon Design milestones.

During the Design process, the Contractor works collaboratively with the MCDOT Project Team and the Designer to:

- Implement the risk management strategy, develop and monitor a Risk register as needed.
- Continually update, at regular intervals, the project estimate and Construction schedule.
- Lead the development of an open cost model for the Independent Cost Estimator (ICE) so that assumptions, contingency, and approach to the estimate are similar.
- Develop and formulate a Subcontracting Plan to integrate Subcontractors, including local, small, minority and disadvantaged businesses, in the Construction phase.

- Participate in up to three formal reviews of the Design at designated Design milestones for each section, phase, or Construction package.
- Participate in risk assessment and mitigation workshops, if necessary, at agreed upon milestones.
- Provide up to three progressively refined Construction cost estimates at designated Design milestones for each section, phase, or Construction package.
- Continually provide informal input on Constructability, value analysis, and cost as requested.
- Provide open-book examination of an open cost model by MCDOT.
- Prepare GMP Proposals to MCDOT with appropriate backup documentation for all Construction, early work, and procurement packages.
- Develop, propose, and track innovations for project Construction.
- Coordinate with all project stakeholders in conjunction with MCDOT and the Designer. This will include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public.

If the Contractor is awarded the fixed price Construction services through a contract amendment, it must construct the project within the GMP and propose solutions that will achieve the goal of staying within the budget. If the project cannot be delivered within the GMP and budget, The County retains the right to end the contract and cancel the project or deliver the project by other Procurement methods. If the County chooses to deliver the project by other Procurement methods, the selected Contractor under this RFP will not be permitted to submit a bid/proposal.

Early Procurement* or Construction** work may be considered for acquisition of long lead items or to complete early Construction tasks that can be completed and turned over to another Contractor, should a GMP for final Construction not be agreed upon. Early utility or Construction work may be considered with the understanding that early phases are not a guarantee of selection for the final Construction. Early phases must be independent and severable from the final Construction package, with a well-defined end point. Construction will not begin until a GMP has been accepted for a substantially complete Plans, Specifications & Estimates (PS&E) package.

5.1.1 Contact Provisions, General Provisions, Terms and Conditions and Technical Requirements

All Construction work for this project shall be in accordance with the Montgomery County Road Code and Design Standards, and the Maryland Standard Specifications for Construction and Materials, dated May 2017, with project specific Special Provisions, the "standard" Special Provisions, the Special Provisions Inserts, and all provisions included in the RFP or a Book of General Provisions, Terms and Conditions and additional Specifications that will be developed at the PS&E stage. In addition, utility work will be performed in accordance with the respective utility company standards and specifications.

MFD goals, wage rates, and number of persons, if any, to be trained will be provided for all Construction phases prior to the submittal of any GMP.

5.1.2 Independent Cost Estimator (ICE)

MCDOT will hire an independent party to prepare a series of detailed estimates. These estimates will be performed independent of the Contractor and the County's Design team and will be used as a basis for cost comparison to the Opinion of Probable Construction Cost (OPCC) and the Guaranteed Maximum Price.

5.1.3 Opinion Probable Construction Cost (OPCC)

The Opinion of Probable Construction Cost (OPCC) is the actual Construction cost to the Contractor to build all aspects of a PS&E package. These are required at established milestones for each phase, procurement, or Construction package.

5.1.4 Guaranteed Maximum Price

The Guaranteed Maximum Price (GMP) is the total itemized dollar amount agreed upon between the Contractor and MCDOT for the Cost of Construction of the project excluding the fee for Preconstruction services. It shall include Construction Managers Fee, all permitting, Construction, labor, equipment and materials and all incidentals necessary to complete the Construction of this project.

The GMP amount that will be incorporated into the Construction contract amendment will be agreed to between MCDOT and the Contractor. A GMP is the sum of the Cost of Construction for a sufficient Plans, Specifications, and Estimates package. The Cost of Construction will be agreed upon with pay items and assumptions. Payment for the Construction of the project will be paid through an agreed upon work breakdown structure.

MCDOT anticipates initiating GMPs based on 80% or greater complete contract documents (including all elements of the project) and intends to establish a GMP after all utility designs have been completed. Multiple sections, phases, or Construction package GMPs may be developed and accepted during the Design and Construction phases of this project. MCDOT reserves the right not to award any parts(s) or all of the Construction Services, and bid/award some or all of the Construction work separately. The selected proposer shall deliver to MCDOT a proposed GMP and GMP Supporting Documents at any appropriate milestones identified at the Project Scoping Workshop for an appropriate Long Lead Time Procurement (LLTP) or Construction phase.

Except for change orders approved by the County, a GMP will not be increased. The Contractor assumes all risk with performance of the work, including management of its Subcontractors, suppliers, and any associated cost impacts over and above a GMP.

A GMP proposal can be offered up to three times for any phase or Construction package. After the third and final attempt at a GMP acceptance, if the County and the Contractor cannot agree to a GMP, the CMAR contract will automatically expire and the County will procure the construction by some other procurement method.

5.1.5 Construction Managers Fee

Construction Manager's Fee is defined as the sum included to compensate Construction Manager for profit, general and administrative costs, regional and home office overhead, and other indirect costs. No other cost will be allowed. The Construction Manager's Fee shall be paid monthly at the rate established in the Owner-Construction Manager Agreement as a Lump sum item and shall be included in the GMP.

5.2 Scope of this RFP for CMAR Services Selection

This Request for Proposals procurement method is a process which includes a Technical Proposal and a Price Proposal. The County is seeking responses to this RFP from Contractors who are

qualified and prepared in all respects to undertake the Preconstruction services and Construction of this project.

MCDOT is soliciting written Technical Proposals and Price Proposals from qualified general Contractors to provide services for, but not limited to:

- Review all as-builts, conceptual Design, and site conditions.
- Attend the Project Scoping/Partnering Workshop, Project Team Meetings, Milestone Meetings, Long Lead Time Procurement (LLTP) GMP or Construction GMP reconciliation meetings with the Project team as necessary.
- Formulate and evaluate alternative designs, systems, and materials. Provide input on accelerated Construction techniques.
- Provide Constructability input into the construction sequence and structure types.
- Provide cost estimates of the alternatives to be evaluated that shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. The Contractor shall develop the OPCC on the designs prepared by the Designer at the completion of any agreed upon Milestone.
- Evaluate the alternatives on the basis of costs, Construction schedules, availability of labor, equipment, and materials, and Construction feasibility in the form of Constructability Reports.
- Prepare written procurement reviews for materials that could be procured by MCDOT or the Contractor ahead of any Construction Phase.
- Prepare written reports at the end of any Design Milestone summarizing the Value Analysis activities accomplished and any recommendations developed within each phase. If OPCCs and/or prices received for the Work contained in any Work Package cause the anticipated cost of the Work to exceed the then current OPCC, any LLTP GMP, or any Construction GMP, the Contractor shall, at no additional cost to the County provide additional Value Analysis services in conjunction with any and all appropriate items in the OPCC, any LLTP GMP, or any Construction GMP for the Work.
- Lead Value Analysis workshop(s) at agreed upon Milestones to coordinate estimating tasks, bring multidiscipline cost/Construction experts to evaluate alternative designs, systems, and materials. This work includes the submittal and ongoing evaluation of Value Analysis Proposals, if required.
- Develop and document a Contracting Plan to meet MFD contract goals on all Construction phases.
- Prepare preliminary Construction schedules and phasing alternatives.
- **RISK MANAGEMENT PLAN:** Collaborate with the Project Team to develop a Risk Management Plan, perform risk assessments, and prepare and update a Risk Register. A sample Risk Register is as follows:

Risk or Innovation Description	Probable Cost Savings of Risk Mitigation	Probability of Occurrence	Cost Savings to Project (Probable Cost saving versus Probability of Occurrence)	Schedule Impacts to Project (Days)	Summary of Implementation or Mitigation/ Elimination plan

- Collaborate with the Project Team to develop a Risk Management Plan, perform risk assessments, and prepare and update a Risk Register.
- Collaborate with the Project Team to develop an Innovation Tracking and Performance Report.
- Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.

- Coordinate with MCDOT and the Designer throughout the Preconstruction phase through a combination of on-site meetings, Design meetings, conference calls, and workshops.
- Participate with MCDOT and the Designer in the Stakeholder outreach program. This will include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public.

5.3 **Scope of Work**

This solicitation is intended to receive and review technical and price proposals, and select a successful contractor through a competitive selection process for the construction of the White Flint West transportation project, Phase 2.

The White Flint West transportation project is located adjacent to the City of Rockville in Montgomery County. The project was developed in April, 2010 as the Montgomery County Council approved the White Flint Sector Plan, which included several transportation improvements that would be provided by both the County and the individual developers. The results of a sector plan traffic impact study, which included redeveloped land in the White Flint sector, called for the realignment of multiple existing roadways and construction of new roadways to improve traffic flow and access to residences and businesses, as well as improve safety and pedestrian/bicycle circulation.

The White Flint West project consists of the removal of existing Executive Boulevard west of Old Georgetown Road, the addition of Banneker Avenue and Grand Park Avenue, reconfiguration of the MD 187 (Old Georgetown Road) and Executive Boulevard intersection, and extension of Towne Road from Montrose Parkway to the Old Georgetown Road intersection. The reconfiguration of the Old Georgetown Road and Executive Boulevard Intersection required land acquisition from the adjacent businesses. The existing curved alignment of the Old Georgetown Rd/Executive Blvd intersection will be removed in favor of a standard 90-degree intersection. With the addition of Banneker Avenue, a new non-signalized intersection will be created along MD 187 (Old Georgetown Road). The project also includes the reconstruction or relocation of major aerial and underground utilities in multiple phases.

Phase 1, which is currently under construction, includes the portion of Banneker Avenue east of existing Executive Boulevard and the portion of Grand Park Avenue south of Banneker Avenue. Phase 1A, which has been completed, involved construction of the portions of Banneker Avenue and Grand Park Avenue that lie within the North Bethesda Conference Center property, including underground utility relocations. Phase 1B is expected to start in Spring 2018 and includes the undergrounding of PEPCO and Verizon facilities and reconstruction of a section of Grand Park Avenue south of the North Bethesda Conference Center. Phase 1 was coordinated with the construction of a new parking garage for the North Bethesda Conference Center. Phase 1 represents only a fraction of the work that needs to be completed as part of the White Flint West transportation project efforts. The remainder of the roadway construction and utility relocation work (Phase 2) is scheduled to start in 2018 and be completed in FY21. This CMAR contract is one of the tools that MCDOT will use to ensure the timely delivery of the improvements proposed in the White Flint West transportation project.

5.3.1 **Project Goals**

The project is intended to address the following goals:

- Provide a roadway network for safe and efficient passage to new residences and businesses.
- Relocate utilities in an efficient manner with no disruption of service.
- Minimize impacts to the physical environment and provide an aesthetically pleasing and context sensitive project.

- Complete the project within the current construction timeframe and within the current budget.
- Facilitate a collaborative partnership with all members of the project team and stakeholders.

5.3.2 Key Project Issues

- Maintenance of Traffic (MOT) during phased construction: Minimization of lane closures and impacts to existing traffic while coordinating with utility companies will be paramount.
- Utility Coordination during phased construction: Utility relocation is extensive and will consist of the following:
 - (i) Pepco - realign poles along Old Georgetown Road, Towne Road, existing Executive Blvd. Underground power conduits to be relocated along Old Georgetown, Executive Blvd and Banneker Avenue.
 - (ii) Verizon and Comcast - underground service along Banneker Avenue to tie-in to Phase 1B overbuild manhole, and relocate conduits along Old Georgetown Road and Towne Road.
 - (iii) Washington Gas - relocate gas line in existing Executive Blvd and Old Georgetown Road. Construct tie-in to Phase 1A gas line along Banneker Avenue.
 - (iv) WSSC - relocation of water and sewer lines along Old Georgetown Road, Executive Blvd, Towne Road and Banneker Avenue.
 - (v) Verizon Business/MCI, Zayo – Relocation or accommodation of Fiber Optic Communication and data along Banneker Avenue, Old Georgetown Road, Executive Blvd and Towne Road.
- There are four site development projects constructed concurrently with the project.
 - (i) Gables property will be constructing residential/commercial buildings with access from Banneker Avenue and Grand Park Avenue.
 - (ii) Maryland Stadium Authority recently completed construction of a parking garage for the adjacent Marriot Hotel and North Bethesda Conference Center.
 - (iii) Federal Realty Investment Trust's ongoing construction of Pike & Rose Phase II located east of Towne Road and north of Old Georgetown Road.
 - (iv) The 6000 Executive Boulevard property owned by Guardian has a site redevelopment for the property located west of Old Georgetown Road and south of Executive Boulevard.
- Realignment of the Old Georgetown Road/Executive Blvd intersection will require land acquisition and a land transfer to relocate Executive Blvd.
- Coordination with Phase 1 and Phase 1B of Construction.

5.3.3 Schedule

Phase 1A of Construction has been completed. Phase 1B is expected to be completed in the Summer of 2018. Phase 2 construction is scheduled to begin in the Summer of 2018 and completed by the end of 2021. The County would like to meet or exceed this schedule if feasible and reasonable.

5.3.4 Budget/Quality

- Construct project within current MCDOT transportation budget
- Compliance with the environmental document, re-evaluation, and all permits
- Provide safe and efficient maintenance of traffic and minimize impacts to traveling public

5.3.5 Key Stakeholders

- Montgomery County Government
- Maryland Department of Transportation/State Highway Administration (MDOT/SHA)

- M-NCPPC – owner/operator of the Kennedy Shriver Aquatic Center and Wall Park located west of Grand Park Avenue, east of Old Georgetown Road and north of Nicholson Lane.
- Maryland Stadium Authority and Marriott Hotels – owners and operators of the North Bethesda Conference Center and new parking structure.
- Gables Residential – owner developer of property west of Grand Park Avenue, east of Old Georgetown Road and south of Banneker Avenue.
- Guardian Realty – owner and developer of 6000 Executive Boulevard, west of Old Georgetown Road and south of Executive Boulevard
- Federal Realty Investment Trust – owner and developer for Pike and Rose development property located north of Old Georgetown Road and east of Towne Road.
- Wilco property – owner of development located west of Towne Road between Montrose Parkway to the north and Executive Boulevard to the south.
- Friends of White Flint – organization of residents, civic associations, businesses and developers
- Adjacent businesses
- Adjacent residential communities

5.3.6 Contractor's Responsibility

In the pre-construction phase, the Contractor is considered part of the Design team. As part of the Design team, the following services will be provided by the Contractor during the Preconstruction phase:

- Attendance and participation in design workshops
- Project site visit and inspection
- Identify project risks and mitigation measures
- Develop project construction schedule and tasks
- Analysis of project and intermediate phasing
- Determine possible early delivery and long lead time items
- Attendance in monthly partnering progress meetings, milestone meetings, and stakeholder meetings
- Providing progress reports on a monthly basis
- Participation in coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners
- Development of project innovations
- Development of Construction cost model and attendance in review meetings
- Develop and calculate quantities
- Develop MFD and Subcontractor plan
- Constructability reviews and reports at milestones
- Provide input on materials availability
- Develop Construction phasing plan
- Value Analysis Proposals
- Cost savings reviews
- Develop, update, and revise preliminary construction schedule.
- Develop OPPC estimates at each milestone and attend reconciliation meetings
- Notify County at what point GMP proposals can be prepared
- Prepare and submit GMP proposals with cost models and assumptions

5.3.7 County's Responsibility

The following services will be provided by the County during the Preconstruction phase:

- Scheduling, facilitation, attendance and participation in initial workshop
- Identify project risks and mitigation measures

- Environmental Document preparation
- Develop overall project schedule and tasks
- Identify Design criteria and provide Design services
- Analysis of project and Construction phasing including determination of acceptability of severable Construction packages
- Scheduling and facilitating monthly partnering progress meetings, milestone meetings, and stakeholder meetings
- Project management services
- Lead coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners. Identify Construction requirements
- Development of project innovations
- Provide Construction plans and specifications
- Develop and calculate independent quantities and independent construction cost estimates
- Develop Construction phasing plan
- Cost savings reviews
- Provide input into preliminary Construction schedule
- Acquisition of Environmental Permits, Access Permit, and Adjacent Construction Permits
- Acquisition of Right-of-Way
- Review Construction GMP proposals
- Reconcile Final GMP for each phase

5.3.8 RFP Package

The County has provided the below pertinent documents. Copies of these documents may be obtained through the county website (<http://www.montgomerycountymd.gov/pro/contract.html>):

1. Copy of the RFP
2. Copy of the current design plans
3. Copy of utility design plans
4. Copy of the Traffic Impact Study
5. Copy of Environmental Assessment Report
6. Displays

5.4 **CMAR Process for Construction**

A. Preconstruction Services During Design Phase

The selected Contractor will be awarded a Preconstruction contract, prepared by and administered by Montgomery County. The cost of the Preconstruction contract will be based upon the CMAR Preconstruction Fee submitted as part of the Price Proposal as defined in Section E – Price Proposal of this RFP. The requirements for the Scope of Work of the Preconstruction contract are outlined in Section B – Scope of Services of this RFP.

B. Contractor Submits Price for Project (*Early Procurement)

The Contractor may be asked to procure long lead materials that may be in short supply or require longer than desired lead times from purchase to delivery. Montgomery County may also procure through the Contractor additional services such as pavement cores or other investigations to facilitate the Design. Montgomery County may choose to exercise this option if the early procurement saves significant Construction time, money, or avoids potential delays once the project begins.

If Montgomery County elects to use this early procurement option, it proceeds as follows:

- The Contractor shall prepare a price to supply the long lead item(s), including all other costs associated with the early procurement option (such as transportation, storage, etc.). This price is only for purchased items and should not include mobilization for Construction or other unrelated costs. If authorized by the County, the cost of additional services directly related to the item will be included.
- Montgomery County will secure an independent cost estimate for the item(s). Montgomery County will determine the acceptability of the price and tolerance. For each item, Montgomery County will evaluate if the GMP, Engineer's Estimate, and the Independent Cost Estimator (ICE) were within acceptable tolerance.
- Montgomery County will review the pricing submitted by the contractor to determine acceptability of prices. If prices, tolerances and risk issues are not acceptable the County and contractor can enter into price and risk negotiations. If a resolution can be attained with both parties on price and risk a best and final price may be requested from the vendor. If negotiations are not successful, the County has the option to accept the offered price; to procure the items later as part of the GMP process for the Construction project; or by some other procurement method.
- The Construction contract amendment is prepared and executed to cover only the defined Early Procurement services.

C. Contractor Submits Price for Project (**Early Construction Package)

If time and/or money can be saved by allowing the Contractor to start initial work prior to the completion of the total Design package, Montgomery County may ask the Contractor to prepare a lump sum or unit cost price for all or a portion of the work.

If Montgomery County elects to use this early construction contracting option, it proceeds as follows:

- Montgomery County and the Contractor will agree upon a scope of work to accomplish this early construction phase of the contract. The agreement may take the form of a set of plans. Both parties must agree that the scope of work is clear and unambiguous.
- If the prices are acceptable, Montgomery County will prepare and execute a Construction contract amendment for this early construction work.
- If the prices are not acceptable, Montgomery County may enter into a process of risk identification with the contractor that identifies price differences between the Contractor and the Independent Cost Estimate. Following the resolution of these risk issues, the work may be re-priced up to two more times. The County has the option to accept the revised price or the CMAR Contract will automatically expire, and the County will procure the Construction project by some other procurement method.

D. Contractor Submits GMP Price for Project (Design is Complete)

When Montgomery County, the Designer, and the Contractor agree that the project has been designed to a sufficient level of detail to allow the Contractor to accurately price the project, the following procedure will be used:

- The Designer will produce a set of plans and specifications showing all work to be accomplished. The plans will also show all work accomplished under any previous Early Construction packages.
- The Contractor will prepare a price to perform the work shown in the design. The price will be based on the estimating model and the most recent OPCC for the agreed scope of work.
- The Contractor will submit a sealed price to Montgomery County. Montgomery County will secure an independent cost estimate for the work. Upon opening the Contractor's price, Montgomery County will determine the acceptability of the price by comparing it to state averages, similar projects, the independent cost estimate and the engineer's estimate. For each item, the team will evaluate if the GMP, Engineer's Estimate, and the ICE were within acceptable tolerance.
- Montgomery County personnel reviewing these costs may include: the Project Manager, members of the Design team and estimating consultant. If the prices are acceptable, Montgomery County will prepare and execute a Construction contract amendment for the final construction project with a GMP. If the prices are not acceptable, Montgomery County will enter into a process of risk identification with the contractor that identifies price differences between the Contractor and the Independent Cost Estimate. Following the resolution of these risk issues, the project will be re-priced up to two more times. The County has the option to accept the revised price or the CMAR contract will automatically expire, and the County will procure the Construction Project by some other procurement method.

E. Contractor Builds Project

From this point forward, the work proceeds in the same manner as a Design-bid-build project as per the amended contract.

6. SECTION C - PERFORMANCE PERIOD

6.1. TERM

The effective date of this Contract begins upon the County's issuance of a Notice to Proceed and ends after a 3 year period or upon completion and acceptance of 07/01/2021 if a GMP cannot be negotiated successfully. Contractor must also perform all work in accordance with time periods stated in the Scope of Service

6.2 PRICE ADJUSTMENTS

Price quoted for pre-construction phase fee are firm for a period of two years after execution of the contract. Any request for a price adjustment for the pre-construction phase fee after this two-year period is subject to the following:

- 6.2.1. Approval or rejection by the Director, Office of Procurement or designee
- 6.2.2. Submission in writing to the Director, Office of Procurement and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the contractor submits to the County sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/services under the contract.
- 6.2.3. Submission within sixty (60) days prior to contract expiration date, if the contract is being amended.
- 6.2.4. The County will not approve a price adjustment request that exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately

prior to the date of the request. The request must be based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS.

- 6.2.5. The County will approve only one price adjustment for each contract term, if a price adjustment is approved.
- 6.2.6. The price adjustment, including its effective date, must be incorporated into a written contract amendment.

7 SECTION D - METHOD OF AWARD/EVALUATION CRITERIA

7.1 PROCEDURES

- 7.1.1. Upon receipt of all of the timely-submitted Proposals, the Qualification and Selection Committee (QSC) will review and evaluate all Proposals in accordance with the written evaluation criteria listed below under "7.2. Evaluation Criteria".
- 7.1.2. Vendor Interviews will be conducted with three highest scoring Proposers based on the QSC's score for each written Proposal. The interview criteria that will be utilized are listed below under "7.2. Evaluation Criteria". The QSC will also review an offeror for responsibility.
- 7.1.3. The QSC will make its award recommendation of the highest ranked offeror based on the QSC's combined written and interview scores and its responsibility determination.
- 7.1.4. The using department head will review and forward the QSC recommendations with concurrence, objection, or amendment to the Director, Office of Procurement.
- 7.1.5. The Director, Office of Procurement may approve, approve with conditions, or reject the using department heads recommendations.
- 7.1.6. Upon approval of a recommended award to a proposed awardee(s), by the Director, Office of Procurement, the County will enter into negotiations with the proposed awardee(s). If a contract cannot be successfully negotiated with the proposed awardee(s), the Using Department will proceed to negotiations with the next highest ranked offeror after obtaining approval from the Director. If the Director approves, negotiations may be held simultaneously or successively with one or more offerors prior to making an award.
- 7.1.7. After the successful conclusion of negotiations, the Director will publicly post the name(s) of the proposed awardee(s).
- 7.1.8. The County reserves the right to cancel the solicitation. The solicitation cancellation will be publicly posted.

7.2 EVALUATION CRITERIA

Note: Category 1. General Requirements – Tabs 1.1 thru 1.6 are listed in the evaluation criteria as information required in the Proposals part of the Method of Award and will not be scored. A PASS / FAIL score will be utilized for the required information of this section. NA = Non-Applicable. Any score of Fail except 1.6, will deem the proposal unacceptable and be removed from further consideration.

		Structure of the Proposals	Written Evaluation		Interview Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points	Criteria	Points
1. GENERAL REQUIREMENTS (PASS / FAIL)	1.1	<u>Cover letter</u> (Limit 2 pages) -Signed by entity that will be signatory to the contract. - Limit 2 pages. Must be 8.5"x11 or 11"x17" (graphic), 12pt font either Arial or Times New Roman, and ½" side margins and 1" top/bottom margins.	Verify submittal of the cover letter. Verify signature.	Required	NA	0
	1.2	Provide names and the roles of all participants.	Names and roles have been provided.	Required	NA	0
	1.3	Identify single point of contact for the contractor with address, phone number, cell phone number, and email address.	Verify point of contact	Required	NA	0
	1.4	Include declaration each Participant's company(s) are prepared to provide necessary final, material, equipment, labor and staff resources to perform the project and the information therein is true and accurate.	Verify declaration	Required	NA	0
	1.5	Include insurance certificate.	Verify certificate.	Required	NA	0
	1.6	<u>Forms</u> 1. Minority Business Program and proposers Representation form. 2. This RFP is subject to the Wage Requirements Law and the Proposer must submit the appropriate Wage Requirements forms attached to the RFP.	Verify submitted forms.	Required	NA	0

2. PROJECT TEAM	2.1	<p>Provide complete resumes of key team members proposed for this project. Resumes shall include education, employment history, and specific experience on work relevant to this contract.</p> <p>Provide qualifications and experience of the key team members on projects similar to the type and complexity and cost of the project.</p> <p>Provide an Organizational Chart to clearly define the structure of the project team.</p> <p>(Limit to 15 Pages for Section 2)</p>	<p>Qualifications of Proposer's key team members and any proposed consultants including but not limited to principals in charge and project managers.</p> <p>Qualifications and experience of the key team members on projects similar to the type, complexity and cost of the project. Verify complete resumes were provided for all disciplines and consultants.</p> <p>Proposer's key team members have experience working together successfully and have involvement in example projects.</p>	10	<p>Presentation of qualifications of proposed key team members. Demonstration that these individuals have worked together successfully to complete example projects and possess necessary skills to successfully manage and complete the project based on their participation on projects of similar type, complexity, and cost. Key team members who will actually do the work must attend and participate in the presentation.</p>	10
	2.2	<p>Provide detailed description of three (3) projects performed by the Participant team similar to this project. Each project should be presented with relevant data including but not limited to: implementation, date designed, date construction completed, client contact/reference, construction budget and cost, and other relevant information.</p>	<p>Expertise of the Proposer's team in the development, design, management and construction of similar projects. Success in providing the services in a reasonable time period and budget.</p>	10	<p>Presentation of the three similar projects. This will be a mechanism to verify Proposer's approach and methodology.</p>	10
3. PROJECT APPROACH (Limit 15 pages) for Section)	3.1 PRECONSTRUCTION PHASE	3.1.1. Project Goals	<p>Discussion on project's goals and the proposers approach to maximizing and attaining the project goals. Clarity and specificity to meet or exceed goals.</p>	5	<p>Presentation of project's goals and the proposers approach to maximizing and attaining the project goals.</p>	20
		3.1.2. Design Review	<p>Clarity and specificity on approach to design review to reduce errors and omissions, improve constructability, and reduce cost of construction.</p>	5	<p>Presentation of approach to design review to reduce errors and omissions, improve constructability, and</p>	

					reduce cost of construction.	
		3.1.3. Concurrent Projects Coordination	Discuss approach to coordinating with project stakeholders, adjacent concurrent projects and Phase 1 of Construction.	5	Presentation of approach to coordinating with project stakeholders, adjacent concurrent projects and Phase 1 of construction.	
		3.1.4. Proposed Technical Concept	Discuss innovative concepts to design and/or construction to meet the project goals and reduce cost and duration of construction. Applicability to the context of the project (i.e. within project goals)	5	Presentation of innovative concepts to design and/or construction to meet the project goals and reduce cost and schedule.	
	3.2 CONSTRUCTION PHASE	3.2.1 Construction Sequence. Provide three (3) project examples and demonstrate how Proposer met the project schedule requirements. Propose a construction sequence to optimize value to the project from a budget and a schedule perspective	Propose a construction sequence to optimize value to the project from a budget and a schedule perspective. Be precise and clear.	20	Presentation of construction sequencing to optimize value to the project.	40
		3.2.2 Contracting Method	Discuss contracting method including self-performance and subcontracting, and how the chosen approach will help construction sequencing and MOT.	5	Presentation of contracting method	
		3.2.3 Utility Coordination	Discuss utility coordination with utility companies, and relocation process and approach for the project.	10	Presentation of utility coordination	
		3.2.4 Stakeholder Involvement	Discuss approach to stakeholder involvement and management during construction	5	Presentation of stakeholder involvement during construction	

	3.3 RISK AND INNOVATIVE MANAGEMENT		<p>CMAR is intended to reduce risk and apply innovations while reducing cost of construction.</p> <p>1. Discuss the process you will use to achieve this goal during the Preconstruction Phase.</p> <p>2. Discuss how you plan to track and report risk mitigation and innovative savings.</p> <p>Propose a table that provides: risk or innovative description; possible cost savings; probability of occurrence; schedule impact; and summary of mitigation or implementation plan.</p>	<p>Discuss the approach to CMAR and how the risk can be reduced and the innovative concepts can be advanced</p> <p>Clarity of the risk / innovative approach table and identification of risks during construction.</p> <p>Applicability of the approach to the project goal in general.</p>	15	<p>Presentation of the approach to CMAR and how the risk can be reduced and the innovative concepts can be advanced.</p>	15
	4. BUDGET & FINANCIAL	4.1	<p>Bonding Capability – Provide the contractor is capable of obtaining a Performance Bond and a Payment Bond in accordance with Procurement regulations.</p>	<p>Provide documentation of commitment to project and ability to bond.</p>	5	<p>Present bonding capability.</p>	5
		4.2	<p>Proposer's approach, methodology, and capability of generating a Guaranteed Maximum Price. Provide three (3) project examples and demonstrate how Proposer met the project budget requirements.</p>	<p>Demonstrated ability to construct within Guaranteed Maximum Price. Present Proposer's methodology and past experience in delivering projects to budget. (within the GMP and time) or if not what was the cause and how close to the GMP?</p>	10	<p>Demonstrated ability to construct within Guaranteed Maximum Price. Present your methodology and past experience in delivering projects to budget.</p>	10
	5. Approach to MFD requirements	5.1	<p>Provide MFD Plan as stated in Section 4.2.2 of this RFP.</p>	<p>Discuss MFD Plan utilizing Montgomery County MFD Forms provided in link in Section 4.2.2*</p>	15	<p>Discuss MFD Plan in interview process.*</p>	15

6. Price Proposal (Separate sealed Proposal)	6.1	Total Itemized cost for items 1-15 in Attachment E, Page E1	The Contractor's proposed price for these items compared to the County's Engineer's Estimate for these items	10	Discussion of the approach as to how these prices were developed	10
	6.2	CMAR Pre-Construction Phase Fee and CMAR Management Fee, Attachment D, Page D1	The Contractor's proposed CMAR Pre-Construction Phase Fee and CMAR Management Fee compared to the County's estimate	15	Discussion of the approach as to how these fees were developed	15
Total			Highest possible QSC score for written Proposal evaluation.	150	Highest possible QSC score for interview evaluation.	150

*MFD Participation Requirements and Examples: (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/MFDCriteria.pdf)

8 SECTION E - PRICE PROPOSAL

The sealed Price Proposal has two sections:

A. CMAR Preconstruction Fee

The proposer shall price Preconstruction Phase services for the scope of work as defined in the RFP. Pricing shall be a lump sum and shall be inclusive of all costs and all fees, profit, and overhead. The fee only applies to Preconstruction phase services.

B. CMAR Management Fee Percentage

The Proposer shall state their CMAR Management Fee, identified as a percentage, which will be applied to all Construction Phases. The CMAR Management Fee Percentage shall include all profit, general and administrative cost, regional and home office overhead, and other indirect costs. The CMAR Management Fee Percentage shall not change regardless of the final amount of any GMP for Early Construction or Construction Phases. A separate breakdown of the CMAR Management Fee Percentage will be provided by the proposer showing the breakdown of all components used in establishing the percentage. The intent of the CMAR Management Fee Percentage is to define the cost and level of effort for the Contractor to deliver the project within the GMP. The CMAR Management Fee Percentage shall exclude all Proposer costs and risk related to the performance of the construction work. Risk will be priced into sub-contracted amounts and into self-performed work as part of the GMP.

8.1 SCORING

Use Price Form included in Attachment D. Price will be evaluated separately from the technical proposal. Cost of the project has been estimated at the mid-point of Cost Group 'H' from the State Highway Administration Standard Specifications for Construction and Materials dated May 2017 (Page 77).

9 SECTION F – SUBMISSIONS

9.1 PROPOSAL SUBMISSIONS

FAILURE OF AN OFFEROR TO SUBMIT ALL REQUIRED PROPOSAL SUBMISSIONS MAY RENDER ITS PROPOSAL UNACCEPTABLE AS DETERMINED BY THE DIRECTOR, OFFICE OF PROCUREMENT.

9.1.1 Offerors must submit one original and 3 copies of their proposal in the format below. Written proposals will be evaluated on only material that is submitted. The offeror must submit sufficient information to enable the QSC to evaluate the offeror's capabilities and experience. Proposals must include the following information (including labeled sections numbered as shown):

9.1.1.1 A cover letter with a brief description of the firm, including the offeror's name, address, telephone number, and email address.

9.1.1.2 The completed Acknowledgment page of this solicitation, signed by a person authorized to bind the offeror to the proposal.

9.1.1.3 At least three references that may be contacted to attest to the quality and timeliness of the offeror's work of similar nature and scope as that required by the County in this solicitation. ([see Attachment A](#)).

9.1.1.4 If this solicitation is subject to the Wage Requirements Law ([see page 1](#)), the offeror must submit the appropriate Wage Requirements Law forms found at: (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf).

Failure to submit and complete the required material information on the form(s) may cause the offeror's proposal to be unacceptable under County law, and the proposal may be rejected.

9.1.1.5 Mid-Atlantic Purchasing Team Rider Clause –

(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-147B.pdf).

9.1.1.6 Minority, Female, Disabled Persons Subcontractor Performance Plan

(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf).

To ensure a contract can move forward as a result of this solicitation, this plan must be submitted with the offeror's proposal. Note: Offerors who are seeking additional MFD participation evaluation scoring points (see Section D above and the requirements and examples at (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/MFDCriteria.pdf) MUST complete and submit this form with its proposal submission.

***The Purchasing Category Related to the MFD Participation Evaluation Factor for this solicitation is indicated on the front cover page.**

9.1.1.7 Minority Business Program and Offeror's Representation –

(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf) (see Sample of MFD Report of Payments Received

(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-97.pdf

9.1.1.8 Submittal items listed under Section D Table.

9.3 AWARD SUBMISSIONS

Prior to the execution of a contract, the following items must be submitted:

9.1.1 Minority, Female, Disabled Person Subcontractor Performance Plan (contract value greater than \$50,000) – (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf).

9.1.2 Offeror's Certification of Cost and Price (contract value greater than \$100,000) – (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-92.pdf).

9.1.3 Certificate of Insurance ([see mandatory insurance requirements](#)) - Attachment C.

9.1.3.1 The proposed contract awardee must provide the applicable insurance coverage, and all costs for this coverage must be calculated into offeror's proposal price.

9.1.3.2 These insurance requirements supersede those found in Provision #21 of the General Conditions between County and Contractor, and are applicable to any contract executed as a result of this solicitation.

9.1.4 If this solicitation is subject to the Wage Requirements Law ([see page 1](#)), then the offeror must submit a Certification of posting a Wage Requirements notice (see sample (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-164.pdf))

10 SECTION G - COMPENSATION

The contractor will be paid on a monthly basis, within 30 days after the County's receipt and acceptance of an invoice submitted by the contractor and in a form approved by the County.

11 SECTION H - CONTRACT ADMINISTRATOR10.1. AUTHORITY

The Director, Office of Procurement, is the delegated contracting officer. Therefore, the Director, Office of Procurement, must approve amendments, modifications, or changes to the terms, conditions, or minority, female, and disabled subcontractor plans in writing.

10.2. USING DEPARTMENT

The contract administrator's duties are defined in the General Conditions of Contract between County & Contractor, Section J, item #6

10.3. CONTRACT ADMINISTRATOR

The Contract Administrator for any contract resulting from this solicitation is: Bruce Johnston, PE
Chief, Division of Transportation Engineering, MCDOT, 240-777-7236

12 SECTION I – ETHICS

As a result of being awarded a contract resulting from this solicitation, the successful contractor may be ineligible for the award of related contracts. In this regard, Montgomery County Code Sections 11B-52 (b) and (c) state the following:

A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer:

- (a) Assist another party in the matter or another person if the person has a direct and substantial interest in the matter; or
- (b) Seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County.

13 SECTION J – CONTRACT TIME

The Contract Time for Preconstruction Services is expected to last up to 6 months from Notice To Proceed. This may include overlapping Preconstruction and Construction Phases, in the event the Contractor is awarded Construction Phase Services. Upon execution of the Contract Amendment for a Construction phase, the completion date of the overall contract will be amended to account for the Construction phase.

For the purpose of the Construction phase, the initial complete date of the contract will be February 10, 2020.

Any delay in awarding or the execution of the contract will not be considered a basis for a monetary claim, however, and extension of time may be considered by Montgomery County, if warranted.

14 SECTION K – PROPOSED PROCUREMENT SCHEDULE

Issue RFP	May 7, 2018
Final Date for Receipt of Proposer's Questions	May 29, 2018
Sealed Proposal Submittal to Procurement	June 6, 2018
Selection of Successful Proposer	July 3, 2018

15 SECTION L - GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who

may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

Montgomery County's Earned Sick and Safe Leave Law, found at Sections 27-76 through 27-82 of the County Code, became effective October 1, 2016. An employer doing business in the County, as defined under the statute, must comply with this law. This includes an employer vendor awarded a County contract. A vendor may obtain information regarding this law at <http://www.montgomerycountymd.gov/humanrights/>

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
- (7) prepare required reports;

- (8) approve or reject invoices for payment;
 - (9) recommend contract modifications or terminations to the Director, Office of Procurement;
 - (10) issue notices to proceed; and
 - (11) monitor and verify compliance with any MFD Performance Plan.
- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS, AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance,

termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code. In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or

demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the minimum insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. The minimum limits of coverage listed shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County, nor shall failure by the County to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Contractor must provide to the County at least 30 days written notice of a cancellation of, or a material change to, an insurance policy. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. After consultation with the Department of Finance, Division of Risk Management, the Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

Please disregard TABLE A. and TABLE B., if they are replaced by the insurance requirements as stated in an attachment to these General Conditions of Contract between County and Contractor.

TABLE A. - INSURANCE REQUIREMENTS
(See Paragraph #21 under the General Conditions of Contract between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by				
Accident (each)	100	100	100	See Attach.
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attach.
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See

each occurrence	300	500	1,000	Attach.
Property Damage				
each occurrence	300	300	300	
Professional Liability*	250	500	1,000	See
for errors, omissions				Attach.

and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000

Certificate Holder

Montgomery County Maryland (Contract #)
Office of Procurement
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*Professional services contracts only

TABLE B. - INSURANCE REQUIREMENTS
(See Paragraph #21 under the General Conditions of Contract between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attach.

Certificate Holder

Montgomery County Maryland (Contract #)
Office of Procurement
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B 33 and Section 27 19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENT AUTHORITY

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. P-CARD OR SUA PAYMENT METHODS

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account ("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

27. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

28. PROTECTION OF PERSONAL INFORMATION BY GOVERNMENT AGENCIES

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and

maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

29. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for

additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

30. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

31. TIME

Time is of the essence.

32. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

33. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

PMMD-45. Revised 03/01/2016

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

ATTACHMENT A**REFERENCES**

(submit at least three)

You are requested to provide references to the County with your proposal. The three (3) references must be from individuals or firms for whom work of a similar scope has been performed within the last three years. Names for references shall be of individuals who directly supervised or had direct knowledge of the services or goods provided.

NAME OF
FIRM:

ADDRESS:

CITY: _____ STATE: _____ ZIP: _____

CONTACT
PERSON:

PHONE: _____

EMAIL:

CELL PH _____

NAME OF
FIRM:

ADDRESS:

CITY: _____ STATE: _____ ZIP: _____

CONTACT
PERSON:

PHONE: _____

EMAIL:

CELL PH _____

NAME OF
FIRM:

ADDRESS:

CITY: _____ STATE: _____ ZIP: _____

CONTACT
PERSON:

PHONE: _____

EMAIL:

CELL PH _____

ATTACHMENT B

COST AND PRICE REQUIREMENTS

By submitting your proposal, offeror, if selected for negotiation, grants the Contracting Officer or an authorized representative the right to examine those books, records, documents and any other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award of a contract. The Montgomery County Government may utilize an independent contractor for cost and price analysis or to examine your books and records.

The Cost/price for any resultant contract will be negotiated on the basis of the successful offeror's normal estimating and/or accounting system or the system set forth in Cost Accounting Standards Board Disclosure Statement as required by Public Law 100-679.

Prior to contract execution, the proposed awardee may be required to provide the following information;

- A. Latest and previous year's financial statement or profit and loss statement.
- B. Burdened rate verification detailing the composition and value of the elements of Fringe Benefits, Overhead, General and Administrative Overhead, Profit or Fee.
- C. Offeror's Certification of Cost and Price information (the form on which to enter this information can be downloaded at (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-92.pdf)).

ATTACHMENT C

MANDATORY MINIMUM INSURANCE REQUIREMENTS

PHASE II – Pre-Construction

Construction Management at Risk (CMAR) WHITE FLINT WEST REDEVELOPMENT PROJECT (PHASE 2 of Project) (CIP# 501116/2000445) Hire a construction contractor/advisor that will provide a GMP (Guaranteed Maximum Price), Manage and control construction costs as to not exceed the GMP, assist MCDOT in preparing a constructible final design, mitigate risk, improve the Construction schedule

Prior to the execution of the contract by the County, the proposed contractor and their contractors (if requested by County) must obtain, at their own cost and expense, the following *minimum* (not maximum) insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of ***one million dollars (\$1,000,000), per occurrence***, for bodily injury, personal injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability Broad Form
- Premises and Operations
- Independent Contractors & Subcontractors
- Products and Completed Operations

Professional Liability (Errors and Omissions Liability)

The policy shall cover professional errors and omissions, negligent acts, misconduct or lack of ordinary skill during the period of contractual relationship and services rendered with the County with a limit of liability of at least:

Each Claim \$1,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limits

Bodily Injury by Disease - \$100,000 each employee

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, MD
Transportation Engineering / Marcelo Cortez
100 Edison Park Drive, 4th floor
Gaithersburg, MD 20878

MANDATORY MINIMUM INSURANCE REQUIREMENTS

Phase II – Construction - WHITE FLINT WEST REDEVELOPMENT PROJECT, PHASE 2 Construction, Stations, Implement Transit Signal Priority, Landscape Improvements, Sidewalks and Bicycle Facilities to Facilitate Station Access, New Bikeshare Docking Stations (Roadways and Utilities)

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the *minimum* following insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as a limitation of any potential liability on the part of the proposed awardee/contractor (or their policies) to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary. Subject to applicable law, the insurance companies providing insurance coverage, as referenced in this agreement, may not limit coverage to their insured, or the County as an additional insured, to stated minimum amount(s) of insurance referenced in this contract/agreement.

Commercial General Liability

A minimum limit of liability of ***five million dollars (\$5,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Automobile Liability Coverage & Heavy Equipment Liability

A minimum limit of liability of ***two million dollars (\$2,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's required commercial general, automobile insurance, and contractor's excess/umbrella insurance (if applicable) under this contract, for liability arising out of contractor's products, goods and services provided under this contract. Additional Insured endorsements may not be construed as a limitation of any potential liability to the Customer under the policies regardless of any minimum stated insurance limits within this contract. Failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide evidence of the minimum limits of insurance coverage specified.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County Maryland
DOT/ Transportation Engineering / Marcelo Cortez
100 Edison Park Drive, 4th floor
Gaithersburg, Maryland 20878

ATTACHMENT D

**PRICE PROPOSAL SHEET
EXPERINCE AND EQUIPMENT CERTIFICATION**

Montgomery County Department of Transportation

PRICE PROPOSAL SHEET

Proposer's Name: _____

This price proposal is submitted in response to the Request For Proposals (RFP), dated (_____), and as amended by addenda (as applicable), and includes the following:

- CMAR Pre-Construction Phase Fee: _____
- CMAR Management Fee Percentage (to two decimal places): _____

I have read and understand all the clauses and requirements contained herein and any amendment thereto and the prices quoted reflect the conditions stated:

NAME OF FIRM: _____

ADDRESS: _____

TELEPHONE: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

NAME: _____

TITLE: _____

SIGNATURE: _____

NOTE: NO PRICE PROPOSALS WILL BE ACCEPTED UNLESS SUBMITTED IN INK OR TYPEWRITTEN. All signatures on bids, amendments, or related documents or correspondence must be by persons who are authorized to contractually bind the Offerors. Changes made to the bid prior to the opening must be done legibly and initiated by the bidder making the changes.

ATTACHMENT E

WHITE FLINT WEST - PHASE 2 CONSTRUCTION ITEMS							
Item	MSHA Category Code No.	MSHA Specification Section Number	Description	Unit	Unit Price	Quantity	Extended Price
1	120500	SP 104, SPI 104	MAINTENANCE OF TRAFFIC	LS		1	
2	120625	104.08	TEMPORARY TRAFFIC SIGNS HIGH PERFORMANCE WIDE ANGLE	SF		2,152	
3	201030	201	CLASS I EXCAVATION	CY		27,629	
4	202065	SP 203, SPI 916	COMMON BORROW	CY		11,309	
5	387106	306, SPI 905	6 INCH PERFORATED CIRCULAR PIPE LONGITUDINAL UNDERDRAIN (MD 387.11A)	LF		16,752	
6	392436	SPI 303	36 INCH REINFORCED CONCRETE PIPE, CLASS IV	LF		1,181	
7	302460	SPI 303	60 INCH REINFORCED CONCRETE PIPE, CLASS IV	LF		722	
8	504500	SPI 504, SPI 904, SPI 915	HOT MIX ASPHALT SUPERPAVE FOR SURFACE, 9.5 MM, PG 64S-22, LEVEL 2	TON		5,141	
9	504580	SPI 504, SPI 904, SPI 915	HOT MIX ASPHALT SUPERPAVE FOR BASE, 25.0 MM, PG 64S-22, LEVEL 2	TON		10,582	
10	520111	501, SPI 901	4 INCH GRADED AGGREGATE BASE COURSE	SY		104,359	
11	655105	603, SPI 901, SPI 902, SPI 908	5 INCH CONCRETE SIDEWALK	SF		84,963	
12	800000		VERIZON CONDUIT – 16-WAY DUCT FORMATION (Preliminary Verizon Plans, Sheet 1)	LF		1,000	
13	800000	SPI 806	2-WAY 4 INCH SCHEDULE 40 RIGID PVC CONDUITS (CONC. ENCASED) - SLOTTED	LF		1,350	
14	801004	801	CONCRETE FOR SIGNAL FOUNDATION	CY		30	
15	805118	805	4 INCH SCHEDULE 80 RIGID PVC CONDUIT-BORED	LF		4,175	
				TOTAL FOR ITEMS 1-15			

RFP #1088210

Attachment F

Sample CMAR Contract

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ATTACHMENT F

RFP # 1088210



*Montgomery County
Department of Transportation
Gaithersburg, Maryland
Competitive Sealed Proposals Request for Proposals (RFP)*

MC CIP Project No. 0501506

Construction Manager At-Risk (CMAR) Contract

White Flint West Transportation

[Located adjacent to the City of Rockville in Montgomery County]

Montgomery County

Part 2 – CMAR Agreement

xx-xx-2018

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Appendix A Project Scope

Appendix B Federal Requirements for Federal Aid Construction Projects

Construction Manager At-Risk Agreement

PROJECT: White Flint West Transportation

MONTGOMERY COUNTY, MARYLAND

CONSTRUCTION MANAGER AT-RISK CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT-RISK

This CONSTRUCTION MANAGER AT-RISK CONTRACT (the “Contract”) BETWEEN OWNER AND CONSTRUCTION MANAGER AT-RISK (Owner and Construction Manager At-Risk together the “Parties”) is made and entered into by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the “County” or “Owner”) and _____ (the “Construction Manager At-Risk” or “CMAR”). This Contract is effective on the date executed by the Director, Department of Transportation (the “Effective Date”).

This Contract is for pre-construction services and the construction of a project identified as the White Flint West Transportation (the “Project”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree:

ARTICLE 1. CONTRACT DOCUMENTS

Certain Definitions. Refer to Montgomery County, Maryland General Conditions of Construction Contract, Article 1.1 for the meaning of various terms used in the Contract Documents. Additional definitions may be found in Article 2 of this Contract.

Contract Documents. The Contract Documents are comprised of the following documents:

- 1: This executed Construction Manager At-Risk Agreement, and Appendices A and B;
- 2: Supplemental General Conditions of Construction Contract;
- 3: Maryland State Highway Administration May 30, 2017 Standard Specifications for Construction and Materials;
- 4: Request for Proposal Plans;
- 5: Engineering Data as included in Request for Proposals; and

6: Construction Manager At-Risk's Proposal.

The Contract Documents will also include any Notice to Proceed (NTP) issued pursuant to the terms of this agreement, the Master Schedule, and Critical Contract Completion Period, as amended by agreement of the parties; and any supplemental agreements, amendments, Change Orders and Contract Modifications. The Contract Documents shall be deemed to include all provisions required by law to be inserted in the Contract, whether actually inserted or not.

ARTICLE 2. DEFINITIONS

Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms. Terms not defined in this Article may be defined in Montgomery County, Maryland's General Conditions of Construction Contract, referenced in the Supplemental General Conditions. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

Bonds: Performance and payment bonds and other instruments of security.

Chief Engineer: County-designated engineer.

Claim: A demand or assertion by the County or Construction Manager At-Risk seeking an adjustment of Contract Sum or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

Conceptual Documents: The drawings and specifications and/or other graphic or written materials, criteria and information concerning the County's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for the County.

Construction: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

Construction Phase Services: The coordination, implementation and execution of the Work required by the Contract Documents.

Construction Subagreement: A written agreement between Construction Manager At-Risk and a construction Subcontractor for provision of Construction.

Construction Schedule: A schedule showing the proposed order of the Work, and the time required for the completion of the Work.

Cost of the Work: The total cost of work by the Construction Manager at Risk.

Construction Manager At-Risk: The individual or entity with whom the County has entered into the Agreement, also referred to as “CMAR”.

Design Professional: The Design Engineering Firm, engaged by the County, and responsible for the design of the project. For this Project, the Design Professional will be Rummel Klepper & Kahl, LLP (RK&K).

Design Professional Services: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases, performed by the Design Professional.

Effective Date: The date indicated in the Agreement on which it becomes effective, meaning the date on which the Agreement is signed by the County’s Director of the Department of Transportation.

Final Completion of the Project: The County’s acceptance of the as-built drawings and the certificate of final inspection, signed by the Design Professional, certifying that the Work is completed in accordance with the Drawings and Specifications.

General Conditions: The County General Conditions of Construction Contract.

Guaranteed Maximum Price (GMP): The total cost of the Construction Services Phase, which shall include the Cost of the Work plus any fixed fees including the Construction Manager At-Risk fixed fee, and any Allowances. The GMP shall be part of the Contract Documents and shall be completely detailed in the “GMP Cost Schedule.”

Guaranteed Maximum Price Schedule (“GMP Schedule”): The schedule submitted by CMAR, which sets forth its GMP and all assumptions and/or clarifications concerning the Contract Documents and Project upon which the GMP is based.

Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

Notice of Award: The written notice by the County to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, the County would sign and deliver the Agreement.

Owner or County Allowances: Owner Allowances shall be funds, established in a separate category within the GMP, for the exclusive use of the County.

Owner's or County's Designated Representative (ODR): An individual or entity with whom the County may contract to furnish services to the County with respect to the Project and who is authorized to act in the County's behalf with respect to the Project. The County's Designated Representative shall examine the documents submitted by the Construction Manager and shall render decisions on behalf of the County. For this Project, the Design Professional may act as the County's Consultant.

Partial Utilization: Use by the County of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

Preconstruction Services: The participation, documentation and execution of the Construction Manager At-Risk's preconstruction deliverables as required by the Contract Documents.

Project Team: The County, Construction Manager At-Risk, Design Professional and its consultants, any separate contractors employed by the County, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by the County and may be modified from time to time by the County.

Resident Project Representative: The authorized representative of the County who may be assigned to the Site or any part thereof.

Self-Performance: Self-Performance is considered any portion of the Work that the CMAR has established within bid packages, solicits subcontractor prices for, elects to perform with its own construction forces. This definition shall apply to any constituent member of the CMAR and any closely related company of any constituent member of the CMAR. Consideration may be given to allowing closely related company to perform Work if the CMAR demonstrates that an appropriate degree of separation in management, communication and control between the CMAR and the related company.

Standard of Care: To perform the Work in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Unit Price Work: Work to be paid for based on unit prices.

Work: The Work means the provision of all services, labor, materials, supplies, and equipment that are required of the Construction Manager at Risk to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Construction, Construction Management, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

ARTICLE 3. SCOPE OF WORK

3.01 The County seeks to design and construct changes to US Route 29 as part of its capital improvements project related to Bus Rapid Transit operations. It is now seeking a Construction Management At-Risk (CMAR) contractor for project implementation. 35% design documents will be provided to the CMAR to carry the proposed project forward.

3.02 The Work to be performed by the Construction Manager At-Risk generally consists of the (a) Preconstruction Services Phase and (b) Construction Services and Construction Management Phase of the Project, as shown in the 35% Design Documents, to be further prepared by Design Professional, in consultation with CMAR.

3.03 Preconstruction Services shall comprise the following four elements: (1) Design; (2) Early Procurement; (3) Early Construction; and (4) GMP Submittal.

3.04 CMAR's performance of the Construction Services Phase or any Preconstruction Services phases, other than the Design Phase, shall be at the County's sole discretion. In the event the County elects to proceed to any Preconstruction phase, the Parties shall negotiate in good faith the price of any Work to be completed during that phase and the County shall issue a Notice to Proceed for the phase, which shall include the agreement by and between the Parties for the Work to be completed during that phase and become part of the Contract Documents

3.05 The Preconstruction Services Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services issued by the County and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. CMAR is not entitled to reimbursement for any costs incurred for Preconstruction Phase Services performed before issuance of the Notice to Proceed.

3.06 Design: the duties and obligations of the CMAR during the Design Phase shall consist of the following:

- A. Provide a project manager, all Key Personnel, and all other associated personnel necessary to fully meet the CMAR's obligations for Preconstruction Services;
- B. Within 14 days of the Notice to Proceed for the Preconstruction Services Phase, provide a construction management plan that includes approach to safety, quality, cost, schedule, project organization during both preconstruction and construction phases, packaging, and subcontractor management plan, to include ensuring conformance to the project design and to every section of the specifications and continuing attention to the production and installation of error-free work;
- C. Participate in one Project kick-off meeting for Preconstruction Services;
- D. Visit the Site and inspect the equipment, utilities, systems, operations, and physical conditions at the Site to insure an accurate and thorough understanding of the existing conditions as required;

- E. Consult with, advise, and provide recommendations to the County and the Design Engineer on all aspects of the planning, design, and proposed construction, as well as drawings and specifications, to include identifying and tracking the resolution of conflicts in the proposed Drawings and Specifications and advising the County of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents;
- F. As the design progresses—from current level up to and including 90% completion of the final design, plans and specifications—provide ongoing constructability review and input to include the following: site use; construction feasibility; construction coordination; procurement time requirements; selection and availability of materials, labor, and component systems; recommendations on equipment and/or packaging to advance construction; and independent quantity calculations to verify quantities specified by Design Engineer;
- G. Provide recommendations and information to the Project Team regarding the following: time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule;
- H. Implement and conduct a constructability program—in accordance with accepted industry standards—to identify and document Project cost and schedule savings opportunities;
- I. At specified design completion levels and milestones, hold review workshops with project manager, estimator, scheduler, superintendent, and any other necessary personnel;
- J. Provide on-going value-engineering review, including written reports and recommendations at the 35%, 60%, and 90% design completion milestones;
- K. Identify, evaluate and propose cost-effective alternatives to the project design or equipment specified and advise the County on reasonable adjustments in the Project scope, quality, or other options for keeping the Project cost within the expectations of the County;
- L. Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions affecting the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the CMAR has reason to believe that the most current GMP estimate will exceed the County's anticipated cost estimates or not meet Schedule requirements and recommend reasonable strategies for bringing the Project in line with cost estimates and anticipated schedule;

- M. Develop independent detailed construction cost estimates, critical path method schedules and cash flow forecasts at the 60%, and 90% design completion milestones;
- N. Develop a critical path method schedule ("CPM Schedule") for Project Team review and the County's approval that coordinates and integrates activities on the Project, including the CMAR's services, the Design Professional's design services, the work of other consultants and suppliers, minimal traffic disruption, and the County's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in accordance with the County's Specifications using the County-specified format and software. The CMAR shall update the CPM Schedule throughout the Preconstruction Phase;
- O. Provide monthly project planning and scheduling reports to optimize the sequencing of constructing the project;
- P. Participate in monthly progress meetings on-site or at a location determined by the Owner;
- Q. At the County's request, attend public meetings and hearings concerning the development and schedule of the Project;
- R. Identify long-lead procurement needs and submit a report to the Owner;
- S. Assist the County and Design Professional in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants hired by the County to develop additional information for the design or construction of the Project;
- T. Identify, evaluate, and recommend elements of the Project that may require less than 100% design completion, to include Early Procurement and Early Construction items;
- U. Make recommendations to the Owner regarding the division of the Work to facilitate bids and proposals for the major elements of the Work;
- V. Advise the Owner regarding ways to gain efficiency in Project delivery;
- W. Provide estimated, complete, detailed, written GMP or fixed-price proposal, including line-item cost breakdowns with conditions and assumptions at the 60%, and 90% (or as agreed to with the Owner) level of design completion. The estimated GMPs for all Early Construction, Early Procurement, or Construction Services Phase shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, equipment, overhead and profit, organized in manner acceptable to the County and containing appropriate backup documentation;

- X. Participate in up to three formal reviews of the Design at designated Design milestones for each section, phase, or Construction package;
- Y. Provide a construction emergency response plan and site safety plan. The safety program shall comply with all applicable requirements of the most recent versions of the Occupational Safety and Health Act and all other applicable federal, state and local Laws and Regulations and with the requirements of a County-controlled insurance program, if any. CMAR shall provide recommendations and information to the County and Design Professional regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. CMAR shall verify that appropriate safety provisions are included in the Construction Documents;
- Z. Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on-site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project;
- AA. Schedule all Project construction-related activities;
- BB. Identify work that the proposer intends to self-perform. Identify and recommend which work, if any, should be procured through value-based competitive selections, in lieu of low-bid selection;
- CC. Participate in risk assessment and mitigation workshops at agreed upon milestones, implement the risk mitigation strategy, and develop and monitor a risk register, as needed;
- DD. Continually update, at regular intervals, the project estimate and Construction schedule;
- EE. Lead the development of an open cost model for the Independent Cost Estimator (ICE) so that assumptions, County-contingency, and approach to the estimate are similar;
- FF. Develop and formulate a Subcontracting Plan to integrate Subcontractors, including local, small, minority and disadvantaged businesses, in the Construction phase;
- GG. Provide open-book examination of an open cost model by the County;
- HH. Develop, propose, and track innovations for project Construction; and
- II. If requested by the County, coordinate with all project stakeholders in conjunction with the County and the Design Professional, to include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public

3.07 Early Procurement: At the County's sole discretion, the Contractor may be asked to procure long lead materials that may be in short supply or require longer than desired lead times from purchase to delivery. Montgomery County may also procure through the Contractor such services such as pavement cores or other investigations to facilitate the Design. The County may choose to exercise this option if the early procurement saves significant Construction time, money, or avoids potential delays once the project begins. If the County elects to use this early procurement option, the process shall be as follows:

- A. The CMAR shall prepare a price to supply the item(s), including all other costs associated with the procurement (*e.g.*, transportation, storage). This price is only for purchased items and should not include mobilization for Construction or other unrelated costs.
- B. The County shall secure an independent cost estimate ("ICE") for the item(s). The County shall determine the acceptability of the price and tolerance. For each item, the County shall evaluate if the GMP, Engineer's Estimate, and the ICE are within acceptable tolerance.
- C. The County shall review the pricing submitted by the CMAR to determine acceptability of prices. If prices and risk issues are not acceptable the County and CMAR may enter into negotiations. If a resolution can be attained with both parties on price and risk, a best and final price may be requested from the vendor. If negotiations are not successful, the County has the option to accept the offered price or to procure the items later as part of the GMP process for the Construction project or by some other method.
- D. The Construction contract amendment is prepared and executed to cover only the defined procurement services.

3.08 Early Construction: If time and/or money can be saved by allowing the CMAR to perform Construction Work prior to the completion of the total Design package, the County may ask the CMAR to prepare a lump sum or unit cost price for all or a portion of the work. If the County elects to use this contracting option, it proceeds as follows:

- A. The County and the CMAR shall agree upon a scope of work and schedule to accomplish this Work. The agreement may take the form of a set of plans. Both parties must agree that the scope of work is clear and unambiguous.
- B. If the prices are acceptable, the County will issue a Notice to Proceed for this portion of the work, which shall include the lump sum price agreed to by the County and CMAR and the scope of work, and which shall be incorporated into this Contract.
- C. In the event the Parties agree to performance of Early Construction under this subsection, CMAR shall be required to obtain performance and payment bonds in amounts no less than 95% of the agreed lump sum price for the Work.
- D. If the prices are not acceptable, the County may enter into a process of risk identification that identifies price differences between the CMAR and the Independent Cost Estimate. Following the resolution of these risk issues, the work may be re-priced up to two more

times. The County has the option to accept the revised price or to terminate the CMAR process and procure the Early Construction Work by some other method.

3.09 GMP Submittal: when the County, the Designer, and the Construction Manager At-Risk agree that the Project has been designed to a sufficient level of detail to allow the Contractor to accurately price the Construction Phase of the project, the following procedure will be used:

- A. The Designer will produce a set of plans and specifications showing all work to be accomplished. The plans will also include all Work performed under any previous Early Construction packages.
- B. The Contractor shall prepare a price to perform the work shown. The price will be based on the estimating model and the most recent Opinion of Probable Construction Cost for the agreed scope of work.
- C. The CMAR will submit a sealed price to the County. The County will secure an independent cost estimate for the work. Upon opening the CMAR's price, the County will determine the acceptability of the price by comparing it to state averages, similar projects, the independent cost estimate and the engineer's estimate. For each item, the team will evaluate if the GMP, Engineer's Estimate, and the ICE were within acceptable tolerance.
- D. County personnel reviewing these costs may include: the Project Manager, members of the Design team, an estimating consultant.
- E. If the prices are acceptable, the County will prepare a Construction Contract Amendment (a template for which is attached to this Contract as _____). If the prices are not acceptable, Montgomery County will enter into a process of risk identification that identifies price differences between the Contractor and the Independent Cost Estimate. Following the resolution of these risk issues, the project will be re-priced up to two more times. The County has the option to accept the revised price or to terminate the CMAR process and procure the Construction Project by some other method.

3.10 Construction Planning and Bid Package Strategy

- A. Identify equipment or material requiring extended delivery times and advise the County on expedited procurement of those items. Advise the County and Design Professional on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by the County and subject to the County's prior approval, issue requests for proposals to qualified sources, receive proposals, and assist in their evaluation.
- B. Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the County. These recommendations may include, but are not limited to, phased or staged construction or

multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, minimization of traffic disruption, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, Laws and Regulations, the County's goals for MDE/MBE/MFD contractor participation, and other constraints.

- C. Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or the County's separate contractors, if any.
- D. Develop a Bid package strategy in coordination with the Design Professional that addresses the entire scope of Work for each phase and stage of the Project. In developing the Bid package strategy, the CMAR shall identify all Bid packages on which the CMAR intends to submit a self-performance Bid. The Bid package strategy shall be reviewed with the County on a regular basis and revised throughout the buyout of the Project to best promote the interests of the Project and the County.
- E. Assist the County, the Design Professional, the County's other consultants, and the County's separate contractors in obtaining all applicable risk management, legal compliance, permits, and regulatory agency reviews and approvals for the Project.
- F. Refine, implement and monitor MDE/MBE/MFD Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the County for the Project.
- G. Advise the County of any tests to be performed, and assist the County in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- H. CMAR shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all job site facilities necessary to manage, inspect, and supervise construction of the Work.
- I. Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations that minimize adverse effects of labor shortages.
- J. Consult with and make recommendations to the County on the acquisition schedule for major equipment, and coordinate with the County as may be required to meet the Schedule.

3.11 Obtaining Bids/Proposals for the Work

- A. CMAR shall solicit competitive lump sum bids/proposals from subcontractors for the performance of all major elements of the Work other than any Work that is Self-Performed. Criteria for determining the Bid that provides the best value to the County

shall be established by the Project Team and included in the request for bids/proposals. CMAR shall notify the County in advance in writing of the date it will receive the Bids.

- B. Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.
- C. CMAR and the County shall review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any Bid to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, CMAR shall recommend to the County the Bid that provides the best value for the Project. Upon the County's concurrence in the recommendation, CMAR may negotiate the terms of the subcontract with the apparent best value bidder/proposer.
- D. All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the County. Upon the County's concurrence in the final terms of the subcontract, CMAR shall enter into a written subcontract for the subcontract work and provide a copy to the County.
- E. CMAR may seek to self-perform portions of the Work identified for self- performance in the Bid strategy. The CMAR must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. The County will determine whether the CMAR's Bid provides the best value for the County, which determination is final. CMAR must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the CMAR shall account for self- performance work in the same manner as it does all other subcontract costs. The County is limiting the CMAR's self-performance to ___% of the total value of the bid package work, for the purposes of this contract.
- F. CMAR shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the County in writing at least ten (10) days before entering into any subcontract. CMAR shall not use any Subcontractor to which the County has a reasonable objection. CMAR shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following the County's acceptance of a Subcontractor, that Subcontractor shall not be changed without the County's written consent, which shall not be unreasonably withheld.
- G. If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the CMAR may, in consultation with the County and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so. Self-performance under this section does not count towards the CMAR's ___% Self-performance limitation.

ARTICLE 4. PRECONSTRUCTION SERVICES FEE

4.01 The Preconstruction Services Fee is the total compensation payable to the CMAR for the performance of Preconstruction Services, except for additional Preconstruction Services, including Early Procurement or Early Construction, approved in advance and in writing by the County. The Preconstruction Fee shall be a lump sum amount, based on a County-approved Scope of Work, and included with this Agreement as Attachment D.

4.02 The CMAR shall not be entitled to any increase in the Preconstruction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Preconstruction Phase Service, except as provided in paragraph 4.01 above.

4.03 Costs associated with the following items are specifically in the establishment of the Preconstruction Services Fee: salaries, labor, estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; specialized subconsultants if approved by the County, purchase or rental of equipment, and general overhead and profit.

4.04 If the County decides to materially alter the Scope of the Preconstruction Services, the Preconstruction Services Fee shall be equitably adjusted accordingly.

4.05 For additional Preconstruction Services that are approved in advance and in writing by the County, including Early Procurement or Early Construction, CMAR shall be entitled to additional compensation computed as a:

1. A pre-established lump sum amount; or
2. The hourly cost of CMAR's employee's or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the additional Preconstruction Services plus an overhead and profit markup of ten percent (10%) of the total cost; or
3. As otherwise agreed to by the parties in advance of performing the additional Preconstruction Phase Services.

ARTICLE 5. CMAR GENERAL RESPONSIBILITIES

In addition to any and all other duties, obligations, and responsibilities of the Construction Manager At-Risk set forth in this Contract and the General Conditions, the Construction Manager At-Risk has and must perform the following duties, obligations, and responsibilities:

5.01 All Work must conform strictly to the requirements of the Contract.

5.02 CMAR shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. CMAR agrees to perform these services using its best efforts, skills, judgments and abilities.

5.03 CMAR shall cooperate with and endeavor to further the interests of the County and the Project. CMAR shall furnish services and complete the Project in an expeditious and economical manner consistent with the interests of the County and in accordance with the Project Schedule.

5.04 CMAR shall designate a representative authorized to act on the CMAR's behalf with respect to the Project.

5.05 The Construction Manager At-Risk must strictly supervise the performance and completion of the Work, and must monitor the Work as it progresses. The Construction Manager At-Risk is strictly liable for all acts and omissions of those engaged in the Work on behalf of the Construction Manager At-Risk.

5.06 CMAR shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

5.07 The Construction Manager At-Risk must keep an updated copy of the Contract, the General Conditions, any Supplemental Conditions, and an updated posted set of the plans and specifications reflecting any and all changes at the Project Site. CMAR shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Project Team meeting and when requested.

5.08 If the County elects to develop the Project in multiple phases, CMAR shall organize and perform its services as appropriate to each phase. Each phase of the Project may have a unique schedule for completion and a specific Guaranteed Maximum Price, at the County's discretion.

5.09 The Construction Manager At-Risk must employ and maintain at the Project Site only competent supervisory personnel. Key personnel must be assigned by the Construction Manager At-Risk to this Project and may be changed only as provided in the General Conditions. CMAR shall identify to the County the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. CMAR shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the County, CMAR shall not remove or replace the persons or entities assigned to the Project except with the County's written consent. CMAR shall not assign to the Project or contract with any person or entity to which the County has an objection. CMAR shall promptly update the list of persons and consultants if they change during the course of the Project

5.10 CMAR's duties as set forth herein shall at no time be in any way diminished because of any approval by the County nor shall CMAR be released from any liability because of such approval by the County, it being understood that the County at all times is ultimately relying upon CMAR's skill and knowledge in performing the services required hereunder

5.11 Except for the obligation of the County to pay CMAR certain fees and expenses pursuant to the terms of this Contract, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, the County shall have no liability to CMAR

or to anyone claiming through or under CMAR by reason of the execution or performance of this Contract. Notwithstanding any obligation or liability of the County to CMAR, no present or future council member or any agent, officer, director, employee, or representative of the County, or anyone claiming under the County has or shall have any personal liability to CMAR or to anyone claiming through or under CMAR because of the execution or performance of this Contract.

5.12 The County shall not be responsible for discovering deficiencies in the technical accuracy of CMAR's Preconstruction Services. CMAR shall correct deficiencies in technical accuracy of CMAR's Preconstruction Services without additional compensation, and compensate the County for any losses or damages resulting from such deficiencies, except to the extent such action is directly attributable to deficiencies in County-furnished information.

5.13 The County shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the County pursuant to this Agreement. CMAR may use such requirements, reports, data, and information in performing services under this Agreement.

5.14 CMAR may employ such Subcontractors as CMAR deems necessary to assist in the performance of services, subject to reasonable, timely, and substantive objections by the County.

5.15 CMAR shall safeguard the proprietary nature of County-provided data.

5.16 The Construction Manager At-Risk must obtain and pay for all required permits, fees, and licenses. The Construction Manager At-Risk must comply with all Laws and Regulations applicable to the Project and to the Work.

5.17 The Construction Manager At-Risk must provide the Owner its Project Progress Schedule in accordance with the General Conditions. The Progress Schedule must conform to the General Conditions, be in the format specified in the Contract Documents, and otherwise be acceptable to the Owner. The Construction Manager At-Risk's Progress Schedule must be updated no less frequently than monthly and must be updated to reflect the current progress of the Work, any conditions that change the critical path or the dates for Substantial or Final Completion of the Work, and any additions or changes to the Work. Each such revision is to be furnished to the Owner and the Architect. Strict compliance with the requirements of this Article 5.17 is a condition precedent to payment to the Construction Manager At-Risk, and failure by the Construction Manager At-Risk to strictly comply with these requirements constitutes a material breach of this Contract.

5.18 The Construction Manager At-Risk must maintain the Project Site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Construction Manager At-Risk must thoroughly clean the Project Site of all debris, trash and excess materials or equipment as provided in the General Conditions.

5.19 At all times relevant to this Contract, CMAR must permit the Owner to enter upon the Project Site and to review or inspect the Work without formality or other procedure.

ARTICLE 6. GUARANTEED MAXIMUM PRICE (GMP) SCHEDULE

6.01 When the Project Team agrees that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, CMAR shall prepare and submit a Guaranteed Maximum Price ("GMP") Schedule to the County. The GMP Schedule must be prepared in accordance with the guidelines and delivered in the format specified by the County. CMAR guarantees and shall not withdraw its Guaranteed Maximum Price Schedule for ninety (90) days following submission to the County. The parties may agree to extend the time period in which the CMAR guarantees its pricing to the County, but in no event may the parties agree to shorten this time period.

6.02 In developing the GMP Schedule, the CMAR shall coordinate efforts with the County and the Design Professional to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The CMAR shall review development of the GMP Schedule with the County on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

6.03 The GMP Schedule must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the CMAR in the GMP and the monetary amounts attributable to them. The GMP Schedule shall include, without limitation, a breakdown of CMAR's estimated General Conditions Costs and estimated Costs of the Work organized by trade; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.

6.04 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

6.05 The GMP Schedule shall include a category of County Allowances, including a detailed breakdown of line items and their estimated cost. The County may elect to add its own contingency in this category.

6.06 Included with its GMP Schedule, CMAR shall provide two complete, bound sets of the Drawings, Specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Schedule and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Schedule.

6.07 The GMP Schedule and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules, permits, and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Schedule and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

6.08 In submitting the GMP Schedule, the CMAR represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Schedule or the

supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically exempted by the County. Upon the County's acceptance of the GMP Schedule, the CMAR shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Schedule or the supporting documents used to establish the GMP.

6.09 The GMP Schedule shall adopt and incorporate all terms and conditions of this Contract and all attachments. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the County in writing and specifically accepted by the County. In the event of a conflict between any term of the GMP Schedule that was not clearly and conspicuously identified and approved by the County and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

6.10 The County may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with CMAR. If the County accepts the GMP Schedule, in writing, both parties may then use the GMP Schedule as the basis for the Contract Amendment for Construction Services and the terms of the GMP Schedule, including the Guaranteed Maximum Price and the supporting documents. If the County rejects the GMP Schedule or the parties are unable or unwilling to agree on a GMP, the County will proceed to have the Design Professional provide bid-ready plans and specifications. Upon rejection of the GMP, the CMAR hereby agrees that the CMAR shall not be entitled to make any claim against the County for compensation or damages due to such rejection of GMP, and hereby waives and releases any such claims.

ARTICLE 7. DETERMINATION WHETHER TO PROCEED WITH CONSTRUCTION PHASE

7.01 After the CMAR has completed its GMP Submittal under the Preconstruction Phase of this Agreement, the County shall determine whether to proceed with the Construction Phase.

7.02 If the County determines to proceed with the Project, the Parties will in good faith negotiate a Contract Sum for the Construction Services Phase and reduce their agreement to writing in the form of a Contract Amendment for construction services. A template Contract Amendment is attached hereto as _____, which the Parties shall use as a Contract Amendment for construction services.

7.04 If the County and CMAR are unable to agree upon a GMP and/or the County elects not to proceed with the CMAR for the Construction Services but rather elects to seek proposals for the Construction Services, and provided that the CMAR has met all obligations under the Preconstruction Phase, the County may compensate the CMAR for work performed up to that time in an amount not to exceed \$_____. The CMAR shall provide documentation to establish that costs have actually been incurred. If the CMAR fails to meet all obligations under the Preconstruction Phase, the County, at its sole discretion, may determine whether to compensate the CMAR, in whole or in part, for work performed during the Preconstruction

Phase. The CMAR will only be compensated for costs actually incurred and properly documented to the County.

7.05 In the event that County and CMAR are unable to agree upon a GMP and/or the County elects not to proceed with the CMAR for the Construction Services but rather elects to seek proposals or bids for the Construction Services the CMAR may not submit any proposals or bids for this work.

ARTICLE 8. OWNER'S RESPONSIBILITIES

8.01 The County shall designate the Design Professional for the Project.

8.02 The County will provide a general schedule for the Project. The general schedule will set forth the County's plan for milestone dates and completion of the Project.

8.03 The County will identify a person as its County Designated Representative (ODR) who is authorized to act in the County's behalf with respect to the Project. The County's Designated Representative shall examine the documents submitted by the CMAR and shall render decisions on behalf of the County. The ODR shall be authorized to administer this Agreement on behalf of the County, including final determination of fees and costs earned by the CMAR.

8.04 The County shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

8.05 The County shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the CMAR's services and of the Work.

8.06 The County may designate one or more quality assurance inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by the County shall not reduce or lessen CMAR's responsibility for the Work. CMAR is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

8.07 The County shall have the right to reject any defective Work on the Project. Should CMAR refuse or neglect to correct any such Work within a reasonable time after notice, the County may have the Work corrected and recover all expenses incurred from CMAR on demand.

8.08 The County shall furnish to the CMAR the number of Construction Document sets as required by this Agreement.

ARTICLE 9. REPRESENTATION AND WARRANTIES OF THE CONSTRUCTION MANAGER AT-RISK

The Construction Manager At-Risk makes the following representations and warranties in order to induce the Owner to execute this Contract. The Construction Manager At-Risk recognizes that, in making these representations and warranties, Owner is entitled to rely upon the

Construction Manager At-Risk's representations and warranties and is relying upon them in entering into this Contract. The Construction Manager At-Risk, by executing this Contract, makes the following express representations and warranties to the Owner:

(A) The Construction Manager At-Risk is fully qualified to act as the Construction Manager At-Risk and perform the Work for the Project and has, and shall maintain, any and all licenses, insurances, permits or other authorizations necessary to act as the Construction Manager At-Risk for, and to construct, the Work for the Project.

(B) The Construction Manager At-Risk has become familiar with the Project Site, the local conditions under which the Project is to be constructed and operated and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the site, except latent conditions that meet the requirements of

(C) The Construction Manager At-Risk has received, reviewed and carefully examined all of the documents which make up this Contract and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction of the Work for the Project. Construction Manager At-Risk is responsible for performing Work shown on the Contract Documents, including reasonably implied or inferred Work from the Contract Documents, which a reasonably prudent Construction Manager At-Risk of Construction Manager At-Risk's reputation, expertise and experience would conclude were inferable from the Contract Documents. The Construction Manager At-Risk is obligated to conduct a careful and thorough pre-Bid review of all of the Contract Documents and to inform the Owner prior to Contract execution of any errors, omissions, or conflicts or other issues in the Contract Documents which will either increase the Contract Sum or extend the Contract Time. Construction Manager At-Risk's performance with respect to its review of the Contract Documents shall be that of an experienced Construction Manager At-Risk performing work of a similar nature in the locale of the Project. Construction Manager At-Risk will not be compensated for the performance of any additional or change order work or for any delays or cumulative impact, lost efficiency, or lost productivity arising from any errors, omissions or conflicts or other issues in Contract Documents that the Construction Manager At-Risk or a reasonably prudent Construction Manager At-Risk of Construction Manager At-Risk's reputation, expertise and experience should have discovered as a result of such review.

(D) CMAR warrants, represents, covenants, and agrees that all persons connected with CMAR directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

(E) CMAR warrants, represents, covenants, and agrees to call to the County's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to CMAR (by the County or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished; however, it is recognized that the CMAR's review is made in the CMAR's capacity as a construction manager-at-risk and not

as a licensed design professional. Nothing shall excuse or detract from CMAR's responsibilities or obligations hereunder in a case where such document or data is furnished unless CMAR advises the County in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and the County confirms in writing that it wishes CMAR to proceed in accordance with the data as originally given.

(F) CMAR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Contract in the best way and in the most expeditious and economical manner consistent with the interests of the County.

(G) CMAR warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Preconstruction Phase Services as soon as CMAR becomes aware of such defects or is notified of such defects or is notified of such defects in writing. Should CMAR refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the County shall be entitled to make good such defective services at the expense of CMAR. This commitment by CMAR is in addition to, and not in substitution for, any other remedy for defective services, which the County may have at law or in equity. CMAR's obligations with respect to Construction Phase Services are set forth in General Conditions and elsewhere as may be noted.

(H) The Construction Manager At-Risk warrants that all labor furnished under this Contract will be competent to perform the tasks undertaken; that the product of such labor will yield only first-class results; that all materials used in the Work and equipment provided will be new and of high quality; that the Work will be complete, of high quality, without defects, when completed; and that all of the Work will strictly comply with the requirements of the Contract. Any Work not strictly complying with the requirements of the Contract will be a breach of the Construction Manager At-Risk's warranty.

ARTICLE 10. INTENT AND INTERPRETATION

The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the County other than the consideration named in this Contract.

With respect to the intent and interpretation of this Contract, the Owner and the Construction Manager At-Risk agree as follows:

(A) This Contract (which includes all Contract Documents) constitutes the entire and exclusive agreement between the parties with reference to the Work and the Project. This Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

(B) Anything that may be required, implied, or inferred by the documents that make up this Contract, or any one or more of them, must be provided by the Construction Manager At-Risk for the Contract Sum within the Contract Time.

(C) It is understood and agreed that Owner is an intended third-party beneficiary of all contracts for design, engineering or construction services and all such Subcontracts, purchase orders, and other agreements between Construction Manager At-Risk and third parties related to those services. Construction Manager At-Risk shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements, and purchase orders.

(D) When a word, term, or phrase is used in this Contract, it is to be interpreted or construed first, as defined in the General Conditions including any supplemental terms and conditions of the Contract, if any; second, as defined in this Contract; third, if not defined, according to Referenced Standards and its generally accepted meaning in the construction industry; and fourth, if there are no Referenced Standards or generally accepted meaning in the construction industry, according to its common and customary usage.

(E) The words “include”, “includes”, or “including”, as used in this Contract, are deemed to be followed by the phrase, “without limitation”.

(F) The specification in this Contract of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract does not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition is to be deemed not to constitute a material breach of this Contract.

(G) In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Construction Manager At-Risk Agreement, Construction Manager At-Risk and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 1 hereof. The Construction Manager At-Risk has a continuing duty to read, examine, review, compare, and contrast each of the Contract Documents that make up this Contract, and must give written notice of to the Owner and County Construction Manager of any conflict, ambiguity, error, or omission which the Contractor may find with respect to the Contract Documents, Shop Drawings, or other Submittals that come to the attention of Construction Manager At-Risk during the course of the Work and before proceeding with any part of the Work affected by the conflict, ambiguity, error, or omission.

The County reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract Documents for the altered or omitted Work, in accordance with Supplemental General Conditions Article 12 and Article 16.

ARTICLE 11. FIXED SUM AND CONTRACT PAYMENTS

11.01 The Owner will pay, and the Construction Manager At-Risk accepts, as full and complete payment for the Construction Manager At-Risk’s timely performance of its obligations under this Contract (including performance of and compliance with all of the General Conditions and other Contract Documents) the fixed sum of _____ Dollars (\$_____). The sum set forth in this Article 11 constitutes the Contract Sum, which cannot be modified except

as provided in the General Conditions or by written Amendment executed by the parties to this Contract

11.02 The Construction Manager At-Risk is bound by the Schedule of Values apportioning the Contract Sum among the different elements of the Work for the Project for purposes of periodic and final payment as provided in the General Conditions of Construction Contract. The Construction Manager At-Risk's Schedule of Prices must not be inflated, unbalanced or misstated in any way to give the Construction Manager At-Risk an unfair advantage during the Bid or Proposal or construction processes. The violation of this provision by the Construction Manager At-Risk constitutes a material breach of this Contract. The Construction Manager At-Risk's Schedule of Prices as approved by the Owner as provided in the General Conditions will be utilized for the Construction Manager At-Risk's Applications for Payment.

11.03 As the Work progresses in accordance with this Contract and in a manner satisfactory to the County, the County will make payments to the Construction Manager At-Risk for Work completed in accordance with Article 13 of the Supplemental General Conditions.

11.04 When payment is received from the Owner, the Construction Manager At-Risk must immediately pay all Subcontractors, materialmen, laborers, and Suppliers the amounts they are due for the Work covered by such payment, as provided in the General Conditions. The Owner will have the right, but not the duty, to issue future checks and payment to the Construction Manager At-Risk of amounts otherwise due under the Contract naming the Construction Manager At-Risk and any such Subcontractor, materialmen, laborer, or Supplier as joint payees. Such joint check procedure, if employed by the Owner, does not create any rights in favor of any person or entity beyond the right of the named payees to payment of the check and does not require the Owner to repeat the procedure in the future.

11.05 If the Construction Manager At-Risk does not comply with any direction concerning the Work or materials given by the Contract Administrator or his/her representative, the Construction Manager At-Risk shall not be entitled to have any payment made for the non-complying Work, nor shall any payment be rendered on account of Work done or materials furnished until such direction aforesaid has been fully and satisfactorily complied with.

11.06 Neither payment to the Construction Manager At-Risk, utilization of the Work or the Project for any purpose by the Owner, nor any other act or omission by the Owner is to be interpreted or construed as an acceptance of any Work of the Construction Manager At-Risk that is not strictly in compliance with applicable industry standards and the requirements of this Contract.

11.07 The Owner has the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Construction Manager At-Risk due to any reason stated in the General Conditions of Contract. The Construction Manager At-Risk must immediately comply with any written demand by the Owner for repayment or reimbursement of the Owner for any amounts previously paid by the Owner as contemplated in this Article.

11.08 The Construction Manager At-Risk has no right to stop Work as a consequence of non-payment. In the event of any dispute between the Construction Manager At-Risk and Owner involving the Construction Manager At-Risk's claim to entitlement to payment the Construction Manager At-Risk's only remedy is to file a claim with the Contract Administrator as provided in the General Conditions of Construction Contract. The Construction Manager At-Risk must diligently proceed with the Work pending resolution of the dispute. Any payments on Certificates for Payment which are approved by the Owner as "proper invoices" within the meaning of applicable laws and regulations not made within thirty (30) days after the Owner approves the Certificate for Payment shall bear interest at a rate equivalent to the interest rate paid by 5-year U.S. Treasury Bills as of the date interest first begins to accrue under Section 11B-34 of the Montgomery County Code, 2004, as amended. An Owner approved Certificate for Payment is one that has been certified as required by the Architect, and signed by the Owner's Construction Representative, the Owner's Project Manager, and the Director of the Office of Procurement and fully complies with the requirements of Montgomery County regulations.

11.09 Prior to being entitled to receive final payment, and as a condition precedent to final payment, the Construction Manager At-Risk must furnish the Owner all items required in the form and manner required by Owner.

11.10 This Contract shall be deemed executory only to the extent of money available to the County for the performance of the terms hereof, and no liability on account thereof shall be incurred by the County beyond moneys available for the purpose thereof.

ARTICLE 12. INFORMATION AND MATERIAL SUPPLIED BY OWNER - DETERMINATION AS TO VARIANCES

12.01 In addition to the Contract Documents, the Owner will, if requested by the Construction Manager At-Risk, furnish to the Construction Manager At-Risk, the legal description of the Project Site, and any required survey in the Owner's possession or under the Owner's control. Such written and tangible material is furnished to the Construction Manager At-Risk only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and has no liability for any statements or representations made in the written and tangible material furnished under this provision.

12.02 In any case of any ambiguity in the Contract Documents or between any of the various Parts of the Contract Documents, the matter must be immediately submitted to the Contract Administrator, who shall determine and direct a course of action relevant thereto.

ARTICLE 13. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The Contract Documents, as well as any other documents furnished by the Owner or that are otherwise used for this Project, shall be the property of the Owner. The Construction Manager At-Risk must not use, or permit to be used, any portion or all of the Contract

Documents or other documents furnished by the Owner on other projects without the Owner's prior written authorization.

ARTICLE 14. OWNERSHIP OF GOODS

Upon Payment by the County, all finished or unfinished work, reports, or goods that are the subject of this Agreement including any licenses or consents acquired by the CMAR for performance hereunder, shall be and shall remain the property of the County.

ARTICLE 15. DISADVANTAGED AND MINORITY-OWNED BUSINESS ENTERPRISE GOALS

15.01 This Contract is subject to federal and related State laws concerning utilization of Minority and Disadvantaged Business Enterprises (MDEs). Federal law (Title 49, Code of Federal Regulations (CFR), Part 26) defines a Disadvantaged Business Enterprise as a for-profit small business concern, while Maryland law refers to Minority Business Enterprises (MBEs) and Montgomery County laws refer to them as Minority, Female or Disadvantaged (MFD). In this Contract, MDE, MBE and MFD have the same meaning.

15.02 All federal law MDE provisions are applicable to this Contract. All State law MBE provisions are applicable to this Contract unless the State law provision is not consistent with federal law. *See* Part 1 – Article 18 for information regarding State law MBE provisions.

15.03 The Construction Manager At-Risk must comply with the provisions of Part 1 – Article 18. The Construction Manager At-Risk shall also comply with the Construction Manager At-Risk's MDE participation schedule and plan included in Part 8. It is noted that the Construction Manager At-Risk's MDE participation schedule and plan may be modified during the course of this Contract.

15.04 The overall MDE participation goal for the PROJECT is __% of the Contract Sum, including professional services. The Construction Manager At-Risk's good faith efforts to achieve this goal shall include efforts to achieve a MDE participation in performance of professional services under the Contract (including design; supplemental geotechnical investigations, surveying and other preliminary engineering; quality control as defined in the Contract; environmental compliance activities; utility coordination; permitting; project controls and public information) equal to or greater than __% of that portion of the Contract Sum allocable to such services.

15.05 PROJECT ORGANIZATION AND CONTACTS

CONTRACT ADMINISTRATOR

The Contract Administrator identified below will serve as the main point of contact for the Construction Manager At-Risk . All notices must be sent via e-mail to the Contract Administrator at the following address, unless specifically stated otherwise in the Contract Documents:

Mr. Bruce Johnston

Contract Administrator

***Department of Transportation
Division of Transportation Engineering
100 Edison Park Drive, 4th Floor, South East Wing
Gaithersburg, Maryland 20878
E-mail address: Bruce.Johnston@montgomerycountymd.gov***

Construction Manager At-Risk's Project Organization. The following information is the contact information for the Construction Manager At-Risk's Project Manager. The Construction Manager At-Risk's Project Manager will serve as the main point of contact for the County. All notices must be sent to the Construction Manager At-Risk's Project Manager at the following address:

Name: _____
Address: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

See Part 8 for specific information regarding the Construction Manager At-Risk's Project organization, including information regarding its representatives authorized to make decisions and bind the Construction Manager At-Risk on matters relating to the Contract Documents.

ARTICLE 16. CLAIMS BY THE CONSTRUCTION MANAGER AT-RISK

Claims by the Construction Manager At-Risk against the Owner are subject to the following terms and conditions:

16.01 All Construction Manager At-Risk claims against the Owner must be initiated by a written claim submitted to the Owner in strict accordance with the requirements of Chapter 11B of the Montgomery County Code, 2004, as amended, and the Montgomery County Procurement Regulations, Chapter 11B of the Code of Montgomery County Regulations (COMCOR), as amended. Any claim must be received by the Owner no later than ten (10) days after the event, or the first appearance of the circumstances, causing the claim. ANY CLAIM NOT FILED WITH THE OWNER WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEDING PROVISIONS SHALL BE DEEMED CONCLUSIVELY TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.

16.02 The Construction Manager At-Risk must continue its performance under this Contract regardless of the existence of any claims submitted by the Construction Manager At-Risk.

16.03 In connection with any claim by the Construction Manager At-Risk against the Owner for compensation in excess of the Contract Sum, any liability of the Owner to the Construction Manager At-Risk shall be strictly limited and computed in accordance with Article 16 of the Supplemental General Conditions, and shall in no event include indirect costs (such as home office overhead) or consequential damages of the Construction Manager At-Risk or any

estimated costs or damages. The Owner is not liable to the Construction Manager At-Risk for claims of third parties, including Subcontractors or Suppliers. The Construction Manager At-Risk may not add or join the Owner as a Party (third-party defendant or otherwise) in any litigation or arbitration between Construction Manager At-Risk and any third parties, including Subcontractors or Suppliers. In addition, the Owner's liability for any contract claims is limited in the case of a Change Order to amounts computed in accordance with Articles 12 and 16 contained in the Supplemental General Conditions and in the case of any compensable delay claim to amounts computed in accordance with Articles 11 and 16 contained in the Supplemental General Conditions.

16.04 In the event the Construction Manager At-Risk is delayed in performing any task, which at the time of the Delay is then critical, as provided in the General Conditions, or which during the delay becomes critical, as the sole and exclusive result of any act or omission by the Owner, or someone acting on the Owner's behalf, or by Owner authorized Change Orders, unusually severe weather not reasonably anticipatable, fire, or other Acts of God, occurring without the fault or negligence of the Construction Manager At-Risk, the date for achieving Substantial Completion, or, as applicable, Final Completion, will be appropriately adjusted by the Owner upon the written claim of the Construction Manager At-Risk to the Owner filed in full compliance with the General Conditions. A task is critical within the meaning of this Article 16 if, the task is on the critical path of the most recently approved Progress Schedule so that a Delay in performing the task will Delay the ultimate completion of the Project. ANY CLAIM FOR AN EXTENSION OF TIME BY THE CONSTRUCTION MANAGER AT-RISK MUST STRICTLY COMPLY WITH THE REQUIREMENTS OF ARTICLE 13(A) ABOVE. IF THE CONSTRUCTION MANAGER AT-RISK FAILS TO MAKE SUCH CLAIM AS REQUIRED IN THIS ARTICLE 16, ANY CLAIM FOR AN EXTENSION OF TIME WILL BE WAIVED AND SHALL BE DISMISSED.

ARTICLE 17. INSURANCE

The Construction Manager At-Risk shall meet the insurance requirements set forth in Exhibit ___ to this Agreement, which is fully incorporated into this Agreement as if set forth herein.

ARTICLE 18. SURETY BONDS

For any and all Construction Work performed under this Contract, the Construction Manager At-Risk shall furnish, at the Construction Manager At-Risk's expense, Performance and Payment Bonds. Performance and Payment Bonds shall each be issued in an amount equal to 95% of the sum provided under this Contract for Construction Work.

ARTICLE 19. CHANGE ORDERS

The Owner may order one or more changes to the Work within the general scope of this Contract. The Construction Manager At-Risk must proceed with any such changes, and any Construction Manager At-Risk claim regarding any such change must be made in strict accordance with Articles 11, 12, and 16 contained in the Supplemental General Conditions.

(A) The Construction Manager At-Risk must notify and obtain the consent and approval of the Construction Manager At-Risk's Surety with reference to all Change Orders if such notice, consent or approval is required by the Owner, the Construction Manager At-Risk's Surety or by law. The Construction Manager At-Risk's performance of Change Order Work constitutes the Construction Manager At-Risk's warranty to the Owner that the surety has been notified of, and consents to, such Change Order Work AND THE SURETY SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN NOTIFIED OF SUCH CHANGE ORDER WORK AND TO HAVE EXPRESSLY CONSENTED TO THE CHANGE ORDER WORK.

(B) ANY CLAIM ABOUT AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM DUE TO A CHANGE MUST BE GIVEN IN WRITING TO THE OWNER AS PROVIDED IN ARTICLES 11, 12 AND 16 OF THE SUPPLEMENTAL GENERAL CONDITIONS AND ARTICLE 16 OF THIS CONSTRUCTION MANAGER AT-RISK CONTRACT, OR THE CLAIM IS WAIVED. Any failure to agree upon an adjustment in the Contract Time or Contract Sum must be resolved under Part 1 - Article 16. The Construction Manager At-Risk must proceed with the prosecution of the Work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this Article.

ARTICLE 20. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

Inspection and correction of the Work and Construction Manager At-Risk's warranties shall be as provided in Article 10 of the Supplemental General Conditions.

ARTICLE 21. NO TERMINATION BY THE CONSTRUCTION MANAGER AT-RISK

The Construction Manager At-Risk does not have a right to terminate the Contract. As provided in Article 15 of the Supplemental General Conditions, the Construction Manager At-Risk has no right to stop Work on the Project. In the event of any dispute between Construction Manager At-Risk and Owner involving the Construction Manager At-Risk's claim to entitlement to any payment, the Construction Manager At-Risk, as required by Article 11 of the Supplemental General Conditions, must diligently proceed with the Work pending resolution of the dispute.

ARTICLE 22. OWNER'S RIGHT TO SUSPEND CONSTRUCTION MANAGER AT-RISK'S PERFORMANCE

The Owner maintains the right to suspend or stop Work as provided in The Supplemental General Conditions, Articles 11 and 15.

ARTICLE 23. TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with Article 15 of the Supplemental General Conditions.

ARTICLE 24. COMPLIANCE WITH THE LAW

The Construction Manager At-Risk shall comply with, and ensure that all Subcontractors comply with, all applicable Governmental Rules, including the federal requirements found in Appendix B hereto.

ARTICLE 25. NON-COLLUSION AND OTHER CONSTRUCTION MANAGER AT-RISK REPRESENTATIONS

The Construction Manager At-Risk represents and agrees that the only Person or Persons interested as principal or principals in the Proposal submitted by the Construction Manager At-Risk for this Contract are named therein, and that no Person other than those mentioned therein has or will have any interest in the above mentioned Proposal, in the securing of the award of this Contract, or in the Contract; that this Contract has been secured without any connection with any Person or Persons other than those named; that the Proposal is in all respects fair and was prepared, and the Contract was secured, without collusion or fraud; and that neither any officer nor employee of the COUNTY has or shall have a financial interest in the performance of the Contract or in the supplies, Work, or business to which it relates or in any portion of the profits thereof.

See Exhibit 1, "Contract Affidavit," at the end of this agreement for additional Construction Manager At-Risk representations and affirmations.

ARTICLE 26. INDEPENDENT CONSTRUCTION MANAGER AT-RISK

The relationship of the Construction Manager At-Risk to the COUNTY is that of an independent Construction Manager At-Risk , and said Construction Manager At-Risk , in accordance with its status as an independent Construction Manager At-Risk , covenants and agrees that it will conduct itself consistently with such status, that it will neither hold itself out as nor claim to be an officer or employee of the COUNTY by reason hereof, and that it will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the COUNTY, including workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE 27. SET-OFF RIGHTS

The County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include the County's option to withhold, for the purposes of set-off, any moneys due to the Construction Manager At-Risk under this Contract up to any amounts due and owing to the State with regard to this Contract, any other contract with any County department or agency, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the County for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto.

ARTICLE 28. RECORDS

The Construction Manager At-Risk shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Contract (hereinafter, collectively called the "Records"). The Records must be kept for a minimum of three years after Final Payment. The County and any of its authorized employees or agents shall have access to the Records during normal business hours at an office of the Construction Manager At-Risk within the State or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. The County will take all reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under the Maryland Public Information Act ("PIA"), provided the following:

The Construction Manager At-Risk timely informs the Contract Administrator, in writing, of the identity of the Records that should not be disclosed; and

Designation of said Records as exempt from disclosure under the PIA is reasonable.

Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

ARTICLE 29. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION

Federal Employer Identification Number and/or Federal Social Security Number. All invoices submitted for payment must include the Construction Manager At-Risk's taxpayer identification number, i.e., either the federal employer identification number or federal social security number, or both such numbers if the Construction Manager At-Risk has both such numbers. That number is as follows: _____. Failure to include this number or numbers may delay payment.

Privacy Notification. The authority to request the above personal information from the Construction Manager At-Risk is found in COMAR 21.07.01.03. Disclosure of this information by the Construction Manager At-Risk is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities. The information will be used for tax administration purposes and for any other purpose authorized by law.

ARTICLE 30. APPLICABLE LAW

This Contract must be construed under the law of the State of Maryland, without regard to conflicts of law provisions

ARTICLE 31. SUCCESSORS AND ASSIGNS

This Contract is binding on the Parties and their respective successors, heirs, and assigns. The Contract must not be assigned without prior written consent of the Owner and except as otherwise provided in this Contract.

ARTICLE 32. NON-ASSIGNMENT CLAUSE

Neither this Contract nor any right, title, or interest therein may be assigned, transferred, conveyed, sublet, or disposed of by the Construction Manager At-Risk without the previous written consent of the State. Any attempts to assign the Contract without the County's written consent are null and void.

ARTICLE 33. UNION ACTIVITY

Furthermore, by signing or performing work under this Contract, the Construction Manager At-Risk expressly certifies that it will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery County Code, Section 11B-33B.

ARTICLE 34. FEDERAL CLAUSES

The Work to be performed under this Contract will be financed in part with federal funds and is therefore subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Appendix B. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions, but only to the extent of the conflict.

IN WITNESS WHEREOF, this Contract has been executed by the County and the Construction Manager At-Risk.

MONTGOMERY COUNTY, MARYLAND

Recommended:

Chief, Division of Transportation Engineering
Contract Administrator

Date: _____

Approved for Execution:

Director, Department of Transportation

Date: _____

Approved:

Director, Department of Procurement
Approved as to form and legal sufficiency:

Date: _____

Montgomery County Office of the County Attorney

Date: _____

[CONSTRUCTION MANAGER AT-RISK FIRM NAME]

Construction Manager At-
Risk Firm License Number

Date Issued

Place of Issuance (County)

ATTEST:

Secretary's Signature

Printed Name

By: _____ (Seal)
President's Signature

Printed Name

Federal ID # or Social Security #

RFP #1088210

ATTACHMENT G

Supplemental General Conditions of Construction Contract

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ATTACHMENT G

SUPPLEMENTAL GENERAL CONDITIONS OF
CONSTRUCTION CONTRACT

**Definitions for terms contained herein can be found in
Article 1 of Montgomery County, Maryland's General
Conditions of Construction Contract.**

ARTICLE 10

QUALITY CONTROL PLAN, COMMISSIONING REPORT AND WARRANTIES

10.1 QUALITY CONTROL PLAN AND COMMISSIONING REPORT

10.1.1 Quality Control Plan. Unless noted otherwise in the Contract Documents, the Contractor must prepare and submit a quality control plan in accordance with the requirements of the Contract Documents for review and approval by the Owner within thirty (30) days of Notice to Proceed. The Contractor must comply with the requirements of the approved quality control plan.

10.1.2 Commissioning Plan. Unless noted otherwise in the Contract Documents, the Owner will provide a commissioning plan to the Contractor; the Contractor must comply with the requirements of the Owner's commissioning plan. If noted in the Contract Documents, the Contractor must prepare and submit a commissioning plan in accordance with the requirements of the Contract Documents for review and approval by the Owner. The Contractor must comply with the requirements of the approved commissioning plan.

10.2 GENERAL WARRANTY AND SPECIAL WARRANTIES

10.2.1 General Warranty. The Contractor warrants to the Owner that all materials and equipment furnished under the Contract will be of first quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents.

10.2.2 Duration of General Warranty. The Contractor warrants and guarantees for one (1) year from Substantial Completion, or for a longer period that is otherwise expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects for a minimum period of one (1) year from Substantial Completion or any longer period stated in the Contract Documents. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no

cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

10.2.3 Relation to Specific Correction Provisions and Other Remedies. The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Section 10.6, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

10.2.4 Additional or Special Warranties. The Contractor must furnish all special warranties required by the Contract Documents no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Subsection 10.6.3.

10.3 OBSERVATION AND INSPECTION OF WORK

10.3.1 Access to Work. The Contractor must provide the Owner and the Architect/Engineer safe access to the Work at all times that it is in preparation or progress wherever located.

10.3.2 Site Visits. The Owner, its Construction Representatives, its consultants and the Architect/Engineer may visit the Site at intervals appropriate to the stage of construction to conduct progress meetings, to make observations and inspections and to become generally familiar with the progress and quality of the completed Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

10.3.3 Responsibility of Contractor. Neither the observations of Owner or the Architect/Engineer nor the performance of any inspections, tests or approvals relieves the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

10.4 UNCOVERING OF WORK

10.4.1 Uncovering of Prematurely Covered Work. If a portion of the Work is covered contrary to the request of the Owner or its designee or the Architect/Engineer, or to specific requirements of the Contract Documents, or prior to any required inspection or testing, the Owner or its designee or the Architect/Engineer may require that the covered Work be uncovered by the Contractor for observation, inspection, testing or approval as appropriate. Any Work that is damaged or removed by such uncovering must be replaced at the Contractor's expense and without change in the Contract Time.

10.4.2 Uncovering of Other Covered Work. If a portion of the Work has been covered which is not required by the Contract Documents or any other requirement to remain uncovered, or which the Owner or its designee or the Architect/Engineer has not specifically requested to observe, test, inspect or approve prior to its being covered, the Owner or its designee or the Architect/Engineer, with the Owner's concurrence, may require that such Work be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, a Change Order will be issued to account for the cost of uncovering and replacement (**if a Change Order is not issued, the Contractor must file a Claim for adjustment of the Contract Sum within the time and containing the information required in Article 12 or the same will be deemed to be conclusively waived**), and if it affects activities on the critical path, the Contractor may file a Claim requesting an adjustment in the Contract Time (**if a Change Order is not issued, the Contractor must file a Claim requesting an adjustment of the Contract Time within the time and containing the information required in Article 11 or the same will be deemed to be conclusively waived**). If such Work is not in accordance with the Contract Documents or any other requirement, the Contractor must bear the costs and time impacts of uncovering, testing, inspection, specific approval, correction and replacement, including the additional costs of the Owner's and the Architect/Engineer's services and all delays relating thereto.

10.5 TESTS, INSPECTIONS AND APPROVALS BY OTHERS

10.5.1 Required Tests, Inspections and Approvals. The Contractor must arrange for tests, inspections and approvals of portions of the Work required by the Contract Documents, laws,

ordinances, rules, regulations or orders of public authorities having jurisdiction, or the Owner or its designee acting as a public authority, to be made at an appropriate time. Unless otherwise provided in the Contract Documents, such tests, inspections and approvals, other than those provided by public authorities, must be provided by an independent testing laboratory or entity acceptable to the Owner, and the Contractor must bear all related costs of tests, inspections and approvals. The Contractor must give the Owner, through the Architect/Engineer, timely notice of when and where tests and inspections are to be made so the Owner and the Architect/Engineer may observe such procedures.

10.5.2 Tests and Inspections by Owner. If indicated in the Contract Documents, the Owner will hire, and pay the costs for, inspection and testing agencies for specific portions of the Work. The Contractor must coordinate with any Owner-hired inspection and testing agencies and arrange for (schedule) tests, inspections and approvals of portions of the Work required by the Contract Documents without delaying the Work.

- .1 Notice of Problems with Owner-hired Inspection Agencies.** The Contractor shall promptly notify the Owner of any problems or concerns with Owner-hired inspection and testing agencies.
- .2 Mis-scheduling of Owner-hired Inspection Agencies.** The Contractor is responsible for coordinating and accurately scheduling Owner-hired inspection and testing agencies so that the work is ready for inspection when scheduled with the agencies. The Contractor's failure to accurately schedule inspections and/or tests with the Owner-hired agencies causes the Owner unnecessary costs. If the Contractor repeatedly fails to accurately schedule the inspections/testing agencies' time, the Owner will backcharge the Contractor for the cost of the unnecessary Site visits by the Owner-hired agencies.

10.5.3 Scheduling of Tests, Inspections and Approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work.

10.5.4 Additional Tests, Inspections and Specific Approvals. The Owner may, in its discretion, require the Contractor to perform additional testing, or obtain inspection or specific approval of any portion of the Work, whether or not such Work is fabricated, installed or completed. However, neither a recommendation made by the Architect/Engineer nor a decision by the Owner either to require or not to require such testing, inspection or specific approval gives rise to a duty or responsibility of the Owner or the Architect/Engineer to the Contractor, Subcontractors, Sub-subcontractors, material and equipment Suppliers, their agents or employees, or other persons performing portions of the Work.

10.5.5 Other Tests, Inspections and Specific Approvals Required by Owner. In addition to the tests required by this Section 10.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

10.5.6 Notice to Contractor. If the Owner, in its discretion, determines that portions of the Work require additional testing, inspection or approval not included under Subsection 10.5.1, the Owner or the Architect/Engineer will instruct the Contractor to make arrangements for such additional testing, inspection or approval, and the Contractor must give timely notice to the Owner and the Architect/Engineer of when and where tests and inspections are to be made so the Owner and the Architect/Engineer may observe such procedures. Unless otherwise provided, additional testing, inspection and approval must be conducted by an organization selected by the Contractor that is acceptable to the Owner. The Owner shall bear such costs except as provided in Subsections 10.5.9 and 10.6.2.

10.5.7 Observation of Tests, Inspections or Approvals. If the Owner or the Architect/Engineer is to observe tests, inspections or approvals, they will do so, so as not to delay any critical path activities and, where practicable, at the normal place of testing, provided reasonable notice of them has been given by the Contractor to the Owner and Architect/Engineer.

10.5.8 Certificates of Testing, Inspection and Approval. Required certificates of testing,

inspection or approval must, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect/Engineer for the Owner.

10.5.9 Costs of Re-Testing, Inspection and Approval. If testing, inspection or approval under Subsections 10.5.1, 10.5.3 or 10.5.4 reveals failure of any portion of the Work to comply with the Contract Documents or applicable legal requirements, the Contractor must bear all costs and time impacts made necessary by such failure, including costs of the Owner's and Architect/Engineer's additional services and expenses and the costs of repeated testing, inspection or approval, and Contractor's cost to correct.

10.6 REJECTION AND CORRECTION OF WORK

10.6.1 Rejection of Nonconforming Work. The Owner and the Architect/Engineer may reject Work at any time that does not conform to the Contract Documents. Unless the Contractor is specifically instructed otherwise, any Work that fails a required test, inspection or approval will be considered as having been rejected, whether or not specific notice of rejection is given by the Owner or the Architect/Engineer.

10.6.2 Contractor to Correct or Replace Rejected Work. The Contractor must promptly correct or, at the Owner's option, replace Work which is rejected by the Owner or the Architect/Engineer as defective or which otherwise fails to conform to the requirements of the Contract Documents, whether before or after Substantial Completion. The Owner may require additional testing or inspection of such Work as provided in Subsection 10.5.3. The Contractor must bear the costs and any time impact related to correcting or replacing such rejected Work, including costs of the Owner's and the Architect/Engineer's additional services and expenses and the costs of additional or repeated testing, inspection or approval and all delays relating thereto.

10.6.3 Acceptance of Defective or Nonconforming Work. If the Owner determines that it is in its best interests to accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its correction or replacement, the Owner may accept such Work with an appropriate corresponding adjustment reducing the Contract Sum and, if appropriate, the Contract Time. Any such

acceptance of defective or nonconforming Work will not extend to defects or deficiencies not expressly revealed to the Owner in writing at the time of acceptance. Any such acceptance to be effective must be in writing and signed by the Director.

10.6.4 Removal of Defective or Nonconforming Work. The Contractor must promptly remove from the Site and dispose of any materials, supplies or equipment that does not comply with the requirements of the Contract Documents and/or which has been rejected by the Owner.

10.6.5 Contractor to Bear Cost to Correct or Replace Other Work. The Contractor must bear the cost and any time impact related to correcting or replacing any construction of the Owner or Separate Contractors or other forces permitted to perform work at the Site which is destroyed or damaged by the Contractor's correction, removal or replacement of Work that does not comply with the requirements of the Contract Documents.

10.6.6 Failure to Correct or Replace. If the Contractor fails to correct or replace Work that is rejected, defective or nonconforming within a reasonable time as required by the Owner, the Owner may correct or replace it. The Owner may remove and dispose of, or at its discretion, store for subsequent auction or private sale, the remaining materials or equipment. All costs of correction, removal, replacement, disposal, storage or sale, including costs of the Owner's and the Architect/Engineer's additional services, must be borne by the Contractor and may be backcharged by the Owner against the Contract Sum.

10.6.7 Artistic Decisions. The Owner's decisions in matters relating to artistic effect are final.

10.7 SPECIFIC CORRECTION OF WORK

10.7.1 Specific Correction Period. Unless otherwise provided in the Contract Documents for a particular item or class of Work, and in addition to any other warranty provided in this Contract, the Contractor must correct or replace any Work found to be defective, non-complying or nonconforming, or any Work (whether by the Contractor or by others) affected thereby, discovered during the specific correction periods as follows:

- .1 Within one year after the Date of Substantial Completion of the Work or designated portion thereof;
- .2 Where the Owner takes partial occupancy or use, one year after the date for commencement of warranties established under Subsection 14.1.5;
- .3 The period of time, if any, established by terms of an applicable special warranty required by the Contract Documents; or
- .4 In the case of hidden or latent defects discovered within the period established by the applicable statute of limitations, a period of one year from the date that the Owner discovers, or should reasonably have discovered, the defect, noncompliance or nonconformance.

10.7.2 Specific Correction Required. If, within the applicable specific correction period provided in Subsection 10.7.1, any of the Work does not comply with the requirements of the Contract Documents, the Contractor must correct or, at the Owner's sole option, replace it promptly after receipt of written notice from the Owner to do so, unless the Owner elects to accept such Work in accordance with Subsection 10.6.3.

10.7.3 Notice and Demand for Specific Correction Obligation. The Owner will give notice to the Contractor within a reasonable time after discovery of Work which it believes to be subject to specific correction. The Owner will afford the Contractor an opportunity to jointly inspect the Work within a reasonable time after such notice, and will, at the Contractor's request, arrange for the Architect/Engineer's presence at such inspection. If no agreement is reached between the Owner and Contractor as to the responsibility and steps to be taken for correction, the Owner may issue a demand for correction to the Contractor, who must comply promptly with the demand. Failure to comply with such demand constitutes a material breach of the Contract. **Any Claim for an increase in the Contract Time and/or a Claim for an increase in the Contract Sum with respect to such demand for correction must be filed by the Contractor in accordance with Articles 11 and/or 12 or the same will be deemed to have been conclusively waived.**

10.7.4 Extension of Specific Correction Obligation. If the Work remains uncorrected, or

if the Work has exhibited a pattern of repeated failure requiring repeated correction, the applicable specific correction period will recommence in its entirety upon the completion of the latest specific correction period.

10.7.5 Inspection Prior to Warranty Expiration. Thirty (30) days prior to the expiration of the correction period provided for in Subsection 10.7.1, the Contractor must conduct a joint inspection of the Work with the Owner and the A/E to determine whether any additional items remain to be corrected.

10.7.6 Effect on Other Remedies. Nothing contained in this Section 10.7 is to be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. This Section relates only to the specific obligation of the Contractor to correct or replace the Work, and has no relationship to the time within which the Contractor's obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct or replace the Work. In addition, the Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any defective Work or Work which fails to conform to the requirements of the Contract Documents.

ARTICLE 11

TIME

11.1 COMMENCEMENT

11.1.1 Date of Commencement and Notice to Proceed. The Owner will issue a Notice to Proceed and make the Site available to the Contractor within a reasonable time after execution of the Contract. The date on which the Contract Time commences, as established in the Notice to Proceed, will not be postponed by failure to proceed with the Work by the Contractor or persons or entities for whom the Contractor is responsible. For phased work noted in the Contract Documents, multiple Notices to Proceed may be issued by the Owner.

11.1.2 Preconstruction Conference. Promptly after the Notice to Proceed has been issued but before the Work at the Site begins, the Owner will conduct a preconstruction conference with the Contractor and any Separate Contractors to review Project requirements including, but not

limited to, preliminary Submittals, schedules, Site utilization, construction operations to occur at the Site during the succeeding sixty (60) days, communications, coordination with Separate Contractors, payment procedures, and other matters.

11.1.3 Commencement of Work at the Site. The Contractor must not commence operations on the Site prior to issuance of the Notice to Proceed.

11.2 CONSTRUCTION SCHEDULES

11.2.1 Contractor's Initial Progress Schedule. Within fifteen (15) days after issuance of the Notice to Proceed, the Contractor must prepare and submit for the Owner's and Architect/Engineer's approval a proposed Initial Critical Path Method Project Schedule (ICPM) for performance of the Work, which schedule may be a cost and man-loaded Progress Schedule, if so specified in the Contract Documents. The Contractor will not receive any payments until such time the ICPM has been submitted and approved by the Owner. The schedule must (i) conform to all specified time limits, including Substantial, Final and any interim Completion dates, established by the Contract Documents, (ii) include all Work for each element of the Project as required by the Contract Documents, (iii) include the schedule for all Submittals, (iv) include all testing, inspections and commissioning required by the Contract Documents, and (v) provide for expeditious and practicable execution and completion of the Work within the Contract Time.

11.2.2 Requirements of the Progress Schedule. The ICPM must further comply with the scheduling specifications set forth in the Contract Documents, and to the extent not inconsistent therewith, must also fully comply with the following requirements.

The Contractor must plan, schedule, and construct the Work using a Critical Path Method Project Schedule (CPM). The CPM must be used for coordinating and monitoring all the work specified in the Contract Documents including all activities of Subcontractors, Sub-subcontractors, vendors, Suppliers, utilities, the Owner, Separate Contractors, authorities having jurisdiction, and all other parties associated with the construction of the Contract. All work including but not limited to submittals, major procurement, delivery, and construction activities must be included. All activities specified in the Contract Documents

must be included in the CPM. The CPM must be based upon the entirety of the Contract Documents. **The software utilized for the CPM must generate files that are compatible with Primavera Project Planner.**

Float. The CPM utilizes float. Float is defined as the amount of time between when an activity “can start to finish” and when an activity “must start or finish”. Float is a shared commodity for the use of the Owner and the Contractor and is not for the exclusive use or benefit of either party. The parties have the full use of the float until it is depleted.

Scheduling Representative. The Contractor must designate a scheduling representative, prior to submission of the Initial Critical Path Method Project Schedule (ICPM). The scheduling representative is the person primarily responsible for development and maintenance of the Contractor’s CPM schedule. The scheduling representative will represent the Contractor in all matters regarding the schedule and must attend all schedule related meetings.

The Contractor must submit the qualifications of the designated scheduling representative to the Owner for approval within ten (10) days of Notice-to-Proceed. This approval is required before the ICPM will be accepted. The designated scheduling representative must have at least three years of verifiable experience in preparing and maintaining CPM project schedules on contracts of similar size and complexity. Replacement of the scheduling representative by the Contractor will require written approval from the Owner.

Initial Critical Path Method Project Schedule (ICPM). The ICPM must consist of:

- (a) A time scaled diagram. The ICPM time scaled diagram will have a scale and format that is acceptable to the Owner and Architect/Engineer. The activities must be labeled with the activity identification clearly shown for each activity. All relationships between activities must be shown;
- (b) Tabular reports with activities sorted as follows:

- (1) Activity ID. This report must include predecessors and successors for each activity with leads and lags shown;
- (2) Activity ID. This report must include resources. This report must clearly define the resources assigned to each activity.
- (3) Early Start, Total Float;
- (4) Total Float, Early Start;
- (5) Project Area (if applicable);
- (6) Project Phase (if applicable); and
- (7) Responsibility e.g., Contractor, specific subcontractor, specific supplier, the Owner, utilities and specific third parties.

The header of each tabular report must include the project name, Contract number, data date, run date and number, and report type.

The body of each report must include the activity identification, activity description, original and remaining duration, early/late start and finish dates, percent complete, actual start/finish dates, total float, and calendar designation for every activity.

- (c) Written Narrative (WN). The WN must comply with the requirements described hereinafter;

- (d) Printed Calendars. The printed calendars must include a listing, description, and calendar form tabulation of all calendars used in the ICPM. The calendar must contain the total number of anticipated work days (including day and night shifts) required to complete all the work required in the Contract. The calendars must delineate the holidays and anticipated non-work days or periods including inclement weather days. An explanation of the Contractor's basis for determining each non-work day or period must be included in the WN; and
- (e) Data disc containing all of the information contained in the CPM. The format must be compatible with Primavera Project Planner software.

All construction activities must have durations not exceeding 10 working days, unless otherwise approved by the Owner and Architect/Engineer. Activities for review and approval of Submittals and shop drawings by the Architect/Engineer must be given durations of not less than 30 calendar days. The Contractor may submit a short list of highly critical approval activities to the Architect/Engineer. The Architect/Engineer will make every effort to expedite the approval of these Submittals; however, this will not alter the requirements to include 30 calendar days for all approvals in the ICPM. Durations for other procurement activities will be evaluated on a case by case basis.

The latest calculated early finish date in the ICPM shall equal the Contract calendar date for Substantial Completion specified in the Contract Documents. If the Contractor submits an earlier Substantial Completion date than specified in the Contract Documents, the Owner, upon approval of the ICPM, may issue a Change Order to adjust the Substantial Completion date to that shown on the ICPM.

For all Contracts with a Contract Sum exceeding eight million dollars (\$8,000,000), the Contractor must resource load all construction activities in its schedule and schedule updates with the material, equipment, and manpower planned to be utilized by the Contractor and its subcontractor in accomplishing each activity. Resource loading of the CPM must be fully explained in the WN.

The Owner and/or Architect/Engineer reserve the right to require specific activities and/or milestones to be added to the CPM (consistent with the Work).

The Contractor must utilize activity codes to categorize activities by at least the following: project area; project phase; and responsibility, e.g. Contactor or specific subcontractors.

The Contractor must provide a WN as part of the ICPM. This WN must explain the sequence of work, the critical path, interim completion dates, project phasing, non-work days, or periods, and labor and equipment resources (as appropriate). In addition, the Contractor must explain how the ICPM has provided for: permit requirements, environmental requirements, coordination with other public Contractors, milestone dates (for the Contract or other related contracts), coordination with other entities, coordination with all utility companies, special non-work days or periods, and weather in its ICPM. The WN must explain the specific scope of each critical activity and the basis used to determine the original duration of each activity, i.e., production rate and anticipated quantities.

All Work specified in the Contract Documents must be addressed in the WN. The Contractor shall utilize the WN to explain the following:

- (a) Relationships between activities not obviously identified;
- (b) Equipment usage and limitations;

- (c) Manpower usage and limitations;
- (d) Activity codes, abbreviations, and activity identification system;
- (e) All Calendars and how they are utilized in the CPM;
- (f) Date or time constraints;
- (g) All abbreviations in the ICPM; and
- (h) Scheduling of weather and temperature sensitive activities.

The Contractor must complete and submit the proposed ICPM within 15 calendar days after issuance of the Notice to Proceed; submission to the Architect/Engineer and Owner for review and approval shall include: one electronic copy and two paper sets (in color) to the A/E, and one electronic copy and three paper sets (in color) to the Owner.

The Architect/Engineer and Owner will complete the review of the Contractor's ICPM within 30 calendar days after the submittal. If required, the Architect/Engineer may convene a Joint Review Conference at which the Architect/Engineer, Owner and Contractor (including its scheduling representative) will make corrections and adjustments to the proposed ICPM. If a revision is necessary due to the Owner's or Architect/Engineer's review or the Joint Review Conference, the proposed revision must be submitted by the Contractor within seven calendar days after the Contractor received the Owner's and/or Architect/Engineer's review comments or within seven calendar days after the date of the Joint Review Conference, whichever is the latest. Revisions must conform to the requirements for the ICPM. The Owner and Architect/Engineer will respond to the revised ICPM within seven calendar days after the revised ICPM is received.

Any delay in starting work caused by the acceptance of the ICPM by the Owner or Architect/Engineer will not be considered as a basis for any adjustments in the Contract Time or Contract Sum.

When the Owner notifies the Contractor that the ICPM has been accepted, that document will become the CPM schedule of record. The Contractor will be responsible for implementing and executing the work specified in the Contract in strict conformance with the CPM Schedule of Record. The CPM Schedule of Record will be the Contractor's work plan for completing the entire Contract as specified in the Contract Documents.

CPM Updates. The Contractor must update the CPM Schedule of Record and submit to the Owner and A/E for review on a monthly basis and at more frequent intervals as required by the issuance of Change Orders and Field Orders or other conditions of the Work and Project and as provided in Article 9 (G) of the Contract. The monthly updates of the CPM Schedule of Record are required to be submitted concurrent with the Contractor's monthly Application for Payment; however, the CPM update is required whether the Contractor submits a Application for Payment for a month or not.

CPM update submissions must contain the activity data as specified in (a) through (e) of the ICPM. The update must describe the progress of the project to date. The WN must include a description of the work performed during the update periods, current critical path, the amount of float on the critical path, any delays or disruptions experienced by the Contractor during the period of the update, any change in manpower or equipment, any systematic revision, and any potential delays or disruptions.

Systematic Revisions to the Schedule of Record. Systematic Revisions are defined as one or more of the following:

- (a) A change in the specified original duration of an activity;
- (b) A change in the logic of the schedule;
- (c) A change in the calendars or to the calendar to which an activity is assigned;
- (d) A change to resources;
- (e) A change to any actual date, previously established;
- (f) The deletion or addition of an activity;
- (g) A change to, addition of, or deletion of a date or time constraint;
- (h) A change to, addition of, or deletion of an activity code;
- (i) A change to an activity description; and
- (j) Any change other than updating an activity.

If the Contractor indicates in the WN that a monthly CPM update contains no systematic revisions from the previous CPM Schedule of Record, the monthly CPM update must consist solely of updating the previous CPM schedule of record with actual data (actual start dates, actual finish dates, completion percentage, etc.). In the event the Contractor is submitting a monthly CPM update without any systematic revisions, no pre-coordination with the Owner and/or A/E is required.

When the Contractor proposes to make a systematic revision(s) to the CPM, the Contractor (including its scheduling representative) must verbally discuss the proposed revision(s) with the Owner and Architect/Engineer. If the revision(s) is/are determined to be minor in nature,

the Owner and Architect/Engineer will allow the Contractor to include the revision on the next CPM Update. If the Owner or Architect/Engineer determines that the revision is not minor in nature, the Contractor must submit its proposed systematic revision(s) in writing to the Owner and Architect/Engineer for review and approval prior to deviating from the CPM Schedule of Record.

The proposed revision(s) must describe the reason for the proposed revision(s), the resulting critical path, and all particulars of the revision. These must include, but not be limited to, changes in the method or manner of the work, changes in resources, addition or deletion of manpower, increased or decreased quantities, defective work, and acceleration of work.

After review, the A/E and Owner shall provide direction on what systematic revisions, if any, are acceptable. The Contractor shall submit its monthly CPM Schedule based on this direction.

Approval and/or Acceptance of Monthly CPM Schedule Update. The Owner, with input from the A/E shall approve, accept or reject the Contractor's monthly CPM Schedule update.

Approval: The Owner will approve a CPM Schedule update if (1) the update accurately reflects the project status as of the data date, (2) any systematic revisions are acceptable, (3) the schedule meets all other contractual requirements, and (4) the schedule's projected Substantial Completion date is at or precedes the contractual Substantial Completion date.

An approved CPM Schedule Update becomes the CPM Schedule of Record and no further action is required by the Contractor.

Acceptance: The Owner will accept but not approve a CPM Schedule update if (1) the update accurately reflects the project status as of the data date, (2) any systematic revisions are acceptable, and (3) the schedule meets all other

contractual requirements but the schedule's projected Substantial Completion date is later than the contractual Substantial Completion date.

An accepted CPM Schedule Update becomes the CPM Schedule of Record but the Contractor must take corrective action to return the project to schedule so that Substantial Completion can be achieved within the Contract Time. Before the next CPM Schedule Update, the Contractor shall submit a written description to the Owner and the A/E of its plan to overcome the delay.

Upon approval or acceptance by the Owner and Architect/Engineer, the update will become the CPM schedule of record for the period between its data date and the data date of the next approved update.

Rejection: The Owner may reject a CPM Schedule update if (1) the update does not accurately reflect the project status as of the data date, (2) utilized systematic revisions are not acceptable, (3) the schedule does not meet any contractual requirement, or (4) the schedule's projected Substantial Completion date is later than the contractual Substantial Completion date for two (2) or more consecutive months and the Contractor is not making adequate efforts to remedy the Delay.

A rejected CPM Schedule Update must be reworked to incorporate the comments of the Owner and/or the A/E and be resubmitted to the Owner and the A/E. Resubmittal by the Contractor must be made within seven calendar days after receipt of the Owner and/or Architect/Engineer's review comments. The Owner reserves the right to reject any proposed revision which adversely impacts the Owner, utilities, or other concerned parties. **No new schedule update shall be submitted until a rejected Update is resubmitted and accepted or approved by the Owner.**

Failure to timely submit a CPM Schedule update may result in the Architect/Engineer or Owner withholding

payment until submission and approval/acceptance. Failure to timely resubmit a CPM Schedule update which can be approved or accepted by the Owner may result in the Architect/Engineer or Owner withholding payment until an acceptable Update or Revision is submitted.

Updates must not include any systematic revisions to the previous CPM Schedule of Record, unless prior approval by the Owner and Architect/Engineer is received for the insertion of revisions.

The Contractor will attend bi-weekly progress meetings at the project site. At these meetings, the Contractor will provide a report on the actual status of the Work as compared to the latest CPM Schedule of Record.

11.2.3 Coordination with Other Schedules.

The Contractor must revise its Progress Schedule as necessary to conform to the overall Project Progress Schedule incorporating schedules of the Owner and any Separate Contractors as provided in Subsection 7.1.4.

11.2.4 Review and Approval of Schedules.

The Contractor's Progress Schedule must include, at no additional cost, details requested by the Owner or the Architect/Engineer and be in the format specified in the Contract Documents and as provided in this Article 11. The Owner and the Architect/Engineer will review and approve or take other appropriate action on the Contractor's Progress Schedule, but only for the limited purpose of checking for general conformance with the requirements of the Contract Documents, this Article 11, and the schedules of the Owner, Separate Contractors and other forces permitted by the Owner to perform work at the Site. Any changes to the schedule required by the Owner or the Architect/Engineer must be made by the Contractor and the schedule resubmitted to the Owner for approval. Review and approval or acceptance of the schedule does not relieve the Contractor of its obligations to complete the Work within the Contract Time or any interim completion dates required by the Contract Documents, nor does it constitute approval of any construction means, methods, techniques, sequences or procedures. The approval or acceptance of any schedule or any schedule adjustment made as part of the

approval/acceptance of any schedule does not constitute, nor does it provide the basis for, any Claim for an increase of the Contract Time or any Claim for an increase in the Contract Sum.

11.2.5 Schedule of Submittals. The Contractor must prepare and keep current, for the Owner's and the Architect/Engineer's approval, a Schedule of Submittals which is part of the Progress Schedule. The Schedule of Submittals must allow at least thirty (30) days for review and approval of each Submittal by the Architect/Engineer, and sufficient additional time, if required, for (i) review and approval by regulatory bodies and (ii) their correction and resubmission by the Contractor and any Subcontractors or Suppliers. The Schedule of Submittals must identify all schedules, Shop Drawings, Product Data, Samples, Warranties, operating manuals and other Submittals provided for review or required for approval by the Owner or the Architect/Engineer, which indicates the dates or times which the Contractor proposes to submit each such Submittal (allowing sufficient time for review, correction and resubmission if required, and approval) and the dates or times on or within which such Submittals must be approved in order to avoid a delay in the progress of the Work.

11.3 PROJECT PROGRESS

11.3.1 Contract Time Reasonable. By executing the Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

11.3.2 Time is of Essence. The Contractor acknowledges that completion of the Contract by the dates specified for Substantial and Final Completion is critical to the Owner, time being of the essence.

11.3.3 Contractor to Proceed Expeditiously. The Contractor must proceed expeditiously with adequate forces and maintain progress in accordance with the latest approved Progress Schedule.

11.3.4 Conformance to Schedules. The Contractor must conform to the most recently approved Progress Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Progress Schedule.

11.3.5 Progress Record. The Contractor must maintain at the Site, available to the Owner and

the Architect/Engineer for their reference during the progress of the Work, a color copy of the latest approved Progress Schedule, a copy of the latest CPM Schedule of Record (if different from the latest approved Progress Schedule) and any approved revisions thereto. **The Contractor must keep current records of and mark on a copy of the CPM Schedule of Record the actual commencement date, progress, and completion date of each scheduled activity indicated on the Progress Schedule.**

11.3.6 Substantial Completion Within Contract Time. The Contractor must achieve Substantial Completion within the Contract Time.

11.3.7 No Damages for Prevention of Early Completion The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and Final Completion. Accordingly, **the Contractor may not make any Claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.**

11.3.8 Acceleration to Comply with Schedule. If the Contractor's progress is not maintained in accordance with the latest approved Progress Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Progress Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner thereof. Any extension of working hours requires approval of the Owner, which will not be unreasonably withheld but may be subject to reasonable conditions including payment for additional or overtime services of the Owner, the Architect/Engineer and any other applicable consultants, testing or regulatory agency costs.

11.3.9 Acceleration of Schedule. The Owner reserves the right to issue a written directive to accelerate the Work which may be subject to an appropriate adjustment, if any, in the Contract Sum. **If the Owner directs an acceleration of the Project Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the**

Contractor must file a request for increase to Contract Time as provided in Article 12 or any Claim for such will be deemed to be conclusively waived.

11.4 SUSPENSION OR STOPPAGE OF WORK

11.4.1 Owner's Right to Stop the Work. If the Contractor fails to correct Work, or any portion thereof, which is not in accordance with the requirements of the Contract Documents or fails on more than one occasion to carry out Work in accordance with the Contract Documents, the Owner may, order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Owner or its designee, acting in the capacity of a building inspection official, has the power to stop Work as may be necessary to enforce compliance with applicable codes and regulations. Work stoppage in accordance with this Subsection does not entitle the Contractor to an increase in Contract Time or damages for delay. If the Contractor disagrees with the Owner's right to stop the Work, the Contractor must file a Claim for increase in the Contract Time and/or increase in the Contract Sum in accordance with Articles 11 and/or 12 as applicable or any Claim for such will be deemed to be conclusively waived.

11.4.2 Owner's Right to Suspend Work for Convenience. The Owner may, without cause and for its convenience, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine, subject to an appropriate adjustment in the Contract Time and/or Contract Sum. **The Contractor is not entitled to profit on any adjustment to the Contract Sum due to any such stoppage, suspension, interruption or delay.** If no adjustment is made in the Contract Sum as a consequence of the suspension order, or if the Contractor disagrees with any adjustment made, the Contractor must file a Claim for increase in the Contract Time and/or increase in the Contract Sum in accordance with Articles 11 and/or 12 as applicable or any Claim for such will be deemed to be conclusively waived.

11.4.3 Disagreements Involving Non-payment. In the event of any disagreement between the Contractor and the Owner involving the Contractor's Claim to entitlement of any payment, the Contractor must diligently proceed with the Work pending resolution of the

disagreement subject to the provisions of Section 7(G) of the Contract.

11.5 DELAYS

11.5.1 Excusable Delay. An excusable Delay is a Delay in the progress of the Work which at the time of the Delay was a critical path activity as shown on the most recent CPM Schedule of Record and which prevents the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused by conditions which could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in 11.5.2, the Contractor or anyone for whose acts the Contractor is responsible. **Excusable Delay does not include any delay caused in whole or in part by any Subcontractor, Sub-subcontractor or Supplier which is considered unexcused Delay. There shall be no compensation whatsoever for excusable delay.** Excusable Delay may, but does not necessarily, include:

- .1 Weather delay as further defined in Subsection 11.6.3;
- .2 Act or omission of government and regulatory agencies and officials (other than the Owner in its capacity as Owner);
- .3 Act or omission by third parties including utilities;
- .4 Catastrophic event such as fire, flood and unavoidable casualties; and
- .5 Strike or labor dispute.

11.5.2 Compensable Delay. Compensable Delay is limited to delay in the progress of the Work which at the time of the delay was critical path activity as shown on the most recent CPM Schedule of Record and which prevents the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused solely and exclusively by acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law).

11.5.3 Unexcused Delay. Unexcused Delay is delay in Work which at the time of the delay was critical path activity as shown on the most recent CPM Schedule of Record and which prevents the Contractor from achieving Substantial Completion before the expiration of the Contract Time, and which is not excusable delay or

compensable delay. No increase in the Contract Time or increase in the Contract Sum will be provided for an unexcused Delay.

11.6 TIME AND RELATED COST ADJUSTMENTS

11.6.1 Notice of Delay. The Contractor must provide written notice of any actual or prospective Delay promptly, and in no event later than five (5) days after the occurrence of the event or omission giving rise to such Delay. The notice must be provided both to the Architect/Engineer and the Contract Administrator within the specified time.

The written notice must contain the following information:

- .1 A detailed statement of the reasons and causes for the Delay;
- .2 Inclusive dates of the Delay (start date only if end date is not known);
- .3 Specific portions of the Work affected by the actual or prospective Delay; provide specific Activity Names and Numbers from the most recent CPM schedule of record
- .4 Status of Work (affected Activities) affected before commencement of the Delay;
- .5 Effect of the Delay on available "float" for referenced Activities; and
- .6 Specific action (if any) required by the A/E and/or the Owner to remedy or mitigate the Delay.

If the Contractor fails to provide the written notice containing the specified information, within the five (5) days, as prescribed above, the Contractor will not receive any consideration, in a Claim for an increase in Contract Time and/or for a Claim for an increase in the Contract Sum, for the time period before a written notice (containing the specified information) is provided to the Owner and the A/E.

11.6.2 Continuing Delay. In the case of a continuing Delay (an actual or prospective Delay to a activity or activities for which the Contractor cannot progress pending further information), the Contractor must provide the initial notice (as described in the preceding subsection) and a further notice at each progress meeting throughout the duration of the Delay. The further

notices must contain all of the specific information required in the preceding Subsection. **A continuing Delay ends when the Contractor has sufficient information to progress the affected work, not when the affected work is completed. The Contractor must request an increase in the Contract Time in accordance with 11.6.3 when the delayed work can progress again.**

11.6.3 Request for an Increase in Contract Time. If the Contract contends that the Delay is an excusable or compensable Delay, and it is entitled to an increase in Contract Time, the Contractor, in addition to providing the notice in Subsection 11.6.1, must submit a request for additional Contract Time to the Owner and the A/E within fifteen (15) days of the event ending the Delay. **The Contractor's failure to provide the written request for an increase in Contract Time containing the information specified in the following Subsection within the fifteen (15) days prescribed above will be conclusively deemed a waiver of any Claim for Delay arising from such occurrence.**

11.6.4 Concurrent Delay. Concurrent delay is two or more separate Delays, as defined in Section 11.5, in the progress of the Work, one or more which is caused by the Owner and one or more which is caused by the Contractor which, at the time of the Delay, delayed critical path activities as shown on the most recent CPM Schedule of Record, that occur during the same time period, and each Delay independently delayed the Contractor from achieving Substantial Completion before the expiration of the Contract Time. Any concurrent Delay will be considered an excusable Delay; therefore, the Contractor will receive a corresponding increase in Contract Time, but will not receive any compensation for a concurrent Delay.

11.6.5 Supporting Documentation. The Contractor's request for an increase in the Contract Time must identify those portions of the latest CPM Schedule of Record affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 A written detailed statement of the reasons and causes for the delay;
- .2 Inclusive dates of the delay;
- .3 Specific portions of the Work affected by the actual or prospective delay;

provide specific Activity Names and Numbers from the most recent CPM schedule of record;

- .4 Status of Work affected before commencement of the delay;
- .5 Effect of the delay on available "float" time for the referenced activities and the Project;
- .6 A critical path method (CPM) analysis demonstrating that the delay has affected an activity (or activities) on the critical path of the most recent CPM schedule of record at the time of the occurrence of the delay; and
- .7 If the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible including any Subcontractor, sub-subcontractor or Supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

11.6.6 Additional Time for Unusually Severe Weather. In order for the Contractor to be entitled to an increase of the Contract Time under this Subsection, the following conditions must be satisfied:

- .1 The weather experienced at the Project Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusually severe weather was a critical path activity as shown on the most recent CPM Schedule of Record and which prevents the Contractor from

achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and

- .3 The Contractor must have provided a request for an increase in the Contract Time of the weather-related delay complying with Subsection 11.6.3 above. The last day of the each month will be the date of the end of the delay for purposes of the fifteen (15) day requirement for submission. Any request for an increase in the Contract Time for a weather-related delay must be submitted by the 15th of the following month.

The following schedule of monthly anticipated adverse weather delays will constitute the base line for monthly weather time evaluations. The Contractor's Progress Schedule including all updates must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY

January	7 work days
February	6 work days
March	6 work days
April	7 work days
May	7 work days
June	6 work days
July	4 work days
August	5 work days
September	3 work days
October	5 work days
November	4 work days
December	4 work days

Upon Notice to Proceed and continuing throughout the Contract, the Contractor must record on its daily CQC and/or field reports, the occurrence of adverse weather and resultant impact to actual and scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays

must include only the Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Subsection 11.6.3 and the number of actual adverse weather delay workdays exceeds the number of days anticipated in the table above, and have adversely affected critical path weather-dependent activities, the Contractor is entitled to an increase in the Contract Time, but not an increase in the Contract Sum (i.e. weather delays are excusable delays).

The preceding calculation and methodology is based on work days. To convert any justified time increase to calendars days, the number of justified work days shall be multiplied by (7/5 = 1.4), and rounded to the nearest whole number, to determine justified calendar days [Example: 2 work days would be converted to 2.8 (3) calendar days.]

11.6.7 Strikes and Labor Disputes. If strikes or labor disputes are to be considered as the basis for an excusable delay, they must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

11.6.8 Review and Adjustment of Schedules. Upon receipt of a request for an increase in the Contract Time from the Contractor complying with Subsection 11.6.3 and 11.6.4 (and if applicable 11.6.5) above, the Owner will review the most recent CPM Schedule of Record to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Progress Schedule including the application of any unused "float" time available in the schedule. The Owner may require the Contractor to submit a more detailed Progress Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Progress Schedule, which minimizes the adverse effects of the delay. After review, the Owner will issue a determination of the validity of the Contractor's request. If justified,

the Owner will prepare a Change Order or Contract Amendment for an increase in the Contract Time.

11.6.9 Limitation on Adjustments. No increase in the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than fifteen (15) days before written request for an increase in the Contract Time for the delay is provided by the Contractor.

1. No increase in the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.
2. **The Contractor will not receive any compensation for profit, additional bond cost or overhead (which includes extended office overhead and site-specific overhead and general conditions) or any other cost or compensation or any other damages of any kind or nature whatsoever whether incurred by the Contractor, its Subcontractor or Suppliers for delay, all of which are irrevocably waived by Contractor where the delay results from performance of additional Work (Change Order or Field Order Work including bilateral, unilateral, and constructive changes) beyond the Work required by the Contract Documents and the Contractor is paid for the additional Work. The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or**

Suppliers), is included in, and payable to the Contractor as part of the Change Order or Field Order Work. Contractor waives any and all other damages and cost of any nature or kind whatsoever including Claims for local and cumulative impacts as a result of such Change Order Work and any and all other Claims of any type or nature whatsoever including any Claim for loss of productivity or loss of efficiency.

3. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order. Work for which the Contractor is not otherwise compensated in an amount not to exceed the lesser of (i) a daily rate computed by dividing eight percent (8%) of the original Contract Sum by the original Contract Time or (ii) a daily rate computed by dividing the Contractor's profit, bond cost and site-specific overhead (but not home office overhead) for the original Contract Sum by the original Contract Time.
4. **The Contractor for itself and its Subcontractors and Suppliers, irrevocably waives any and all other compensation and delay damages as a result of any compensable delays, including without limitations any Claims for any indirect cost and any Claims for loss of productivity or loss of efficiency.**

11.6.10 Denial of Adjustments in Time or Money. In the event the Owner denies the Contractor's Claim for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within thirty (30) days after such denial, submit a Claim as provided in Article 16. Submissions made prior to the denial must be resubmitted as part of the Claim after the denial. Any Claim on account of denial of a change which is not made

within such thirty (30) days of the denial will be deemed conclusively to have been waived.

11.7 DAMAGES FOR DELAY

11.7.1 Delay Damages.

- .1 By executing a Bilateral Change Order, Field Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in Contract Time or an increase in the Contract Sum beyond that specified in the Bilateral Change Order, Field Order or Contract Amendment for the Work performed or to be performed under the Modification. Nor is the Contractor entitled to an increase of the Contract Time or an increase in the Contract Sum as a result of the issuance by the Owner of a Unilateral Change Order or Field Order unless a Claim for an increase in the Contract Time and/or a Claim for an increase in the Contract Sum is made by the Contractor as and when required by this Article 11 and Article 12.
- .2 No Claim for an increase in the Contract Time and/or Claim for an increase in the Contract Sum or Claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the Owner, its agents, employees or consultants, (ii) Contract Documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable increases in Contract Time for completion of the Work.
- .3 The provisions of the preceding subsection do not apply to Claims that meet all of the following conditions: (i) the Claim arises under the Contract; (ii) the Claim is limited to actual and direct damages

(i.e. profit, additional bond costs (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Subsection 11.6.9; (iii) the Contract establishes a time limit for achieving Substantial Completion and the Claim is for critical path delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Section 11.6.

- .4 An increase in Contract Time shall be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No increase in Contract Time will be granted in the absence of a written request for the increase in Contract Time complying with Section 11.6.

11.7.2 Liquidated Damages. The Owner will suffer financial loss if Substantial Completion of the Work is not achieved within the Contract Time. Accordingly, and in lieu of actual damages or proof thereof, the Contractor agrees to pay, as Liquidated Damages and not as a penalty, the amount stipulated in the Contract for each and every day of unexcused delay in achieving Substantial Completion.

11.7.3 Assessment of Liquidated Damages. The Owner may assess and deduct the applicable amount of Liquidated Damages from any payment due the Contractor. If the unpaid balance of the Contract Sum is less than the amount of the Liquidated Damages, the Contractor or its Surety must pay the deficiency to the Owner upon demand.

ARTICLE 12

CHANGES

12.1 CHANGE INSTRUMENTS

12.1.1 Amendment only by Written Modification. The Contract may be amended or modified only by a written Modification as defined in Subsection 1.1.39.

12.1.2 Change Instruments. Changes in the scope of the Contract may be effected only by a written Amendment signed by the Contractor and Owner. Changes in the Work which are within the general scope of the Contract may be effected, without invalidating the Contract, by a Change Order or Field Order. The Contract Time and Contract Sum may be changed only by a Change Order or Contract Amendment.

12.1.3 Change Proposals. The Contractor must submit a request for change to the Contract Sum (change proposal) covering a contemplated change within ten (10) days after request of the Owner or the Architect/Engineer or within ten (10) days of the event giving rise to the Contractor's request for a change in the Contract Sum or Contract Time. No increase in the Contract Time or increase in the Contract Sum or will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals must define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Time, or (ii) the Contract Sum. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed ten percent (10%). Change proposals are binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. Acceptance of a change proposal may only be made in a written Modification. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in a unilateral Change Order or unilateral Field Order in

accordance with this Article 12, without accepting the change proposal in its entirety.

12.1.4 Preparation and Submission of Change Orders and Contract Amendments. If the Owner determines that a change proposal is appropriate, the Contract Administrator or designee will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Time or Contract Sum, or both, for further action by the Director. No such change is effective until the Change Order has been approved by the Director.

12.1.5 Performance of Changes. Unless otherwise provided, the Contractor must perform changes in the Work promptly upon receipt of executed Modifications under applicable provisions of the Contract Documents.

12.2 CHANGE ORDERS

12.2.1 Utilization. A Change Order is a written directive by the Owner to the Contractor directing a change in the Work which is within the general scope of the contract and which may increase or decrease the Contract Time and/or the Contract Sum issued with or without the consent of the Contractor.

12.2.2 Adjustments in Amount Payable to Contractor. A Change Order may provide for an adjustment in the amount payable to the Contractor based only on one of the following methods:

- .1 A fixed or not-to-exceed sum agreed to by the Owner and Contractor and stated in the change instrument;
- .2 Unit Prices stated in the Contract Documents; or
- .3 Reasonable and fair cost estimate, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to estimated costs of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors

overhead and profit in turn must not exceed ten percent (10%). **The total percentage of overhead and profit payable by the Owner (to both the Contractor and all subtier subcontractors), regardless of the subtier which performs the work, shall not exceed twenty percent (20%).**

- .4 Actual cost, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to actual cost of labor, actual cost of materials, supplies and equipment, actual rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed ten percent (10%). **The total percentage of overhead and profit payable by the Owner (to both the Contractor and all subtier subcontractors), regardless of the subtier which performs the work, shall not exceed twenty percent (20%).**
- .5 In the absence of an agreement between the Owner and Contractor, the amount must be determined in accord with Subsection 12.2.2.2 or 12.2.2.3 above, using whichever will result in the lowest cost to the Owner.

12.2.3 Adjustments in Progress Schedule. A Change Order may provide for an adjustment in the Contract Time if justified by the requirements of Article 11.

12.2.4 Absence of Proposed Adjustments. If a Change Order is silent as to any adjustment to the Contract Time or the Contract Sum, it will be conclusively presumed that none is intended and none will be allowed unless the Contractor files an objection as and when specified in the following Subsection

12.2.5 Action Upon Receipt. Upon receipt of a Unilateral Change Order, the Contractor must

promptly proceed with the change in the Work involved. The Contractor must advise the Owner and the Architect/Engineer in writing, promptly and in no event later than ten (10) days after issuance of the Change Order, of the Contractor's objection (i) to the amount or method, if any, provided for in the Unilateral Change Order for adjustment in the Contract Time or in the amount payable to the Contractor, or (ii) to the absence of any adjustment to the Contract Time or the Contract Sum. Any objection to be valid must contain the specific adjustment in the Contract Time or the Contract Sum to which the Contractor claims it is entitled including a detailed explanation of the basis for its request. A Claim for an increase in the Contract Time, to be valid, must contain the supporting documentation specified in Subsection 11.6. A Claim for an increase in the Contract Sum, to be valid, must further be documented and calculated as specified in Subsection 12.2.2. **Failure of the Contractor to object as and when specified in this Subsection is deemed an acceptance of the Unilateral Change Order as issued and a waiver of any Claim by the Contractor to any adjustment to the Contract Time or the Contract Sum.**

12.3 FIELD ORDERS

12.3.1 Utilization. A Field Order is a written instruction issued by the Owner to the Contractor directing a change in the Work when unforeseen and unanticipated conditions arise which require immediate action to mitigate costs or avoid delays. It may provide for additional compensation to be paid to the Contractor (outside of the Contract), but does not change the Contract Time or Contract Sum.

- .1 The Owner may issue a unilateral Field Order to avoid Project Delay before the Contractor has prepared its cost proposal. In these instances, the Contractor should, unless noted otherwise on the Field Order, submit its cost proposal within ten (10) days and the Owner will review the cost proposal in accordance with Section 12.3.
- .2 The Owner may issue a Field Order directing the Contractor to proceed with work which the Contractor and the Owner and/or A/E disagree as to whether it is a Change to the Work. In these instances, the Contractor shall submit its Claims for an increase in the Contract Time and/or an increase in

the Contract Sum in accordance with Articles 11 and 12 and the County will make a determination on the Claims. If the Contractor disagrees with the determination, the Contractor must file a Dispute in accordance with Article 16.

12.3.2 Adjustments in Amount Payable to Contractor. A Field Order may provide for an adjustment in the amount payable to the Contractor based only on one of the following methods:

- .1 A fixed or not-to-exceed sum stated in the change instrument;
- .2 Unit Prices stated in the Contract Documents;
- .3 Reasonable and fair cost estimate, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to estimated costs of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed ten percent (10%). **The total percentage of overhead and profit payable by the Owner (to both the Contractor and all subtier subcontractors), regardless of the subtier which performs the work, shall not exceed twenty percent (20%);**
- .4 Actual cost, properly itemized and supported by sufficient substantiating data to permit evaluation which will be limited to actual cost of labor, actual cost of materials, supplies and equipment, actual rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the

Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. **The term 'cost' as used in this subsection is limited to the cost incurred in the actual performance of the work.** The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed ten percent (10%). **The total percentage of overhead and profit payable by the Owner (to both the Contractor and all subtier subcontractors), regardless of the subtier which performs the work, shall not exceed twenty percent (20%); or**

- .5 In the absence of an agreement between the Owner and Contractor, the amount must be determined in accord with Subsections 12.3.2.2 or 12.3.2.3 above, using whichever will result in the lowest cost to the Owner.

12.3.3 Adjustments in Progress Schedule. A Field Order may not be used to adjust the Contract Time. If the Contractor files an objection under Subsection 12.3.5 below which results in an entitlement by the Contractor to an increase in the Contract Time, it will be implemented by execution of a Change Order or Contract Amendment.

12.3.4 Absence of Proposed Adjustments. If a Field Order is silent as to any adjustment to the Contract Time or the Contract Sum, it will be conclusively presumed that none is intended and none will be allowed unless the Contractor files an objection as and when specified in the following Subsection.

12.3.5 Action Upon Receipt. Upon receipt of a (unilateral or bilateral) Field Order, the Contractor must promptly proceed with the change in the Work involved. The Contractor must advise the Owner and the Architect/Engineer in writing, promptly and in no event later than ten (10) days after issuance of the Field Order, of the Contractor's objection (i) to the amount or method, if any, provided for in the Field Order for adjustment in the Contract Time or to the Contract Sum, or (ii) to the absence of any adjustment in the Contract Time or to the Contract Sum. **Any objection to be valid must contain the specific adjustment to the Contract Time or the Contract Sum to which the Contractor claims it is entitled including a detailed explanation of the basis for the**

Claim. A Claim for an increase in the Contract Time, to be valid, must contain the supporting documentation specified in Section 11.6. A Claim for an increase to the Contract Sum, to be valid, must further be documented and calculated as specified in Subsection 12.2.2. **Failure of the Contractor to object as and when specified in this Section is deemed an acceptance of the Field Order as issued and a waiver of any Claim by the Contractor to an adjustment to the Contract Time or the Contract Sum.**

12.4 DIFFERING CONDITIONS (SITE AND STRUCTURAL)

12.4.1 Differing Site Conditions. This Contract contains a Differing Site Condition clause and requests may be made by the Contractor and, if justified, approved by the Owner for an increase in Contract Time and an increase in the Contract Sum as consequence of differing site or subsurface conditions encountered by the Contractor. For Contract Modification purposes, the Geotechnical Studies establish a baseline for expected subsurface conditions. The Contractor must show a material difference between the Geotechnical Studies and actual subsurface conditions to justify a Contract Modification.

The Contractor must promptly, before conditions are disturbed and in no event later than five (5) days after first observing such conditions, give written notice to the Owner and Architect/Engineer of:

- .1 Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.

Failure of the Contractor either (i) to provide notice before disturbing the existing conditions or (ii) failure to give notice within five (5) days of first observing such conditions is conclusively deemed a waiver of any Claim relating to such conditions.

12.4.2 Differing Structural Conditions in Remodeling or Renovation Contracts. If this is a Contract for a remodeling or renovation of an existing structure and the Contractor encounters

conditions in the structure (not as to the site or subsurface conditions) which differ materially from those indicated in the Contract Documents, the Contractor must give written notice thereof to the Owner and the Architect/Engineer promptly before conditions are disturbed and in no event later than five (5) days after first observing such conditions. **Failure of the Contractor either (i) to provide notice before disturbing the existing conditions or (ii) failure to give notice within five (5) days of first observing such conditions is conclusively deemed a waiver of any entitlement to an increase in the Contract Time and/or an increase in the Contract Sum relating to such conditions.**

12.4.3 Investigation and Determination by Architect/Engineer. After receipt of the written notice, the Architect/Engineer will promptly investigate any alleged differing condition(s) and provide a written report of its findings to the Owner. If the Architect/Engineer and Owner determine that the conditions vary materially from the Contract Documents, the Architect/Engineer will produce technical revisions to the Contract Documents as required. The Contractor shall submit Claims for an increase in the Contract Time and/or an increase in the Contract Sum in accordance with Articles 11 and 12 and the Owner will issue a corresponding Modification. To avoid Delay, the Owner may issue a unilateral Field Order or Change Order before receipt of the contractor's Claim. In that instance, a second Modification will be issued after review and acceptance of the Contractor's Claims. If the Owner determines that the actual conditions are not materially different or that no change in the terms of the Contract is justified, the Owner will so notify the Contractor in writing.

12.4.4 Claims Over Differing Structural Conditions. If the Contractor objects to the Owner's finding under Subsection 12.4.3, the Contractor must file a notice as and when provided in Subsection 12.5.1 below and the same will be resolved as provided in Subsection 12.5.2 below. **Failure of the Contractor to file the notice as and when required by Subsection 12.5.1 below and Article 11 of the Contract will be conclusively deemed a waiver of any Claim relating to any such differing condition.**

12.5 CONSTRUCTIVE CHANGES AND DISPUTED ADJUSTMENTS

12.5.1 Notice to Owner and Architect/Engineer. The Contractor must

advise the Owner (Contract Administrator) and the Architect/Engineer in writing promptly and in no event later than ten (10) days after (i) issuance of any interpretation, clarification, instruction, direction or order whether orally or in writing from either the Owner or the Architect/Engineer, or (ii) the occurrence of any event or discovery of any condition (including any condition as provided in Section 12.4 above), which the Contractor believes or has reason to believe entitles the Contractor to an increase in the Contract Time or an increase in the Contract Sum; and except in the case of an emergency involving possible loss of life or bodily injury or property damage exceeding \$50,000, the required written notice must be provided by the Contractor prior to proceeding with the Work. Failure of the Contractor to provide such notice constitutes an acceptance of the interpretation, clarification, instruction, direction, order, event or condition without adjustment to the amount payable to the Contractor and/or the Contract Time and a conclusive waiver of any Claim relating to the same. Any objection to be valid must contain the specific adjustment to the Contract Time and/or Contract Sum to which the Contractor claims it is entitled including a detailed explanation of the basis for the request. A Claim for an increase in the Contract Time must further contain the supporting documentation specified in Section 11.6. A Claim for an increase in the Contract Sum must further be documented and calculated as specified in Subsection 12.2.2.

12.5.2 Disputed Adjustments. All disputed adjustments under this Contract will be determined in accordance with Article 16 if, as conditions precedent thereto, the Contractor has timely provided all notices and objections required under the terms of the Contract.

12.6 SUBSTITUTIONS AND OR-EQUAL ITEMS

12.6.1 Allowance of Substitutions and Or-Equal Items. The Contract Sum and Contract Time are based on the requirements of the Contract Documents and use of the materials and equipment specified therein. Proposals to use Substitutions and Or-Equal Items after Contract execution is neither invited nor favored by the Owner. Or-Equal Items will be considered only where permitted by the Specifications, and Substitutions will be considered only where the specified item is not available or where significant overall cost savings are offered to the Owner. No Substitution or Or-Equal Item will be used without

specific written acceptance of the Owner, which may be withheld in the sole discretion of the Owner. The determination by the Owner that an item is not an "or-equal" but a proposed Substitution, and any decision by the Owner regarding the acceptability or use of an Or-Equal or Substitution will be final and without further recourse by the Contractor. In making such determinations the Owner may, but will not be required, to rely upon the recommendations of the Architect/Engineer.

12.6.2 Or-Equal Items. The Contractor must submit any requests for the use of an Or-Equal Item, if specifically permitted by the Specifications, to the Owner in writing through the Architect/Engineer. If in the Owner's sole discretion an item of material or equipment proposed by the Contractor is functionally equal to that named and sufficiently similar so that no change in design or related Work will be required, it may be considered for eligibility as an Or-Equal Item, in which case further review of the proposed item will, in the Owner's sole discretion, be accomplished subject to compliance with all of the requirements for acceptance of a proposed Substitution except as expressly waived by the Owner. A decision in the Owner's sole discretion that an item of material or equipment proposed by the Contractor does not qualify as an Or-Equal Item, does not preclude a request by the Contractor that it be considered a proposed Substitution under Subsection 12.6.3. An Or-Equal Item may only be accepted by the Owner in writing.

12.6.3 Substitutions. After the Contract has been executed, the Owner and Architect/Engineer will consider a formal request submitted by the Contractor for the substitution of products or materials in place of those specified, when such request is accompanied by:

- .1 Evidence that the specified item is unavailable;
- .2 Complete data on the proposed Substitution substantiating compliance with the Contract Documents, including product identification and description, performance and test data, references and samples where applicable, and an itemized comparison of the proposed item with the products specified or named in the Contract Documents;
- .3 Data indicating the effect of the Substitution on the Progress Schedule

and the Contract Time, if any, on the general design and artistic effect where applicable, and its effect on work under separate contracts;

- .4 accurate cost data on the proposed item in comparison with the product specified, whether or not the Substitution of such item will require an adjustment to the Contract Sum; and
- .5 Any additional information required by the Owner or the Architect/Engineer to permit evaluation.

12.6.4 Representations by Contractor. Requests for Substitution based on Subsection 12.6.3 above are understood to mean that the Contractor:

- .1 Represents having personally investigated the proposed Substitution and having determined that it is equal or superior in all respects to that specified;
- .2 Will warrant the Substitution to the same extent and will provide the same or better special Warranties and Guarantees for the Substitution as was required for the item originally specified;
- .3 Certifies that the cost data is complete and includes all related costs under the Contract including, if known to the Contractor, cost under separate contracts and the Architect/Engineer's redesign costs, and that the Contractor waives all Claims for additional costs and agrees to pay all such additional costs, whether known or not, related to the Substitution including any cost which subsequently become apparent;
- .4 Certifies that the schedule and time data are complete and include all related time under the Contract (excluding time under separate contracts and for the Architect/Engineer's redesign), and that the Contractor waives all Claims for delay related to the Substitution which subsequently become apparent; and
- .5 Will coordinate the installation of the proposed Substitute, making such changes as may be required for the Work to be complete in all respects.

12.6.5 Costs Borne by Contractor. The Contractor must bear all costs of preparing and submitting requests for Substitutions and the use of Or-Equal Items. The Contractor bears the risk for the proper fit and performance of substituted and "or-equal" materials and the burden for additional work, time and expense resulting from substituted and "or-equal" materials. The costs of the Owner's and Architect/Engineer's additional services attributable to their review, evaluation, acceptance, design and implementation must also be borne by the Contractor.

12.6.6 Timeliness. All requests for use of an Or-equal or Substitution must be made in a timely manner in sufficient time to permit adequate review and approval or acceptance by the Owner and the Architect/Engineer, coordination with Separate Contractors, and preparation of any changes to the Contract Documents which would be required by acceptance of any proposed Substitution or Or-Equal Item so as not to delay the Work or the Project.

12.6.7 Improper Substitutions. Submission of an item as part of a Shop Drawing, Sample or Product Data does not constitute compliance with Section 12.6, even if the Shop Drawing, Sample or Product Data is or has been approved. **The Owner may direct removal of any unapproved Substitutions and/or Or-Equal items, and replacement with approved items, at Contractor's cost and with no increase in the Contract Time.**

ARTICLE 13

PAYMENTS

13.1 SCHEDULE OF VALUES

13.1.1 Submission. Within ten (10) days after issuance of a Notice to Proceed, the Contractor must submit to the Architect/Engineer a Schedule of Values which allocates the Contract Sum among all portions of the Work.

13.1.2 Form and Contents of Schedule of Values. The Schedule of Values must be prepared in such a manner that each item of Work and each subcontracted item of work is shown as one or more line items on AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. Unless otherwise required, each line item must include its allocable share of the Contractor's overhead and profit. The Schedule of Values must be prepared in such detail and must be supported by such data to substantiate

its accuracy as required by both the Owner and the Architect/Engineer.

13.1.3 Review and Approval. The Architect/Engineer will review the Schedule of Values with the Owner and advise the Contractor of its approval or any revisions that may be required for approval. This Schedule of Values as approved by the Architect/Engineer and Owner, will be used as a basis for reviewing the Contractor's Applications for Payment, and must be revised and resubmitted as necessary to reflect adjustments to the Contract Sum by approved Contract Modifications.

13.2 APPLICATIONS FOR PAYMENT

13.2.1 Initial Review and Submission. The Contractor must submit to the Architect/Engineer complete and itemized Applications for Payment for Work on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Architect/Engineer and Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application for Payment.

13.2.2 Form and Contents of Application. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and the Architect/Engineer, such as copies of requisitions from Subcontractors and material Suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Change Orders and Contract Amendments and the Contract retainage provided for in the Contract Documents.

13.2.3 Inclusion of Stored Materials. Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. **The Owner has no obligation or responsibility to pay for materials stored off the Site.** If determined to be in the Owner's best interest and specifically approved in writing in advance by the

Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing which is within Montgomery County. **Material stored out of Montgomery County will not be considered for payment.** Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interest. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

13.2.4 Exclusion of Amounts Not Payable to Subcontractors and Suppliers. Under applicable provisions of Maryland law, payments received by the Contractor are held in trust for Subcontractors and Suppliers who have furnished labor and materials covered by an Application for Payment. Accordingly, **Applications for Payment may not include requests for payment of amounts for Work performed by a Subcontractor or Supplier that the Contractor does not intend to pay for said work.**

13.2.5 Contract Retainage. Until Substantial Completion of the Work, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less contract retainage of ten percent (10%). Such contract retainage will apply whether or not the Owner is entitled to withhold additional amounts under the Contract. The Contractor has no right to receive any such retainage, or interest thereon, until Substantial Completion. Upon Substantial Completion and with the Surety's consent to the reduction in the retainage, the Contract retainage will be reduced to five percent (5%) of the Contract Sum if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and the Architect/Engineer, and will remain in effect until Final Completion.

If the Project has LEED requirements, the Contract retainage will be reduced to not more than one percent (1%) of the Contract Sum if Surety consents to the reduction in the retainage and the Contractor has performed all requirements for Final Completion except for issuance, by the USGBC, of the LEED certification at the level required in the Contract Documents.

The full ten percent (10%) retainage will be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and the Architect/Engineer, or if the Surety withholds its consent, or if there is a failure to properly perform under any of the provisions of the Contract.

13.2.6 Passage of Clear Title. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material Suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

13.2.7 Contractor's Certification. Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and Suppliers:

- .1 Have been paid from the proceeds of previous progress payments; and
- .2 Will be paid in a timely manner from the proceeds of the progress payment currently due.

The foregoing certification will be deemed to have been inserted into any Application for Payment from which it has been omitted.

In the event the Contractor has not paid or does not pay as certified, such failure **constitutes a ground for Termination under Subsection 15.3.2** of the Contract.

13.2.8 Application of Payments for Field Orders. The Contractor shall submit its Application for Payment of Field Orders monthly to the Architect/Engineer on a separate document from the Contract Application for Payment. The Contractor can submit for partial completion of Field Orders and retainage is not applied to Field Order work.

13.3 CERTIFICATES FOR PAYMENT

13.3.1 Issuance of Certificate for Payment. The Architect/Engineer will, within ten (10) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment for such amount as the

Architect/Engineer determines is properly due, with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in Subsection 13.3.3.

13.3.2 Representation in Certificate for Payment. The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the Site and the data comprising the Application for Payment, that to the best of the Architect/Engineer's knowledge, information and belief, (i) the Work has progressed to the point indicated and (ii) the quality of the Work, to the extent certified as having been completed, is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect/Engineer, in writing in the Certificate for Payment, and are not binding upon the Owner. The issuance of a Certificate for Payment will not be a representation that the Architect/Engineer has (i) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (ii) reviewed construction means, methods, techniques, sequences or procedures, or (iii) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

13.3.3 Withholding Certification. The Architect/Engineer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect/Engineer's opinion the representations to the Owner required by Subsection 13.3.2 cannot be made. If the Architect/Engineer is unable to certify payment in the amount of the Application for Payment, the Architect/Engineer will notify the Contractor and Owner as provided in Subsection 13.3.1. If the Contractor and Architect/Engineer cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make such representations to the Owner. The Architect/Engineer may also decide not to certify payment or may nullify the whole or a part of a

Certificate for Payment previously issued, to such extent as may be necessary in the Architect/Engineer's opinion to protect the Owner from loss because of the causes set forth in Subsection 13.3.4.

13.3.4 Grounds for Withholding Certification. The Architect/Engineer may withhold certification, or the Owner may withhold payment, to the extent reasonably necessary, to protect the Owner from loss on account of:

- .1 The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract and with construction industry standards;
- .2 Claims made, or likely to be made, against the Owner or its property on account of the Contractor's performance;
- .3 Reasonable evidence that the Contractor has failed to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Work and Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 Loss by, or damage to the Owner or another contractor;
- .6 Reasonable evidence that the Contractor's rate of progress is such that, in the Owner's opinion, Substantial or Final Completion of the Work for the Project, or both, may be inexcusably delayed;
- .7 Failure to carry out the Work in accordance with the Contract Documents;
- .8 The quantity of the Contractor's Work being less than that stated in the Contractor's Application for Payment, or otherwise;
- .9 Other items which entitle the Owner to a setoff against the amounts due the Contractor; or

- .10 Failure of the Contractor to remove or bond off liens by its Subcontractors or Suppliers.

13.3.5 Release of Certificate When Grounds Removed. When the reasons for withholding certification are removed, the Architect/Engineer will certify payment for amounts previously withheld.

13.4 PROGRESS PAYMENTS

13.4.1 Withholding of Payment by Owner. The Owner may withhold payment on a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if the Owner, based on its own Site observations, inspections or other evidence available to the Owner, does not concur with the Architect/Engineer's representations under Subsection 13.3.2 or with the Architect/Engineer's finding of removal of conditions as provided in Subsection 13.3.5. In such case the Owner will notify the Architect/Engineer and the Contractor of the reasons for withholding payment in whole or in part as permitted by this Subsection 13.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly initiate payment for an amount which the Owner determines to be appropriate. The Owner may also decide not to make payment as necessary to protect the Owner from loss because of the causes set forth in Subsection 13.3.4. In that event, Contractor must submit a revised Application for Payment for the Owner's review and approval once such causes have been remedied along with evidence

reasonably satisfactory to the Owner that such causes have in fact been remedied.

13.4.2 Payment. Payments on Certificates for Payment which are approved by the Owner as "proper invoices" within the meaning of applicable laws and regulations will be paid within thirty (30) days after the Owner approves the Certificate for Payment.

13.4.3 Payment Not Acceptance of Defective Work. Issuance of a Certificate for Payment by the Architect/Engineer or the making of any progress payment by the Owner does not constitute acceptance of Work that is not in accordance with the Contract Documents.

13.4.4 Payment Contingent on Performance. Progress payments may be withheld to the extent the Contractor is not in full compliance with the Contract. The Owner's failure to make progress payments is not an event of default by the Owner under the Contract, nor does it give rise to the right of the Contractor to stop work.

13.4.5 Waiver of Claims by Contractor Acceptance of progress payments by the Contractor, a Subcontractor, Sub-subcontractor or Supplier (to the extent not previously waived) constitutes a waiver of Claims arising from any occurrence existing prior to payment, or arising from performance of the Work for which payment is made by that payee except those previously made in writing and identified by that payee as unsettled on the Application for Payment and which fully comply with the requirements of Articles 11, 12 and/or 16.

ARTICLE 15

RIGHTS AND REMEDIES

15.1 OWNER'S RIGHTS AND REMEDIES

15.1.1 Special and Additional Testing and Inspection. The Owner, on its own initiative or upon the recommendation of the Architect/Engineer, has the right to require additional inspection or testing of the Work as provided in Section 10.5.

15.1.2 Rejection of Nonconforming Work. The Owner has the right and the Architect/Engineer has authority to reject Work which does not conform to the Contract Documents as provided in Subsection 10.6.1 and to require its correction or replacement as provided in Subsection 10.6.2 unless accepted by the Owner under Subsection 10.6.3.

15.1.3 Withholding of Certificates and Withholding of Payments. The Architect/Engineer has the authority to withhold a Certificate for Payment in accordance with Subsections 13.3.3 and 13.3.4. The Owner has the right to withhold payment on a Certificate for Payment as provided in Subsections 13.3.4 and 13.4.1.

15.1.4 Additional Bonds and Insurance. The Owner has the right to require the Contractor to furnish additional bonds as provided in Subsections 14.3.4 and 17.1.3 and additional insurance as provided in Subsection 17.4.4.

15.1.5 Removal of Superintendent, Personnel, Subcontractors or Suppliers. The Owner has the right to require the Contractor to remove and replace the Contractor's Superintendent, Project Manager, Quality Control

Manager and/or any of the Contractor's key project personnel, at no additional cost to the Owner, if the Contractor fails to maintain good order and discipline at the Site under Subsection 5.3.3, if any key personnel proves to be unsatisfactory under Subsection 5.4.2, or if personnel are not properly qualified as required by Subsection 5.5.5. The Owner has the right to require the removal and replacement of any Subcontractor or Supplier as provided in Subsections 6.1.5 and 6.1.6.

15.1.6 Stopping or Suspending the Work.

The Owner has the right to order the Contractor to stop the Work as provided in Subsection 11.4.1 or to suspend the Work as provided in Subsection 11.4.2.

15.1.7 Correction of Defective Work by Owner. The Owner has the right to correct rejected or nonconforming or defective Work as provided in Subsection 10.6.6.

15.1.8 Cleaning Up. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so as provided in Subsection 5.6.7.

15.1.9 Owner Takeover. If the Contractor defaults or otherwise neglects to carry out or complete the Work or a designated portion thereof in accordance with the Contract Documents, whether before or after Substantial Completion, the Owner may include with any notice of default in the performance of such Work, notice of the Owner's intent to remedy the default and perform the Work itself or with other forces, if not remedied by the Contractor within the time specified in the notice, in which case an appropriate Change Order will be issued deducting from payments then or thereafter due the Contractor the cost of correcting the deficiencies or completing such Work, including compensation for the Owner's and the Architect/Engineer's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor must pay the difference to the Owner upon written demand.

15.2 TERMINATION BY OWNER FOR CONVENIENCE

15.2.1 Owner's Right to Terminate for Convenience. The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

15.2.2 Action by Contractor Upon Notice. Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.

15.2.3 Action by Owner Following Notice. Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders as provided in Section 6.4, and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

15.2.4 Contract Adjustments. In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;

- .3 The cost of terminating the following contracts including:
 - (i.) Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
 - (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs; and
- .6 Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor will not be compensated for the cost of terminating subcontracts which must be terminable at no cost to the Owner if the Contract is terminated. The Contractor will not be compensated for the cost of any idled employees unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. **The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 15.2.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract.** If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 16. The Claim must be limited to resolution of the amounts specified in Subsections 15.2.4.1, 15.2.4.2, 15.2.4.3 and 15.2.4.4 of this Subsection 15.2.4. **No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor.** Any such Claim must be filed with the Director within thirty (30) days of the termination of the Contract and must contain a

written statement setting forth the specific reasons and supporting calculations as to the amounts the Contractor claims to be entitled to under this Subsection, all with supporting documentation of all cost claimed as a result of the termination of the Contract.

15.2.5 Obligations to Continue. The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work which has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

15.3 TERMINATION BY THE OWNER FOR CAUSE

15.3.1 Owner's Right to Terminate for Cause. The Owner may terminate the Contract for cause for any of the reasons set forth in the following Subsection 15.3.2.

15.3.2 Grounds for Termination. The Owner has the right to terminate the Contract for cause if the Contractor:

- .1 Fails to supply adequate properly skilled workers or proper materials;
- .2 Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 Files for bankruptcy (voluntary or involuntary);
- .6 Is guilty of an anticipatory breach or repudiation of the Contract;
- .7 Fails to make satisfactory progress in the prosecution of the Contract; or
- .8 Endangers the performance of this Contract.

15.3.3 Notice of Termination. The Director may terminate the Contract, in whole or in part, whenever the Director determines that sufficient grounds for termination exist as provided in Subsection 15.3.2. The Director will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination

for default is effective on the date specified in the Director's written notice. However, if the Director determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Director may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

15.3.4 Action by Contractor and Owner.

Upon termination for cause, the Contractor must take those actions described in Subsection 15.2.2, and the Owner may take those actions described in Subsection 15.2.3, subject to the prior rights of the Contractor's Surety.

15.3.5 Suspension of Payments. When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

15.3.6 Adjustments and Payments. If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect/Engineer's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

15.3.7 Right to Take Other Than Low Bid. In completing the Work following termination for cause or for convenience, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

15.3.8 Termination As If For Convenience. If, after termination of the Contract, it is

determined that the Owner did not have sufficient grounds to terminate for cause, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner, and the provisions of Section 15.2, including Subsection 15.2.4, will apply.

15.4 CONTRACTOR'S NO RIGHT TO STOP WORK

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 16. The Contractor must diligently proceed with the Work pending resolution of the Claim, Dispute and/or Dispute Appeal. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

ARTICLE 16

CLAIMS, DISPUTES, AND DISPUTE APPEALS

16.1 CLAIM

A Claim is a written request by the Contractor that seeks the payment of money, an adjustment of time, an adjustment or interpretation of a Contract provision, or other relief arising under or relating to the Contract. Claims include all requests for additional Contract Time and/or Contract Sum in accordance with Articles 11 and/or 12.

A Claim must be filed, in writing, with the Contract Administrator within the time and containing the information required in:

- .1 Section 11.6, as to an excusable or compensable delay;
- .2 Subsection 12.2.5, as to a unilateral Change Order;
- .3 Subsection 12.5.1, as to a Constructive Change;
- .4 Subsection 12.3.5 as to a unilateral Field Order;
- .5 Subsections 12.4.3, 12.4.4 and 12.5.1 as to differing Site and Structural conditions; and
- .6 Subsection 15.2.4 as to a disagreement arising from termination of the Contract.

As to a disagreement over interpretation of a Contract provision or the Contract Documents, the Contractor must file a Claim within ten (10) days of issuance or statement of the contrary interpretation by Owner.

As to any other Claim arising under or relating to the Contract, the Work or the Project, the Contractor must file a Claim within ten (10) days of the event giving rise to the Claim, unless otherwise specified in the Contract Documents.

A Claim will be deemed to have been conclusively waived by the Contractor if it is not filed within the specified time or it does not contain the required information.

16.2 CONTRACT ADMINISTRATOR'S DECISION ON CONTRACTOR'S CLAIM

The Contract Administrator is responsible for issuing decisions on Claims. The Contract Administrator's final decision on a Claim shall be considered an event giving rise to a Dispute and the Contractor must file any Dispute within the time period stated in Section 16.3 from the date of the Contract Administrator's final decision.

16.3 DISPUTE

A Dispute means an unresolved Claim. If a Contractor's Claim is denied, in whole or in part, by the Contract Administrator, the Contractor must file any Dispute the Contractor may wish to take, with the Director, within thirty (30) days of the event giving rise to the Dispute. The Contractor waives any Dispute not timely filed. The Director must dismiss a Dispute that is not timely filed.

16.4 APPEAL OF THE DIRECTOR'S DECISION (DISPUTE APPEAL).

The Director must decide a Dispute within 45 days after receiving the Dispute unless the Contractor agrees to extend the time for a decision. If the Director denies a Dispute, in whole or in part, the Contractor may file a Dispute Appeal with the Chief Administrative Officer for Montgomery County, Maryland. The Contractor must file a Dispute Appeal within 30 days after receiving the Director's decision, or if no decision is rendered by the Director within 45 days, within 75 days after submitting the Dispute. The Dispute Appeal will thereafter be resolved as provided by Section 11B-35 of the Montgomery County Code and Section 14.2 of the Montgomery County Procurement Regulations or their respective successor provisions. Article 16 is the Contractor's sole and exclusive remedy for resolution of any and all Disputes arising under or relating in any way to the Contract, the Work or the Project. The deadlines set forth in Article 16

and in the Montgomery County Code and Procurement Regulations are jurisdictional and if not complied with will result in denial and dismissal of the Dispute and Dispute Appeal.

16.5 INCORPORATION OF THE MONTGOMERY COUNTY CODE AND PROCUREMENT REGULATIONS

All Disputes must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations which is the Contractor's sole and exclusive remedy for resolving Disputes under this Contract.

ARTICLE 20

MISCELLANEOUS PROVISIONS

20.1 MISCELLANEOUS PROVISIONS.

20.1.1 Assignment. The Contractor may not assign any part of the Contract without written consent of the Owner which consent is within the Owner's sole discretion.

20.1.2 Assignment of Payments. In the event the Contractor desires to make an assignment of any monies due or to become due under the Contract, the Contractor must file a copy of consent of Surety and a fully executed copy of the assignment with the Owner and the Architect/Engineer. Any such assignment must be approved by the Director.

20.1.3 Audit Provisions. The Owner has the right to examine the Contractor's, its Subcontractors', Sub-subcontractors' and Suppliers' records directly or indirectly pertaining or relating to the Work or the Contract. The Owner must be granted access to and an opportunity to copy such records at all reasonable times during the Contract period and for three (3) years thereafter.

20.1.4 Extent of Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

20.1.5 Governing Law. The Contract is governed by the laws of the State of Maryland and of Montgomery, Maryland.

20.1.6 Obligations Surviving Termination. The Contractor's obligations under the correction of Work provisions of the Contract, Warranties, representations, indemnification obligations and other continuing obligations survive acceptance of the Work under the Contract and termination of the Contract; and do not relieve the Contractor of the Contractor's obligations thereunder.

20.1.7 Severability of Provisions. If any one or more of the provisions contained in the Contract Documents should be deemed invalid,

illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein are not to be affected or impaired thereby; provided the same does not materially alter the rights or obligations of the parties.

20.1.8 Third Parties. The Contract Documents are not to be construed to create a contractual relationship of any kind other than between the Owner and Contractor except as specified in Subsection 3.1.2.

20.1.9 Venue and Jurisdiction. The Contractor hereby waives venue and jurisdiction and submits to the venue and jurisdiction of the Circuit Court for Montgomery County, Maryland, relating to administrative appeals. **Any suit or action involving this Contract may only be brought in the Circuit Court for Montgomery County Maryland and only under the Maryland Rules governing administrative appeals, which along with Article 16 is the Contractor's sole and exclusive remedy for any and all Disputes arising under or relating in any way to the Contract, the Work or the Project.**

20.1.10 Waiver of Breach. Any action or failure to act by the Owner, Architect/Engineer or Contractor does not constitute a waiver of any of their rights or obligations under the Contract. No such action or failure to act, whether or not repeated, constitutes a continuing waiver of any requirements of the Contract or any approval of or acquiescence in any breach.

20.1.11 Written Notice. Written notices are to be given to the representatives of the parties designated in the Contract. Written notice are deemed to have been duly served if delivered in person to the addressee for which it was intended, or if delivered or sent by mail to the last business address known to the party giving notice, provided that if sent by mail it must be by first class mail postage prepaid except, if to the

Owner in which case it must be by registered or certified mail. Any notice given by facsimile or e-mail must be confirmed by a copy delivered personally or by mail, and in the case of the Owner, by registered or certified mail. The date of any notice is deemed to be the earlier of the date of personal delivery or receipt by facsimile or e-mail or similar means, or if mailed, the earlier of actual receipt or three (3) days after the postmark date.

20.1.12 Intellectual Property Approval And Indemnification – Infringement.

If the Contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then the Contractor must:

.1 At its expense obtain all necessary licenses, authorizations, and approvals related to its use;

.2 Include the Owner in any approval, authorization, or license related to its use at no cost to the Owner; and

.3 Indemnify and hold harmless the Owner from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the Owner, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest.

**END SUPPLEMENTAL GENERAL
CONDITIONS OF CONSTRUCTION
CONTRACT.**