CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK
Part 2
Construction Phase Services

THIS CONTRACT, 05FY16 (Part 2 - Construction Phase Services), made and entered into this day of __________, 2018; between Arlington County School Board, operating as Arlington Public Schools, through its Purchasing Agent, Virginia (the "Owner" or “APS”) and Turner Construction Company (the "Construction Manager at Risk" or “CMR”), whose address is 11413 Isaac Newton Square, Reston, VA 20190

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

1. The Project

CMR shall provide all labor, services, equipment and materials necessary and required to complete the Work in accordance with the Contract Documents for the following Project:

The Stratford Middle School Addition and Renovation(s)

2. The Contract Documents

2.1 The following, except for such portions thereof as may be specifically excluded, constitute the Contract Documents except for titles, subtitles, headings, running headlines, and tables of contents (all of which are used merely for convenience). In the event of a conflict between the Contract Documents, the following shall be the order of precedence:

1. The Contract for the Part 2 Construction Phase Services
2. The General Conditions for the Part 2 Construction Phase Services Contract, as amended, Attachment “A”
3. Construction Manager at Risk Standard Scope of Services, as amended, Attachment “B”
4. GMP Submitted by the CMR dated March 16, 2018, Attachment “C”
5. The Drawings for the GMP Set dated September 14, 2017, including Addenda 1 dated November 29, 2017, including Use Permit and all conditions. Within the Drawings, stated dimensions shall take precedence over scaled dimensions
6. The Specifications for the GMP Set dated September 14, 2017, including Addenda 1 dated November 29, 2017
7. Notice to Proceed

The latest Addendum or Modification of a Contract Document shall have precedence within that Contract Document

In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail.

In the event of a conflict which is not resolved by the foregoing, the Owner and CMR shall determine the provision having precedence by mutual agreement.

2.2 All provisions required by Law related to construction means, methods or performance as opposed to design to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

2.3 The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the CMR finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall
immediately, in writing, call it to the attention of Owner and the Owner’s Representative before proceeding with the Work affected thereby. The Owner and/or the Owner’s Representative shall promptly resolve the matter in writing. Work done by the CMR after it discovered, or reasonably should have discovered, such conflicts, errors, ambiguities or discrepancies, prior to written resolution thereof by the Owner, shall be done without increase to the GMP and the CMR shall bear the risk of any delay arising therefrom or related thereto. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or no; it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

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

3. Definitions

All words and terms shall have the meanings assigned to them in Part 1 of the General Conditions, unless a different meaning is clear from the context.

4. Design and Management Team:

The Project has been designed by Quinn Evans Architects, 2121 Ward Pl NW, Washington, DC 20037 (the “Architect,” “Engineer,” or “A/E”). The on-site Construction Manager Advisor will be MBP 1044 Little Patuxent Parkway, Suite 250, Columbia, MD 21044 (the “Construction Manager Advisor” or “CMA”). In addition to an on-site representative of the A/E and CMA, the Owner will have a regular presence on site in the form of the “Owner’s Project Manager” or “Project Manager”. The A/E, Construction Manager Advisor, and the Project Manager have been designated to act as the Owner’s Representative, subject to such limitations as are set forth in the General Conditions. Unless otherwise expressly stated or directed by Owner, reference in any Contract Document to Owner’s Representative shall mean either the A/E, CMA, or the Project Manager.

5. Contract Period

The Work will be completed in accordance with the Contract Documents and will have the following start and completion dates:

April 16, 2018 Anticipated Notice to Proceed (NTP) for the Project
August 21, 2018 Interim Milestone: Occupancy of Existing Building and Completion of Vacation Lane Parking Lot
July 19, 2019 Interim Milestone: Occupancy of Addition
August 16, 2019 Project Substantial Completion
September 26, 2019 Project Final Completion

These dates are subject to adjustments as provided in the Contract Documents.

6. Liquidated Damages

The Owner and the CMR recognize that time is of the essence in this Agreement and that Owner will suffer damages if Substantial Completion, and thereafter Final Completion, of the Work, or of any individual Phase of the Work for which a Substantial Completion, and if applicable, Final Completion, date with associated Liquidated Damages is established by the Contract Documents, is not complete within the time specified in Paragraph 5 above, plus any extensions thereof allowed in accordance with Part 10 of the General Conditions. The Owner and the CMR
agree that the actual damages to be incurred by the Owner in the event of late completion are not readily ascertainable or capable of estimation at the time of contracting. It is understood and agreed that the Liquidated Damages amount shall not be affected by the Owner’s use or occupancy of, or by the achievement of Substantial Completion or Final Completion of, less than the entirety of the Work to which the Liquidated Damages amount may be applicable. The CMR hereby waives without condition or limitation any objection that the amount of Liquidated Damages set forth below is void as a penalty or is not reasonably related to actual damages. Without limitation of the foregoing, CMR also agrees that any deduction of Liquidated Damages from amounts otherwise payable to CMR shall not constitute improper or wrongful nonpayment of CMR and CMR without limitation or condition conclusively waives any claim or cause of action premised in whole or in part on any such deduction of Liquidated Damages. In the event that, subsequent to any deduction of Liquidated Damages as authorized herein, a time extension is granted or any determination is made which affects in whole or in part the amount of Liquidated Damages deducted, CMR acknowledges and agrees that its sole remedy shall be payment by the Owner of the principal amount of Liquidated Damages so determined to be payable to the CMR plus interest as provided in the Contract Documents. Accordingly, instead of requiring any such proof, the Owner and the CMR agree that as Liquidated Damages for delay, and the Owner’s sole remedy for delay, in achieving timely completion as required by the Contract (but not as a penalty), the CMR shall:

a. Pay Owner Four Thousand Dollars ($4,000.00) for each day that expires after the time specified in Paragraph 5 for the Project Substantial Completion Date, plus any approved time extensions, until Substantial Completion is achieved; and Pay Owner Two Thousand Dollars ($2,000) for each day that expires after the time specified in Paragraph 5 for the Project Final Completion Date, plus any approved time extensions, until Final Completion is achieved.

b. CMR hereby consents to the Owner withholding from amounts otherwise payable to the CMR all Substantial Completion Liquidated Damages and Final Completion Liquidated Damages which have been assessed through the date of payment. If the amount of Substantial Completion Liquidated Damages and Final Completion Liquidated Damages assessed exceeds the amount otherwise payable to CMR, CMR shall make payment thereof to Owner within fourteen (14) days following issuance by Owner of Notice of payment due for Substantial Completion Liquidated Damages, Final Completion Liquidated Damages, or both.

7. **Contract Sum**

Owner shall pay CMR for completion of the Work in accordance with the Contract Documents. The Contract Sum is:

7.1. The Cost of the Construction Work

Twenty-five million six hundred sixty-six thousand nine hundred sixty-eight Dollars ($25,666,968).

7.2. The General Conditions Fee in the amount of:

One million four hundred eighty-three thousand eighty-three Dollars ($1,483,083).

The maximum daily General Conditions Fee rate in the event of any approved time extension is:

Three thousand forty-five Dollars ($3,045) / per day.

7.3. The Insurance and Taxes Fee in the amount of:

One million four hundred seventy-four thousand one hundred sixty-four Dollars ($1,474,164).

7.4. The CMR’s Fee in the amount of:
Eight hundred thirty-six thousand six hundred forty-three Dollars ($836,643).

7.5. The CMR Contingency in the amount of:

Nine hundred sixty-two thousand five hundred eleven Dollars ($962,511).

In no case shall the total compensation to the CMR exceed the Guaranteed Maximum Price (GMP) of:

Thirty million four hundred twenty-three thousand three hundred sixty-nine Dollars ($30,423,369).

Unit prices are as listed in Division 1 Section “Unit Prices” in the Specifications.

8. Payment Procedures

8.1. CMR shall submit Application for Payment in accordance with the General Conditions and Applications for Payment will be processed by the Owner’s Representative and Owner as provided in the General Conditions.

8.2. CMR hereby consents to the Owner deducting from amounts otherwise payable to the CMR and retaining any and all amounts payable to the Owner by the CMR for any reason stated in the Contract Documents assessed or payable through the date payment is due CMR from Owner. If the amount payable to the Owner by the CMR exceeds the amount otherwise payable to CMR by Owner, CMR shall make payment thereof to Owner within fourteen (14) days following issuance by Owner of Notice of payment due.

9. Interest

All funds not paid when due as provided by Part 11 of the General Conditions shall bear interest at the rate of 0.5 percent per month.

10. No Assignments

No assignment by either party hereto of any rights interest under any of the Contract Documents will be effective unless in writing signed by the authorized representative of each party; and no assignment will release or discharge the assignor from any responsibility under the Contract Documents. Owner shall be under no obligation to consent to any request by CMR for approval of an assignment as the CMR’s obligations are intended not to be assignable.

11. Authorization to Transact Business

The CMR certifies that, if it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The CMR understands and agrees that the Owner may terminate this Contract for default if the CMR fails to comply with these provisions and recover from CMR all amounts paid to CMR during any period CMR was not in compliance with such requirements.

Virginia Class A Contractor’s License Number: 2701000076
Current Expiration Date: November 30, 2018
State Corporation Commission ID#: F0018962
Federal Employer Identification Number/Social Security Number: 13-1401980
12. **Debarment and Enjoinment.**

By signing this Contract, the undersigned certifies that neither this CMR nor any officer, director, partner or owner thereof is currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, by any other public body or agency within the Commonwealth, or by any public body or agency of another state, nor by any agency of the federal government, nor is this CMR a subsidiary or affiliate of any firm/entity that is currently so barred from bidding on public contracts.

13. **Governing Law**

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

14. **Binding Agreement**

Owner and CMR each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

SIGNATURES APPEAR ON THE FOLLOWING PAGE
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized officers.

CONSTRUCTION MANAGER AT RISK

By:  
Kevin Sharkey
Title: Vice President & General Manager

04/12/2013
Dated

ARLINGTON PUBLIC SCHOOLS

By:  
David J. Webb, C.F.M.
Title: Purchasing Agent

April 12, 2018
Dated

Attachments:
1. Attachment “A”: Section 00 7000 Standard General Conditions for Construction Manager at Risk, as amended
2. Attachment “B”: Construction Manager at Risk Standard Scope of Services, as amended (included as Attachment C of the RFP)
3. Attachment “C”: Guaranteed Maximum Price proposal dated March 16, 2018 (summary attached for purposes of brevity)

END OF SECTION