

**TUCKAHOE COMPREHENSIVE AGREEMENT**  
**Solar Photovoltaic Rooftop System Installation and Sale of Generated Electricity**  
**Contract No. 01FY18-A**

THIS TUCKAHOE COMPREHENSIVE AGREEMENT (“Contract” or the “Comprehensive Agreement”), made and entered into as of the date of the Owner’s signature appearing below, between Arlington County School Board operating as Arlington Public Schools through its Procurement Agent (the "Owner" or “APS”), and Sun Tribe Solar, LLC (the "Contractor"), whose address is 455 2<sup>nd</sup> Street SE, Suite 400, Charlottesville, VA 22902.

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

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

**ARTICLE 1: THE PROJECT:**

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

**1.2.** The Facility to which this Contract is applicable is

Tuckahoe Elementary School 6550 26th St N, Arlington, VA 22213

**1.3.** Contractor shall execute the Lease for the foregoing Facility and submit to APS the signed Lease at the same time it submits to APS the signed Contract.

**1.4.** Contractor shall provide all labor, services, equipment and materials necessary and required to complete the Work and to provide the on-going services and deliverables in accordance with the Contract Documents for the Facility. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment both during the installation period and during the term for maintenance and operation. Neither the Owner’s approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner’s approval or failure to approve create a cause of action for damages against the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor. The terms of the First Comprehensive Agreement have been incorporated into the Facility Lease, and the terms of this Comprehensive Agreement, as set forth above, therefore are incorporated into the Facility Lease.

**ARTICLE 2: FINANCING:**

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

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

**ARTICLE 3: THE CONTRACT DOCUMENTS:**

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

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

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

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

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

**3.5.** The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. Any doubt as to whether any Work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use of the term "include" or "including" shall be deemed to mean "include without limitation," "including but not limited to," and similar expansive intent.

**3.6.** The Contractor shall be held to a standard of strict compliance with the requirements of the

Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

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

**ARTICLE 5: OBLIGATIONS OF OWNER:**

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

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

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

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

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

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

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

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

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

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

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

Contract Documents.

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

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

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

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

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

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

**6.9. Shop Drawings**

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

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

**ARTICLE 7: INSTALLATION OF THE SPRS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.2.** The timing of such Notice to Proceed will be solely at the discretion of APS and will be dependent upon, among other things, the perceived needs of APS, market factors for electricity, and the Contractor's performance. APS shall have two (2) years from the date of this Contract within which to issue the Notice to Proceed and Lease.

**8.3.** Contractor shall complete Commissioning of the SPRS and begin Operation of the SPRS within Three Hundred Sixty (360) calendar days from the date APS issues Notice to Proceed and the Lease ("Contract Period"). The Notice to Proceed is expected to be issued when APS has completed the roof repairs for the Facility previously identified by Contractor as necessary.

**8.4.** The Notice to Proceed was issued on the following schedule:

Facility Order  
Tuckahoe Elementary School

Facility NTP Schedule  
December 12, 2019

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

**9.1.** The Contractor warrants that (a) it and its Subcontractors each are and at all times during the term of this Contract will be duly organized Private Entities qualified to do business in the Commonwealth of

Virginia and in Arlington County, Virginia; and (b) any portion or element of the Work related to installation, Operation, maintenance or which otherwise is required by applicable law to be performed only by a Private Entity holding a Class A Virginia Contractor's License and classification or specialty designation shall be performed only by Private Entities who have obtained and maintain a Virginia Class A Contractor's License with the specialty classification or designation applicable to such Work and all other applicable licenses as required by the laws and codes of the Commonwealth of Virginia and which employ qualified and experienced personnel who specialize in performing the type of construction, maintenance and Operation services required hereunder. The Contractor agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. The Contractor represents that it and its Subcontractors are capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide services of high quality. The Contractor agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.

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

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

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

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

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

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

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

**9.7.2.** Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

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

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

**9.8. Contractor Certification Regarding Criminal Convictions**

**9.8.1.** All Contracts with APS, where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the Contractor to certify that neither it nor any of its employees nor any of its Subcontractors' nor any of its Subcontractors' employees, who will have direct contact with students, have been:

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

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

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

**9.8.3** The Contractor certification covers its employees, its Subcontractors and the employees thereof. (Submit completed Appendix A).

**9.8.4.** The Contractor certification shall also cover its employees, its Subcontractors and



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

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

**9.8.6.** Contractor shall provide to Owner annually on the anniversary date of the completion of Commissioning of the Facility an updated Contractor Certification Regarding Criminal Convictions.

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

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

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

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

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

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

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

**9.12.** Owner will designate to Contractor the route of access to the SPRS location. Contractor workers shall not use any other route within the Facility. In the event the Contractor desires to perform Work outside the Normal Working Hours in any Facility, Contractor shall notify the Owner in writing at least two Working Days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the Contractor to the Owner at a rate of \$40 per hour per person. The cost of custodial support for Sunday or holiday Work shall be paid by the Contractor to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the Contractor for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday Work shall be paid by the Contractor at rate of \$150 per hour.

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

periodic landscape maintenance of vegetated areas of the Site to the extent such vegetated areas are affected by the Work.

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

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

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

#### **ARTICLE 10: MAINTENANCE AND OPERATION:**

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

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

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

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

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

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

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

system required repairs and for relocating and/or reinstalling to operable condition the SPRS after completion of the roofing system repair or replacement.

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

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

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

**10.11. End of Service Life.**

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

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

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

	Year 8	Year 16
Tuckahoe	\$0.00	\$0.00

**ARTICLE 11: PAYMENT TO CONTRACTOR:**

**11.1.** The sole compensation payable by APS to the Contractor shall be the payment rates for electrical power generated by the SPRS at the Facility. The \$ per kilowatt-hour (kWh) rates for the Facility shall be included in the Lease and is as set forth below.

Tuckahoe Elementary	\$0.00
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**ARTICLE 12: MINOR CHANGES IN THE WORK:**

**12.1.** The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall substantially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to entitle it to additional compensation or any extension

to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.

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

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

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

### **ARTICLE 13: EXTRA WORK:**

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

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

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

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

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

### **ARTICLE 14: CLAIMS FOR DAMAGES:**

**14.1.** The Contractor shall have no claim against the Owner for any damages or increased costs from any

cause other than intentional, reckless or negligent action by the Owner which results in the damage claimed. The Contractor knowingly and willingly assumes all other risk of damage or loss from any other cause in return for the compensation provided by the Contract. If the Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

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

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

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

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

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

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

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

**14.9.** If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the Contractor shall not be entitled to recover any interest on any amounts claimed to be due from

the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the legal rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**15.6.3.1.** Notify the Owner's Representative, if one has been designated, and the Procurement Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a Notice of claim for Inclement

Weather delay, shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the activities on the Contractor's previously established project schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**16.2.** Team Members.

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

**16.2.2.** If the Owner finds, in its sole and absolute discretion, that the proposed substitute is not qualified, the Contractor will be notified in writing within five (5) Working Days of the Owner receiving the request for approval of the substitute. If no such notice is provided, the Owner shall be deemed to have accepted the substitute. The Owner may retract its acceptance of any substitute in the event such substitute evidences an unwillingness or inability to perform its portion of the Work in strict accordance with the Contract Documents. Notice of such retraction will be given in writing to the Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within five (5) Days, submit a new substitute for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the Contractor.

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

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

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

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

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

**16.4.4.** Include appropriate provisions in all subcontracts to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner

may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses caused by its exercising of its rights under this Article 16.4.4.

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

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

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

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

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

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

**16.6.** Payment of Subcontractors.

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

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

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

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

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

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

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

**16.9.** The Owner's review or acceptance of Subcontractors as described herein shall not relieve the

Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

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

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

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

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

**17.1.3.** Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in Work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of any required Employer's Liability Insurance for the Contractor and each of its Subcontractors shall be not less than \$1 million. For any insurance obligations in this Article 17.1.3 which Contractor seeks to satisfy by self-insurance, APS agrees to accept self-insurance which commits Dominion Energy, Inc. as the principal obligor.

**17.1.4.** Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than \$100,000 per occurrence/ \$500,000, including uninsured motorist. For any insurance obligations in this Article 17.1.4 which Contractor seeks to satisfy by self-insurance, APS agrees to accept self-insurance which commits Dominion Energy, Inc. as the principal obligor.

**17.1.5.** Intentionally deleted.

**17.1.6.** The Contractor shall purchase Builder's Risk insurance in the amounts shown in Article 17.1.6.5 during the construction period of the Solar Photovoltaic Rooftop System and installation thereof at the applicable location. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:

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

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

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

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

**17.1.6.5.** The amount of Builder's Risk insurance required is \$59,400.00

For any insurance obligations in this Article 17.1.6 which Contractor seeks to satisfy by self-insurance, APS agrees to accept self-insurance which commits Dominion Energy, Inc. as the principal obligor.

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

**17.3.** All of the aforesaid insurance policies shall provide that the insurance company shall give forty-five (45) days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. In the event any self-insurance is used to satisfy any of the requirements of this Article 17, the self-insured letter shall obligate the insuring Private Entity to give to Owner forty-five (45) days written notice if the self-insured agreement is to be terminated or if any changes are made during the life of this Contract which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide the Owner with a copy of each policy or self-insured letter in form and substance acceptable to APS, as applicable, which it shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.

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

**18.1.** The parties agree that:

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

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

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

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

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

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

then the Owner, without prejudice to any other rights or remedies Owner may have hereunder, shall have the right to declare the Contractor in default in whole or in part. In the event the Owner elects to declare the Contractor (or Lessee under a lease) in default, the Owner shall notify the Contractor and/or the Lessee, as applicable, and its Sureties by written notice describing the nature of the default and providing the Contractor and/or the Lessee, as applicable, a right to cure such default within twenty-one (21) calendar days after the date of the Notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in this Article 18.

**18.2.** The parties agree that:

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

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

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

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

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

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

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

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

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

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

**18.4.1.** If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a twenty-one (21) calendar day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such

purpose without additional cost to the Owner such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:

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

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

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

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

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

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

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

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

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

**18.7. Owner's Right to Terminate for Convenience:** Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor, without further liability or obligation to Contractor. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Article 18.7.

**18.8. Change in Law; New Taxes:** If either party reasonably determines that a change in law has occurred which affects such party's performance under the Contract Documents, then such party may deliver Notice to the other party of such change in law. Within sixty (60) days following receipt of such Notice, the parties shall meet and attempt in good faith to negotiate an amendment to this Contract or the Lease as is reasonably

necessary to preserve the economic value of this Contract to both parties.

**ARTICLE 19: ROYALTIES AND PATENTS:** Contractor shall be responsible for all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

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

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

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

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

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

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

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

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

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

**22.3.1.3.** “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or

Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

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

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

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

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

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

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

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

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

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

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



**ARTICLE 24: AUDIT:**

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

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

**ARTICLE 25: ASSIGNMENTS:** No assignment by either party hereto of any rights or interest under any of the Contract Documents will be effective unless in writing signed by the authorized representative of each party; and no assignment will release or discharge the assignor from any responsibility under the Contract Documents. Owner shall be under no obligation to consent to any request by Contractor for approval of an assignment as the Contractor's obligations are intended not to be assignable. However, notwithstanding the forgoing, if and for so long as APS Solar 1, LLC is an Affiliate of Dominion Energy, Inc., Contractor may assign its rights, obligations or interest under any of the Contract Documents to APS Solar 1, LLC, or any Affiliate of Dominion Energy, Inc., without the consent of Owner, and Contractor shall provide prior written notice to Owner. With respect to any assignment by Contractor of its rights, obligations or interest under any of the Contract Documents to an assignee other than APS Solar 1, LLC, in the event Owner in its sole discretion determines such assignee not to be a responsible Private Entity meeting all requirements of a Contractor under this Contract and competent to perform all obligations under this Contract, Owner may within thirty (30) days following receipt of written notice of such assignment reject such assignment in which event the assignment shall be null and void.

**ARTICLE 26: INDEMNIFICATION:**

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

**26.2.** EXCEPT FOR LIABILITY IN RESPECT OF (A) A PARTY'S INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD OR RECKLESSNESS OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF A PARTY OR ANY AGENT OR EMPLOYEE OF A PARTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR ANY OTHER CONTRACT DOCUMENT, INCLUDING THE LEASE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF

THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

**ARTICLE 27: PERFORMANCE BOND:**

**27.1.** Sun Tribe Solar, LLC (as the Contractor) shall execute and deliver to the Owner a Performance Bond on the forms provided in the Contract Documents in an amount equal to \$1.651/Wdc \* SPRS Size (Wdc). The Performance Bond shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. The Bond shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance Bond shall serve as security for the faithful performance of the design and installation requirements of this Contract. The premiums on the Performance Bond shall be paid by the Contractor and shall be included in the power rates as established in this Contract and any Leases. The Performance Bond, shall no longer be required upon the expiration of the Warranty Period of the SPRS.

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

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

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

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

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

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

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

**28.4.** The Procurement Agent may delegate his authority/power to his designee or designees, but only to

the extent the Contractor has been given written notice by the Procurement Agent of such delegation.

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

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

**ARTICLE 31: DEFINITIONS:**

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

**Affiliate:** With respect to any Private Entity, any other Private Entity which directly or indirectly controls, is controlled by or is under common control with such Private Entity. As used in this definition, “**control**” (including, its correlative meaning “**controlled by**” and “**under common control with**”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of more than fifty percent (50%) of outstanding voting securities or partnership or other ownership interests, by contract or otherwise).

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

**APS Facilities:** See “Facilities.”

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

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

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

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

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

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

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

**Contract Documents:** See Article 3.

**Contract Period:** See Article 8.3.

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

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

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

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

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

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

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

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

**kW:** Kilowatt

**kWh:** Kilowatt hours

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

**Local Utility:** Dominion Energy Virginia

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

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

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

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

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

- A. Delivered by mail, courier, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.
- B. Delivered by mail, express mail or hand delivered to the office of the Procurement Agent, Arlington Public Schools, Education Center, 2110 Washington Boulevard, 4<sup>th</sup> Floor, Arlington, Virginia 22204.

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

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

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

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

**Owner:** See APS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SPRS Portfolio:** All of the SPRSs owned, directly or indirectly, by the same Private Entity (or any of such Private Entity's Affiliates).

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

**Sub-Subcontractor:** Any individual, firm or organization, other than an employee of the Contractor or of

a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.

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

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

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

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

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

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

**Working Day:** See "Normal Working Day."

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

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

[signature page to follow]

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

SUN TRIBE SOLAR, LLC  
By: Taylor Brown  
Title: CTO  
Dated: 4/24/20

ARLINGTON PUBLIC SCHOOLS  
By: David J. Webb  
Title: David J. Webb, C.P.M., Procurement Director  
Dated: April 24, 2020



**APPENDIX A**

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

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

As the official authorized to enter into this Contract on behalf of my organization, I certify that the Contractor, its employees, its subcontractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

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

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

Sun Tribe Solar LLC  
Name of Firm

300 East Main St, ste 300  
Culle VA 22902  
Address of Firm

Telephone: 423 987 2210

Taylor B  
Signature

Taylor Brown, CTO  
Name and Title (please type or print)

Date: 4/24/20