

**CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK
PHASE 1
PRE-CONSTRUCTION PHASE SERVICES**

This Contract 30FY18 (Phase 1 - Pre-Construction Phase Services), dated this 18 day of April, 2018, between Arlington County School Board, operating as Arlington Public Schools ("Owner" or "APS"), and Gilbane Building Company (hereinafter "Construction Manager at Risk" or "CMR") and effective as of the date of the Owner's signature.

1. IDENTIFICATION OF PARTIES:

Owner:

Arlington Public Schools
c/o David J. Webb, C.P.M.
Director of Purchasing
1426 N. Quincy Street
Arlington, Virginia 22207
Office: (703) 228-6127
Email: David.Webb@apsva.us

Construction Manager at Risk:

Gilbane Building Company
1100 Glebe Road, Suite 1000
Arlington, VA 22201
Emre Ozcan, Vice President Preconstruction)
Office: (703)312-7262
Email: EOzcan@GilbaneCo.com

Virginia Class A Contractor's License Number:	<u>2701004552</u>
Issue Date:	<u>September 12, 2012</u>
Current Expiration Date:	<u>10-31-2018</u>
State Corporation Commission ID#	<u>F1363433</u>
Federal Employer Identification Number/Social Security Number	<u>05-0495530</u>

2. SUMMARY OF PROJECT:

A. The Owner contemplates development of the following project ("Project") identified as:

Project Title: New Elementary School at the Reed Site

General Project Description: APS requires a Contractor on a Construction Manager at-Risk (CMR) basis for the New Elementary School at the Reed Site (Project).

The School Board approved FY 2017-26 CIP includes an expansion project at the Reed Site for a maximum cost of \$49 Million to create a new elementary school for completion in time for the start of the 2021-22 school year that provides at least seven hundred and twenty-five (725) seats.

The existing Reed-Westover Building, located at 1644 N McKinley Road, Arlington, VA 22205, houses both Arlington County and APS programs. The existing building is

approximately 61,000 square feet (SF) of which the Arlington County Westover Library Branch comprises approximately 16,000 SF and the APS portion consisting of both The Children's School (TCS) and Integration Station (IS) comprises the remainder. TCS and IS will be relocated prior to construction. It is expected that the library will continue operations throughout construction.

It is expected that following the expansion the total building square footage for the new elementary school (excluding the public library branch) will be approximately 110,000 SF. The facility will be a heavily used community asset. In addition to expected use during regular school hours it will be used to support the APS Extended Day program, used most evenings and weekends by community groups, and used throughout the summer for various camps and summer school/enrichment programs. It is likely that structured parking will be necessary to accommodate the required parking while retaining adequate field and open space. Site construction will be required to meet current stormwater regulations and APS instructional requirements.

The maximum total Project cost is \$49,000,000 (approximately \$32,000,000 to \$36,000,000 for the GMP and the remaining for Owner contingency and soft costs).

Preliminary Project schedule:

February 2018	Phase 1 Pre-Construction Services Contract Award
October 2017 to February 2018	Concept Design / Ed Spec / Site Survey
March to June 2018	Schematic Design
July to November 2018	Use Permit / Design Development / 65% CD
December 2018 to May 2019	Building Permit / 95% CD / 100% CD
▪ April 2019	Draft GMP due to APS
▪ May to June 2019	Phase 2 Construction Services Contract Award
July 2019 to April 2021	Construction
▪ July 1, 2019	Construction Starts (Enabling Work & Sitework)
▪ September 9, 2019	Construction Starts (Building Renovation & Expansion)
▪ March 31, 2021	Substantial Completion
▪ April 30, 2021	Final Completion

- B. This Contract is for Phase 1 - Pre-Construction Phase Services only to provide construction management for the design and procurement of the Project, which, including the Construction Phase, has an anticipated completion date of April 30, 2021. Proceeding to execution and performance of the Phase 2 – Construction Phase Services Contract is subject to and contingent upon (a) the CMR's satisfactory performance of the services authorized under this Contract; (b) the Owner and the CMR reaching agreement on the Guaranteed Maximum Price for the Construction Phase of the Project; and (c) both parties executing the Contract for Phase 2 – Construction Phase Services for the Project.
- C. The CMR agrees to provide the Phase 1 – Pre-Construction Phase Services for the Project under the terms and conditions set forth in this Contract, in the attached documents and in any other Contract Documents. The CMR further agrees to provide its proposal for the Project Guaranteed Maximum Price and to negotiate with the Owner in good faith to reach agreement on providing Phase 2 – Construction Phase Services for the Project.
3. **STATEMENT OF WORK:** The CMR shall furnish all labor, materials, and equipment, and perform all responsibilities of the CMR under this Contract for the Pre-Construction Phase Services described in Attachment "B" and as generally described herein in strict accordance with the Contract Documents and further, shall provide its proposal for the Project ("GMP") and negotiate with the Owner in good faith to reach agreement on providing the Phase 2 - Construction Phase Services for the Project.


4. **CONTRACT DOCUMENTS:** This Contract shall consist of the following, all of which are incorporated into and are a part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Addendum or Modification having precedence over preceding provisions:
1. The Contract
 2. Attachment A, the Terms and Conditions for Phase 1 Pre-Construction Phase Services Contract;
 3. Attachment C, Section 00 7000 Standard General Conditions for Construction Management at Risk
 4. Attachment B, Construction Manager at Risk Standard Scope of Services (included as Attachment C of the RFP);
 5. Attachment D, APS Division 01 General Requirements (included as Attachment D of the RFP);
 6. The Request for Proposal (RFP) documents;
 7. Attachment E, Negotiated Agreement dated January 29, 2018;
 8. The Proposal;
 9. The Request for Qualifications (RFQ) documents;
 10. Response to the RFQ;
 11. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail.
 12. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.

See the definitions set forth in Attachment "A," Terms and Conditions for Phase 1 Pre-Construction Phase Services Contract, for terms used in this Contract.

5. **COMPENSATION PAYABLE TO CMR:** The Owner agrees to pay and the CMR agrees to accept as full compensation for the performance of the requirements of this Contract in accordance with the Contract Documents as follows:
- A. For Phase 1 – Pre-Construction Phase Services: The Lump Sum amount of Four Hundred and Thirty-Six Thousand, Six Hundred and Fifty-Nine Dollars (\$436,659.00)
- (Includes a Not-to-Exceed Allowance Sum of Two Hundred Thousand Dollars (\$200,000.00) for design assist and/or advance buy activities. The allowance shall be used only upon written approval by APS.)
6. **TIME FOR COMPLETION:** The Work shall be commenced on February 19, 2018, and shall be completed no later than June 30, 2019. After further review of the conceptual Drawings and draft Specifications and after completion of the Project Schedule required by the Scope of Services (Attachment B), the CMR may propose Project Schedule amendments for consideration by the Owner. The Work under Phase 1 shall be completed upon the earlier of execution by the parties of the Phase 2 – Construction Phase Services Contract, mutual agreement by the parties that the Phase 1 Services have been completed and a GMP cannot be agreed upon, or when this Contract is terminated as provided in Section 14 of the Terms and Conditions for the Phase 1 – Pre-Construction Phase Services Contract (Attachment A).
7. **PROJECT FAMILIARITY:** The CMR shall visit the Project site, review the Project documents, and coordinate with the Owner and the A/E and fully familiarize itself with the Project requirements.
8. **DEBARMENT AND ENJOINMENT:** By signing this Contract, the undersigned certifies on his/her behalf and on behalf of the CMR that neither this CMR nor any officer, director, partner or owner therein or thereof is currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, by any public body in the Commonwealth of Virginia, by any public body or agency of any other state or the District of Columbia, or by any agency of the federal government, and that this CMR is not a subsidiary or affiliate of any firm/corporation or other form of business entity that is currently barred from bidding on contracts by any of the same.

9. **AUTHORIZATION TO TRANSACT BUSINESS:** The CMR certifies that, if it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required, to be revoked or cancelled at any time during the term of this Contract. The CMR understands and agrees that this Contract shall be void if the CMR fails to comply with these provisions.


IN WITNESS WHEREOF, the parties hereto on the day and year written below have executed this Contract in four (4) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

BY: Gilbane Building Company

Eric Ozcan
Print Name
Its Vice President and authorized agent
Dated: 4/12/18

ARLINGTON PUBLIC SCHOOLS
BY: David J. Webb
David J. Webb, C.P.M.
Purchasing Agent
Dated: April 18, 2018

9. **AUTHORIZATION TO TRANSACT BUSINESS:** The CMR certifies that, if it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required, to be revoked or cancelled at any time during the term of this Contract. The CMR understands and agrees that this Contract shall be void if the CMR fails to comply with these provisions.

IN WITNESS WHEREOF, the parties hereto on the day and year written below have executed this Contract in four (4) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

BY: Gilbane Building Company

Eric Ozcan
Print Name
Its Vice President and authorized agent
Dated: 4/12/18

ARLINGTON PUBLIC SCHOOLS
BY: David J. Webb
David J. Webb, C.P.M.
Purchasing Agent
Dated: April 18, 2018

Attachments:

1. Attachment "A" Terms and Conditions for the Phase 1 – Pre-Construction Phase Services Contract
2. Attachment "B" Construction Manager at Risk Standard Scope of Services (included as Attachment C of the RFP)
3. Attachment "C" Section 00 7000 Standard General Conditions for Construction Management at Risk
4. Attachment "D" APS Division 01 General Requirements (included as Attachment D of the RFP)
5. Attachment "E" Negotiated Agreement dated January 29, 2018

Attachment A

**TERMS AND CONDITIONS FOR THE
PHASE 1 – PRE-CONSTRUCTION PHASE SERVICES CONTRACT**

PART 1 DEFINITIONS

- 1.1. ADDENDA or ADDENDUM
- 1.2. ADDITIONAL SERVICES
- 1.3. AMENDMENT
- 1.4. ARCHITECT, ENGINEER, ARCHITECT/ENGINEER OR A/E
- 1.5. CONSTRUCTION MANAGER AT RISK (CMR)
- 1.6. CONTRACT
- 1.7. CONTRACT DOCUMENTS
- 1.8. CONTRACT PERIOD or CONTRACT TIME
- 1.9. CONTRACT SUM, CONTRACT PRICE, CONTRACT AMOUNT
- 1.10. CONTRACTOR
- 1.11. DAY
- 1.12. DRAWINGS, PLANS
- 1.13. FINAL PAYMENT
- 1.14. GENDER AND PLURAL
- 1.15. HOLIDAY
- 1.16. MODIFICATION
- 1.17. NORMAL WORKING DAY
- 1.18. NOTICE
- 1.19. OWNER
- 1.20. OWNER’S PROJECT MANAGER
- 1.21. OWNER’S REPRESENTATIVES
- 1.22. PROJECT
- 1.23. PROJECT SCHEDULE
- 1.24. PROJECT SITE
- 1.25. PURCHASING AGENT
- 1.26. SPECIFICATIONS
- 1.27. SUBCONTRACT
- 1.28. SUBCONTRACTOR
- 1.29. SUB-SUBCONTRACTOR
- 1.30. WORK
- 1.31. WORKING DAY

PART 2 EXECUTION AND INTENT OF THE CONTRACT

- 2.1. CONTRACT SIGNATURE
- 2.2. EXECUTION OF AGREEMENT
- 2.3. INTENT OF THE CONTRACT DOCUMENTS
- 2.4. DRAWINGS AND SPECIFICATIONS
- 2.5. COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS
- 2.6. OWNERSHIP AND RETURN OF RECORDS

PART 3 OWNER'S REPRESENTATIVE

- 3.1. ADMINISTRATION OF CONTRACT
- 3.2. OWNER'S REPRESENTATIVE
- 3.3. CERTIFICATION OF PAYMENTS
- 3.4. INTERPRETATION OF CONTRACT

PART 4 OWNER

- 4.1. SITE SURVEYS
- 4.2. CERTIFICATION OF PAYMENTS
- 4.3. RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES

PART 5 CONSTRUCTION MANAGER AT RISK

- 5.1. GENERAL REVIEW OF CONTRACT DOCUMENTS
- 5.2. CHARACTER AND COMPETENCY
- 5.3. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL
- 5.4. RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE
- 5.5. RESPONSIBILITY FOR THOSE PERFORMING THE WORK
- 5.6. USE OF SITE
- 5.7. INDEMNIFICATION
- 5.8. CONFLICT OF INTEREST

PART 6 SUBCONTRACTORS

- 6.1. ABSENCE OF CONTRACTUAL RELATIONSHIP
- 6.2. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
- 6.3. SUBCONTRACTOR AND SUB-SUBCONTRACTOR AGREEMENTS
- 6.4. PAYMENTS OF SUBCONTRACTORS

PART 7 SEPARATE CONTRACTS

- 7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS

PART 8 MISCELLANEOUS PROVISIONS

- 8.1. GOVERNING LAW
- 8.2. SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES
- 8.3. ENTIRE AGREEMENT
- 8.4. ROYALTIES AND PATENTS
- 8.5. CLAIMS FOR DAMAGES
- 8.6. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- 8.7. ASSURANCES OF COMPLIANCE

- 8.8. CONFLICT WITH PROVISIONS OF THE CODE OF VIRGINIA
- 8.9. VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT
- 8.10. SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES
- 8.11. LABOR UNIONS AND RIGHT TO WORK
- 8.12. SURVIVAL OF TERMS

PART 9 CHANGES IN THE WORK

- 9.1. CHANGES IN THE CONTRACT PRICE
- 9.2. OMITTED OR DELETED WORK
- 9.3. AUDIT

PART 10 TIME

- 10.1. TIME OF START AND COMPLETION
- 10.2. INITIAL SUBMISSIONS

PART 11 PAYMENTS AND COMPLETION

- 11.1. PRICES
- 11.2. APPLICATION FOR PAYMENT
- 11.3. DELAYED PAYMENTS
- 11.4. EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE COVERAGE
- 11.5. CMR'S ACCEPTANCE OF FINAL PAYMENT
- 11.7. RELEASE AND REQUEST FOR FINAL PAYMENT
- 11.7. REINBURSEABLE EXPENSES

PART 12 INSURANCE

- 12.1. CMR'S INSURANCE

PART 13 POWERS OF THE PURCHASING AGENT

PART 14 CMR'S DEFAULT AND TERMINATION

- 14.1. OWNER'S RIGHT AND NOTICE
- 14.2. CMR'S DUTY UPON DEFAULT
- 14.3. COMPLETION OF WORK AFTER DEFAULT
- 14.4. PARTIAL DEFAULT
- 14.5. DEATH OR INCOMPETENCE OF CMR
- 14.6. OWNER'S RIGHT TO TERMINATE

PART 1 DEFINITIONS

GENERAL INSTRUCTION: Any term not defined in these Terms and Conditions which may become applicable to the Work of the CMR which is defined by the General Conditions to the Contract Between Owner and Construction Manager at Risk, Phase 2 - Construction Phase Services shall be as defined in those General Conditions.

- 1.1. **ADDENDA or ADDENDUM:** Changes to the Solicitation Documents issued prior to receipt of Proposals.
- 1.2. **ADDITIONAL SERVICES:** Services of the CMR directed by Owner which are beyond the services reasonably contemplated as included within the Scope of Services.
- 1.3. **AMENDMENT:** Written authorization executed by the Purchasing Agent, acknowledging the Modification(s), revised Contract Sum and current Contract Period.
- 1.4. **ARCHITECT, ENGINEER, ARCHITECT/ENGINEER OR A/E:** The term used to designate the Architect and/or the Engineer who or which contracts with the Owner to provide the Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner, except to the extent expressly provided in the Contract Documents. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.
- 1.5. **CONSTRUCTION MANAGER AT RISK (CMR):**
The person, firm or other legal entity with whom or with which the Owner has entered into a contractual agreement to provide all Phase 1 – Pre-Construction Phase Services for the Project for a Lump Sum Price and to be “At Risk” for providing the Work within the Lump Sum Price stated in the Contract. The CMR may also be called the Contractor in the Contract Documents.
- 1.6. **CONTRACT:** The signed Phase 1 – Pre-Construction Phase Services Contract Between the Owner and the Construction Manager at Risk.
- 1.7. **CONTRACT DOCUMENTS:** The Contract Documents are as defined in the Contract.
- 1.8. **CONTRACT PERIOD or CONTRACT TIME:** The period allotted in the Contract Documents for completing this Contract before the Project is ready to proceed to the Construction Phase.
- 1.9. **CONTRACT SUM, CONTRACT PRICE, CONTRACT AMOUNT:** The total amount payable to the CMR for performance of the Work, not including Reimbursable Expenses. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions of the Contract Documents. The Contract Sum also is referred to in the Contract Documents as the GMP or Guaranteed Maximum Price, as defined below.
- 1.10. **CONTRACTOR:** See Construction Manager at Risk. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the CMR's authorized representative.
- 1.11. **DAY:** The term "day" or “Day” shall mean "calendar day" unless otherwise noted. When any provision in 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 Working Day thereafter.
- 1.12. **DRAWINGS, PLANS:** One or more pages or sheets or collection thereof which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Project. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedule, tables and/or pictures.

- 1.13. **FINAL PAYMENT:** The final payment that the CMR receives pursuant to the applicable PAYMENT and TERMINATION provisions of these Terms and Conditions, and such other provisions of the Contract Documents as may be applicable.
- 1.14. **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.
- 1.15. **HOLIDAY:** Holidays recognized by the Owner which shall not be considered 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.
- 1.16. **MODIFICATION:** Any written change to any provision of the Contract Documents signed by the Purchasing Agent by any means provided by the Contract Documents.
- 1.17. **NORMAL WORKING DAY:** See "Working Day."
- 1.18. **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 CMR's office at the Project Site or to the business address of the CMR as stated in its Proposal; or if delivered in person to the CMR's Project Manager, or to any officer or director of the CMR.
 - B. Delivered by mail, express mail, or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207; or, when expressly so stated in the Contract Documents, delivered by mail, express mail, email or hand delivery to the Owner's Representative.
 - C. 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.
- 1.19. **OWNER:** Arlington County School Board, operating as Arlington Public Schools (APS), and employees authorized to represent APS.
- 1.20. **OWNER'S PROJECT MANAGER:** APS' employee authorized to act on behalf of the Owner regarding matters related to the Contract Documents during CMR's performance of the Work. CMR's communications with Owner generally shall be through the Owner's Project Manager or the Owner's Representative.
- 1.21. **OWNER'S REPRESENTATIVE:** The Architect, Construction Manager Advisor and the Owner's Project Manager are the Owner's Representatives. The Owner's Project Manager may designate by writing to CMR additional personnel to serve as Owner's Representatives. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the Project Architect or the Owner's Project Manager. CMR will be given written direction regarding the individuals with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's Representative are set forth in Part 3 of these Terms and Conditions. Notwithstanding any other provision in the Contract Documents to the contrary, any Modification of the Contract Sum or of the Contract Period may be made only by writing signed by the Arlington Public Schools Purchasing Agent or the designee thereof as identified to the CMR by writing issued by and signed by the Arlington Public Schools Purchasing Agent.

- 1.22. **PROJECT:** The Project as identified in the Contract, including all Drawings, Specifications, structures, improvements, services, materials and equipment reasonably related thereto. The entire Project encompasses two phases. Phase 1 is the Pre-Construction Services Phase, and Phase 2 is the Construction Services Phase. As to the CMR's responsibilities, the term is synonymous with the term "Work" as the context may require.
- 1.23. **PROJECT SCHEDULE:** The Critical Path Method Baseline Schedule for the Project as a whole established and updated by Monthly Project Schedule Update all in accordance with the provisions of Attachment "B" Construction Manager at Risk Standard Scope of Services.
- 1.24. **PROJECT SITE:** The location at which the improvements which are the subject of the Work are to be or are being constructed. May also be referred to as "Site."
- 1.25. **PURCHASING AGENT:** The employee of the Owner with authority to execute contracts, Amendments, and Modifications on behalf of the Owner, and with such other authority as may be set forth in the Contract Documents.
- 1.26. **SPECIFICATIONS:** Those portions of the Contract Documents which consist of written technical descriptions of materials, equipment, constructions systems, standards and workmanship to be applied to the Work and certain administrative details, procedures and requirements applicable thereto.
- 1.27. **SUBCONTRACT:** Any contract between the CMR and a Subcontractor, or involving the performance of any Sub-Subcontractor.
- 1.28. **SUBCONTRACTOR:** Any individual, firm or organization other than an employee of the CMR, who contracts with the CMR to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the CMR in connection with the Work.
- 1.29. **SUB-SUBCONTRACTOR:** Any individual, firm or organization, other than an employee of the CMR 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.
- 1.30. **WORK:** Everything explicitly or implicitly required to be furnished or to be performed under the Contract Documents.
- 1.31. **WORKING DAY:** The hours between 7:00 A.M. and 5:00 P.M., local prevailing time, Monday through Friday, excluding Owner Holidays. Also may be referred to as "Business Day."

PART 2 EXECUTION AND INTENT OF THE CONTRACT

- 2.1. **CONTRACT SIGNATURE:** Four (4) copies of the Contract shall be signed by both the Owner and the CMR.
- 2.2. **EXECUTION OF AGREEMENT:** Execution of the Contract by the CMR is a certification that the CMR has examined the Site, 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, Drawings, and Specifications, as required by the Contract.
- 2.3. **INTENT OF THE CONTRACT DOCUMENTS:** 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. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. 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.

2.4. **DRAWINGS AND SPECIFICATIONS:** The Division 0 and portions of the Division 1 Specifications will be provided by the Owner. As set forth in the Scope of Services, the CMR will participate with the A/E and the Owner in developing the remainder of the Drawings and Specifications for the Construction Phase. If the Phase 2 Construction Phase Services Contract is awarded to the CMR, the CMR shall be entitled to no increase in either the Construction Phase Contract Price or the Construction Phase Contract Time arising from or related to any inconsistency, error or omission in the Drawings or Specifications which in the exercise of due diligence and reasonable care should have been discovered in performance of the Pre-Construction Phase Work by a reasonably competent CMR.

2.5. **COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:**

- A. Original Drawings and Specifications are the property of the Owner, and the CMR may not use the Drawings and Specifications produced pursuant to this Agreement for any purpose not relating to the Project without the Owner's consent.
- B. The Owner's Representative will make available to the CMR versions of the Drawings, Specifications, and Addenda in electronic format (i.e. PDF file formats).
- C. The CMR shall not transfer or reuse Drawings and Specifications in electronic or machine-readable form without prior written consent of the Owner's Representative.

2.6 **OWNERSHIP AND RETURN OF RECORDS**

- A. This Contract confers no ownership rights to the CMR nor any rights or interests to use or disclose APS' data or inputs.
- B. The CMR agrees that all Drawings, Specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the CMR or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The CMR shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the CMR agrees that the Records are confidential records and neither the Records nor their contents shall be released by the CMR, its Subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The CMR agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or his or her designee for response. At APS' request, the CMR shall deliver all Records to the Project Manager, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.
- C. The CMR agrees to include the provisions of this section as part of any contract or agreement the CMR enters into with Subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

PART 3 OWNER'S REPRESENTATIVE

- 3.1. **ADMINISTRATION OF CONTRACT:** The Owner's Representative shall provide administration of the Contract in accordance with the Contract Documents between the Owner and the Owner's Representative.
- 3.2. **OWNER'S REPRESENTATIVE:** The Architect and the Owner's Project Manager shall serve as the Owner's Representatives during the Phase 1 – Pre-Construction Services Phase. The Architect shall advise and cooperate with the Owner and shall act on the Owner's behalf in accordance with the Contract Documents. The Owner shall issue instructions to the CMR or, at the Owner's option, elect to have the Owner's Representative issue instructions to the CMR.
- 3.3. **CERTIFICATION OF PAYMENTS:** Based upon the Owner's Representative's observations and evaluations of the CMR's Application for Payment, the Owner's Representative shall review and certify the amounts due the CMR from the Owner.
- 3.4. **INTERPRETATION OF CONTRACT:** The Owner's Representative shall interpret the Contract requirements and the Architect shall serve as an advisor to the Owner concerning the performance of the Work.

PART 4 OWNER

- 4.1. **SITE SURVEYS:** The Owner shall make available to the CMR 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 provisions of such information shall not relieve the CMR 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 CMR relies on such information solely at its own risk.
- 4.2. **CERTIFICATION OF PAYMENTS:** The Owner shall have the right but not the obligation to review, revise, and approve the Owner's Representative's certifications concerning payment.
- 4.3. **RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES:** Should the CMR default, fail to perform the Work, or improperly perform the Work, the Owner has the right, after three (3) days written Notice, to correct the deficiencies. The CMR shall pay to the Owner the Owner's cost of correcting the deficiencies, including but not limited to charges by the Architect, plus a markup of ten percent (10%) to cover administrative costs. The Owner's exercise of the right to correct deficiencies shall in no way prejudice or limit any other remedy that the Owner may have.

PART 5 CONSTRUCTION MANAGER AT RISK

- 5.1. **GENERAL REVIEW OF CONTRACT DOCUMENTS:**
 - A. The CMR shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work.
 - B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.
 - C. Supervisor and Construction Procedures: The CMR shall supervise and direct the Work and shall have at all times at least one full-time project manager assigned to and active in performing the Work.

5.2. **CHARACTER AND COMPETENCY:**

- A. The CMR and its Subcontractors each represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of Work required hereunder. The CMR 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 CMR 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 CMR agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.
- B. The Owner, upon written Notice to the CMR, and in the Owner's sole discretion, shall have the right to direct the CMR and its Subcontractors to remove an employee permanently from the Project for any reason. Any individual who is removed from the Project pursuant to this Section may not return without specific permission of the Owner.
- C. The CMR will ensure that no Work shall be performed in occupied areas during school 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.
- D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site or on any other property owned or controlled by Owner, and will constitute grounds for immediate removal of any employee of the CMR or of any Subcontractor from such location. Sexual harassment, profanity, and inappropriate behavior are not permitted and will constitute grounds for immediate removal of any employee of the CMR or of any of its Subcontractors from the Project.
- E. No Smoking Policy on Arlington Public Schools' property: CMR and all of its Subcontractors and Sub-subcontractors, including their employees or agents, performing work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.
- F. 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 which 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 CMR agrees to:
 - 1. Provide a drug-free workplace for the CMR's employees;
 - 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 CMR's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - 3. State in all solicitations or advertisements for employees placed by or on behalf of the CMR that the CMR maintains a drug-free work place; and
 - 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.
- G. CMR Certification Regarding Criminal Convictions

1. As a condition of awarding a contract for the provision of Work that requires the CMR or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Arlington School Board require that the CMR provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The CMR certification covers its employees, its Subcontractors and the employees thereof.
 2. The CMR certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The CMR, upon demand from APS, shall provide all information which allowed for the CMR's certification.
 3. The CMR shall submit to the Owner a completed CMR Certification Regarding Criminal Convictions on the form provided by the Owner (see RFP attachment).
- 5.3. **REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL.** The key personnel submitted by the CMR in its Proposal and thereafter accepted by Owner are considered essential to CMR's qualifications. CMR may not replace, substitute or augment any key personnel without prior written approval of Owner. A request to replace or substitute any key personnel for any reason shall be submitted in writing to the Owner's Project Manager at least fifteen (15) days in advance of such proposed replacement or substitution. The request for substitution or replacement shall contain sufficient justification, and shall include identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by Owner.
- 5.4. **RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE:** The CMR shall be responsible as a part of the Work to use such software or software products as may be designated by the Contract Documents or otherwise directed for use by the Owner in performing all obligations, and exercising all rights, under the Contract Documents. Should there be any changes in any such software requirements during the Contract Period such change shall not be the basis of any claim of any sort by CMR.
- 5.5. **RESPONSIBILITY FOR THOSE PERFORMING THE WORK:** The CMR shall be responsible and accountable to the Owner for the acts and omissions of the CMR'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 CMR or a contract with a Subcontractor.
- 5.6. **USE OF SITE:** CMR workers shall not be present in any building and/or property owned or controlled by Owner without an Owner employee present nor without a CMR issued APS temporary security badge. In the event the CMR desires to perform Work on weekends, outside normal working hours or a Holiday in any building and/or property owned or controlled by Owner, CMR 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 CMR workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the CMR 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 CMR to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to

the CMR for review and verification. The cost for the Owner's Representatives and/or consultants for Weekend or Holiday work shall be paid by the CMR at a rate of \$150 per hour.

5.7. **INDEMNIFICATION:** The CMR covenants to save, defend, hold harmless, and indemnify the Owner, Arlington School Board, 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, normal and customary costs of litigation such as expert witness fees, and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the CMR'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 on the Project Site or in or on any other property owned or controlled by Owner. This indemnification obligation shall survive the termination of this Contract.

5.8. **CONFLICT OF INTEREST:**

A. § 2.2-4367. Purpose - The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100, et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438, et seq.), and 3 (§ 18.2-446, et seq.) of Chapter 10 of Title 18.2.

B. The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act. (1982, c. 647, § 11-72; 1987, Sp. Sess., c. 1; 2001, c. 844.)

PART 6 SUBCONTRACTORS

6.1. **ABSENCE OF CONTRACTUAL RELATIONSHIP:** 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.

6.2. **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:**

A. Unless otherwise specified in the Contract Documents, before entering into any Subcontract for performance of a portion of the Work, the CMR must submit to the Owner's Representative a written statement setting forth the name, address, and telephone number of the Subcontractor, the portion of the Work the proposed Subcontractor is to perform, and any 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.

B. If the Owner finds, in its sole and absolute discretion, that the proposed Subcontractor is not qualified, the CMR will be Notified in writing within five (5) days of the Owner receiving the request for approval of the Subcontractor. If no such Notice is provided, the Owner shall be deemed to have accepted the Subcontractor. The Owner may retract its acceptance of any Subcontractor in the event such Subcontractor 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 CMR. Upon receipt of Notification of such rejection or retraction, the CMR shall, within five (5) days, submit a new Subcontractor for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the CMR.

C. The CMR shall not enter into a contract in connection with the Work with any Subcontractor who has been rejected by the Owner and/or the Owner's Representative, and shall promptly terminate any contract with a Subcontractor who subsequently is rejected by Owner as provided herein.

- D. Upon request, the CMR promptly shall file with the Owner a copy of any one or more of its subcontracts. The CMR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CMR in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CMR the same power to terminate any subcontract that the Owner may exercise to terminate the CMR under the provisions of these Contract Documents. The CMR shall bear all additional expenses due to its exercising of its rights under this paragraph.
- E. The Owner's review or acceptance of Subcontractors as described herein shall not relieve the CMR of any of its responsibilities, duties and liabilities under the Contract Documents. The CMR shall be responsible to the Owner for the acts, defaults, or omissions of the CMR's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

6.3. **SUBCONTRACTOR AND SUB-SUBCONTRACTOR AGREEMENTS:** Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the CMR, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement shall be submitted by the CMR to the Owner's Representative within ten (10) days of the Subcontractor award and shall:

- A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;
- B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;
- C. Require timely processing of applications for payment;
- D. Make specific reference to the conditions of Terms and Conditions Paragraph 6.3 as a mutually binding provision; and
- E. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work.

6.4. **PAYMENTS OF SUBCONTRACTORS:**

- A. Within seven (7) days after receipt of payment from the Owner, the CMR shall:
 - 1. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor, less an amount equal to no more than the percentage of payments to be retained by the Owner from the CMR as retainage; or
 - 2. Notify the Owner and the Subcontractor in writing of the intention to withhold all or part of the amount due a Subcontractor and state the reason for such withholding.
- B. In the event the CMR fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the CMR, the Subcontractor shall have the right to be paid by the CMR upon demand of the amounts due.
- C. The CMR shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the CMR's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld pursuant to Terms and Conditions Paragraph 6.4.A.2 shall not accrue interest.

- D. Insurance proceeds received by the CMR under the insurance policies described in Terms and Conditions Paragraph 12.1 shall be equitably distributed to the Subcontractors affected by the insured loss.
- E. Information concerning percentages of completion of work performed by a Subcontractor as shown in Application for Payment may be made available to that Subcontractor upon determination of the Owner.
- F. The CMR shall include in each Subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of this Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.
- G. The CMR's obligations with respect to payments to its Subcontractors as outlined in this Terms and Conditions Paragraph 6.4 above shall not operate to create any obligation or contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.
- H. The CMR's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A Contract Modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.
- I. The CMR shall include in each Subcontract, the same requirements as appear in this Terms and Conditions Paragraph 6.4 and shall require the completion of the CMR Certification Regarding Criminal Convictions Criminal Activity set forth in Terms and Conditions Paragraph 5.2.

PART 7 SEPARATE CONTRACTS

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS:

- A. The Owner reserves the right to award separate contracts in connection with other portions of the Project.
- B. When separate contracts are awarded for different portions of the Project, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate contract.
- C. At no additional cost to the Owner, the CMR shall coordinate the Work with the activities of each separate Contractor.

PART 8 MISCELLANEOUS PROVISIONS

- 8.1. **GOVERNING LAW:** The Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. The jurisdiction, forum, and venue for any litigation with respect to this Contract shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the CMR shall comply with applicable federal, state, and local laws, ordinances and regulations.
- 8.2. **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Unless specifically stated to the contrary in any written

consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.

- 8.3. **ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersedes all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.
- 8.4. **ROYALTIES AND PATENTS:** The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the CMR is required or desires to use any design, device, material or process covered by letters of patent or copyright, the CMR shall indemnify and save harmless the Owner and Owner's Representative, their 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 and the Owner's Representative, their 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.
- 8.5. **CLAIMS FOR DAMAGES:** If the CMR 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 CMR, the CMR 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 CMR'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.
- A. The CMR 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, to the Purchasing Agent, and to the Owner's Project Manager 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.
- B. If the Owner within five (5) Working Days following receipt of such Notice of claim does not direct the CMR otherwise, the CMR 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, to the Owner's Project Manager, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.
- C. The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Subparagraph B above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90th) day. A final decision by the Owner shall be a condition precedent to institution by the CMR of any judicial claim for relief on the claim. The CMR'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 CMR in support of any claim shall extend this six month limitation.
- D. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

- E. No claim whatsoever shall be made by the CMR against any officer, authorized representative or employee of the Owner or Owner's Representative for, or on account of, anything done or omitted to be done in connection with this Contract.
 - F. 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.
 - G. In the event the CMR 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 CMR 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.
 - H. If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the CMR 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.
 - I. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.
- 8.6. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The CMR 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.
- 8.7. **ASSURANCES OF COMPLIANCE:** The CMR shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.
- 8.8. **CONFLICT WITH PROVISIONS OF THE CODE OF VIRGINIA:** In the event that there is a conflict between the language of this Agreement and any mandatory provisions or requirements of the Code of Virginia, and specifically Chapter 43, Title 2.2, ("Virginia Public Procurement Act"), the Code of Virginia shall control.
- 8.9. **VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT:**
- A. During the performance of this Contract the CMR agrees as follows:
 - 1. The CMR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CMR. The CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - 2. The CMR, in all solicitations or advertisements for employees placed by or on behalf of the CMR, will state that such CMR is an equal opportunity employer.
 - 3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this action.

4. The CMR will include the provisions of the foregoing paragraphs 1, 2 and 3 in every Subcontract or purchase order over \$10,000.00, in order that the provisions above will be binding upon each Subcontractor.

B. Nothing contained in this provision shall be deemed to empower any agency to require any CMR to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such CMR in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the state.

C. Arlington Public Schools does not discriminate against faith-based organizations.

8.10. **SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES:**

The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, 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, Minority, Women Owned, and Service Disabled Veterans Business Enterprises.

A. In seeking Subcontractors, suppliers and vendors necessary to perform the Work, the CMR shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses and service disabled veteran-owned businesses. At a minimum, for any portion of the Work the CMR is not going to perform with its own forces, the CMR 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 CMR shall directly solicit bids from at least one certified business in each category 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.

B. As used in this section:

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:

a. "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.

b. "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.

c. "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.

- d. “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.
- 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.
- 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.
- 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.
- 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.
- 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.

8.11. LABOR UNIONS AND RIGHT TO WORK:

- A. The CMR 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.
- B. Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Articles 1, 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The CMR 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.

8.12. SURVIVAL OF TERMS. Any provision of the Contract Documents which by its context is intended to survive the termination of this Contract, expressly or by implication, for any reason shall so survive.

PART 9 CHANGES IN THE WORK

9.1. CHANGES IN THE CONTRACT PRICE

- A. 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. If the CMR believes that any particular Work is not within the scope of the Project or is a material change or otherwise will call for more compensation to the CMR, the CMR must immediately Notify the Project Manager after the change or event occurs and within ten (10) calendar days thereafter must provide written Notice to the Project Manager. The CMR's Notice must provide to the Project Manager the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The CMR will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written amendment has been signed by APS and the CMR and an APS purchase order is issued covering the cost of the services to be provided under the amendment.
- B. If the parties agree that Owner directed work is a change to the Scope of Services for which CMR is entitled to an increase, or subject to a decrease, in the Contract Price, an Amendment to the Contract shall be executed by both parties setting forth the Modification to the Scope of Services and any Modification to the Contract Price. The adjustment in the Contract Price, if any, set forth in the Amendment shall constitute full and mutual accord and satisfaction for all costs related to such change.
- C. No payment shall be made to CMR for any disputed work for which Owner's final determination is that CMR is not entitled to receive any increase in the Contract Price for such Work. Payment for Work not in dispute shall continue to be made to CMR in accordance with the Contract Documents.

9.2. OMITTED OR DELETED WORK:

- A. The Owner may at any time by a written order require the omission or deletion of such Work as the Owner may find necessary or desirable in its sole and absolute discretion.
- B. An order for omission or deletion of Work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative, upon the issuance of which the Work so ordered must be omitted by the CMR. The amount by which the Contract Sum shall be reduced shall be determined based upon the unit prices established in the Proposal.

9.3. AUDIT:

- A. The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the CMR 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 CMR hereby covenants to maintain the Records in good order for such time and to deliver promptly the Records to the Owner upon request.
- B. The CMR agrees to include in all Subcontracts 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.

PART 10 TIME

- 10.1. **TIME OF START AND COMPLETION:** The CMR shall commence Work on the Commencement Date stated in the Contract. Time being of the essence with respect to this Contract, the CMR shall prosecute the Work diligently, using such means and methods as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the Work within the Contract Period. The CMR shall provide a Project Schedule as prescribed in the Scope of Services. By submitting a Proposal, the CMR confirms that the Contract Period is a reasonable period for performing the Work. The CMR shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.
- 10.2. **INITIAL SUBMISSIONS:** The CMR shall comply with the following initial submissions requirements:
- A. Submission of CMR Certification of Criminal Conviction form(s), due within ten (10) days of Commencement Date;
 - B. Submission of an acceptable Project Procedures Manual, due within fifteen (15) days of Commencement Date;
 - C. Submission of an acceptable Project Schedule, as described in the Scope of Services, within fifteen (15) days of Commencement Date.

PART 11 PAYMENTS AND COMPLETION

11.1. PRICES:

- A. For the CMR's complete performance of the Work, the Owner agrees to pay, and the CMR agrees to accept, subject to the terms and conditions hereof, the Contract Sum, plus Reimbursable Expenses, plus the amount required to be paid for extra Work approved under Paragraph 9.1 of these Terms and Conditions, less credit for any work omitted pursuant to Paragraph 9.2 of these Terms and Conditions, and any other credits or offsets, including reimbursements to which the Owner is entitled.
- B. No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract item or a unit price Contract item, unless specific provision is made therefore in the Contract Documents.

11.2. APPLICATION FOR PAYMENT:

- A. The CMR must submit invoices for payment containing the following information:
 - 1. CMR's name
 - 2. Invoice date
 - 3. APS Contract Number
 - 4. APS Purchase Order Number
 - 5. Description of services actually delivered or rendered, identifying the provider, agreed billing rate, and time applied.
 - 6. Dates of services
 - 7. Total previously billed
 - 8. Total previously paid by Owner
 - 9. Amount currently being billed
 - 10. Name, title, telephone number of person preparing the invoice
 - 11. Name, title, telephone number of person to be contacted in the event of questions regarding the invoice

12. CMR's authorized signature
- B. Owner shall be under no obligation to make payment for any Work which is not in strict compliance with the Contract Documents.
- C. If Subcontractors are performing any portion of the Work, CMR shall supply with each application for payment affidavits from each Subcontractor verifying receipt of payments of amounts billed in the previous payment request to the extent paid by Owner. Failure to submit all affidavits will delay payment.
- D. Upon the request of the Owner's Representative, as a condition precedent to payment pursuant to the terms of this Contract, the CMR shall give the Owner a statement that no employee of the Owner has received or has been promised, directly or indirectly, any financial benefit, by way of a fee, commission, finder's fee or in any other manner, remuneration arising from or directly or indirectly related to this Contract. All parties agree that the Owner shall have the right, in its sole and absolute discretion, to withhold payment to the extent of any such fee or commission. The CMR shall not be entitled to interest and shall not have any claim on account of any payments being withheld under this paragraph.
- E. Within fifteen (15) days following receipt of CMR's invoice, Owner will give Notice to CMR of the amount of the invoice approved for payment and an explanation of any amount not approved. Payment of the amount approved for payment will be made within forty-five (45) days of receipt of a proper and Owner approved invoice.
- F. Final invoices shall be submitted no later than thirty (30) calendar days following completion or termination of the Contract. No amount not billed within this time shall be payable to Contractor.

11.3. **DELAYED PAYMENTS:**

- A. Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner in consultation with the Owner's Representatives to protect the Owner due to loss because of:
 1. Defective work not remedied,
 2. Third party claims filed or reasonable evidence indicating probable filing of such claims,
 3. Failure of the CMR to make payments properly to Subcontractors or for labor, materials or equipment,
 4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
 5. Damage to the Owner or another Contractor,
 6. Reasonable evidence that the Work will not be completed within the time required for completion,
 7. Persistent failure to carry out the Work in accordance with the Contract Documents, or
 8. Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors of others, caused by the act or neglect of the CMR or any of its Subcontractors.
- B. The Owner shall have the right, as an authorized representative for the CMR, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to

secure such protection. The application of these amounts shall be deemed payments for the account of the CMR and shall reduce the Owner's obligation to the CMR accordingly. The CMR may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If CMR does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the CMR shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

- 11.4. **EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE COVERAGE:** Neither final payment nor any retainage shall become due until the CMR submits to the Owner's Representative (i) an affidavit that payrolls, bills for materials and equipment, and all other indebtedness in connection with the Work for which any third party claim against the Owner might be asserted have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force following final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days' prior written Notice has been provided to the Owner; (iii) a written statement that the CMR knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) if required by the Owner, other data establishing the payment or satisfaction of obligations (such receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract) and such guaranties and indemnities all in such form and detail as may be required by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner, in its sole and absolute discretion, sufficient to indemnify the Owner against any claim or lien. If any such claim or lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim or lien, including all costs associated therewith, including reasonable attorneys' fees. Provided, however, that nothing herein shall be deemed a waiver by the Owner of its sovereign immunity.
- 11.5. **CMR'S ACCEPTANCE OF FINAL PAYMENT:** The CMR's acceptance of Final Payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment previously submitted in strict compliance with the claims submission requirements of the Contract Documents and not finally resolved. If at the time CMR requests Final Payment there are claims pending which were submitted in strict compliance with the claims submission requirements of the Contract Documents, the Owner may pay undisputed portions of the Final Application and Certificate for Payment as if it were an Application and Certificate for Partial Payment. No payment, final or otherwise, shall operate to release the CMR from any obligations under the Contract.
- 11.6. **RELEASE AND REQUEST FOR FINAL PAYMENT:** Upon completion of the Work and before Final Payment, the CMR will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment in the form provided by the Owner (see RFP attachment B.6.).
- 11.7. **REIMBURSEABLE EXPENSES**
- A. Reimbursable expenses include expenses incurred by the CMR (including consultants) in the interest of the project, as identified in the following paragraphs. A maximum of three percent (3%) markup may be applied to reimbursable expenses, except for expense of reproduction, postage, and handling of Drawings, Specifications, and other documents, to which no markup may be applied.
- B. The following expenses incurred by the CMR in performing its responsibilities under the Contract will be reimbursed:
1. Reproduction, incurred by the CMR using the APS authorized reproduction service providers, postage, and handling of Drawings, Specifications, and other documents, as required for formal submission to APS or the County offices.

2. Long distance travel, as authorized by APS. Long distance travel is considered to be travel in excess of the states of Virginia, Maryland and The District Columbia In these circumstances, travel expenses will be reimbursed in accordance with the GSA Per Diem Rates for Arlington County, Virginia.
- C. Expenses incurred by the CMR which will not be reimbursed include, but are not limited to:
1. Transportation (mileage, parking, bike or car rental) within the states of Virginia, Maryland and the District of Columbia and unauthorized out of Arlington County or long distance travel; communications and Internet connectivity; meals and entertainment. These expenses are to be included in the CMR's Lump Sum Price, Not to Exceed Price, and Loaded Hourly Rates.
- D. If the CMR has expenses which they deem to be reimbursable in nature outside the items noted above, the CMR shall bring these items to the attention of APS prior to the final negotiation of the CMR's fees and also provide justification for consideration to APS for approval on such expenses.

PART 12 INSURANCE

12.1. CMR'S INSURANCE:

- A. During the term of this Contract, the CMR shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:
1. Commercial General Liability insurance with combined limits not less \$20 million. The \$20 million insurance requirement may be reached through a combination of general liability and excess liability insurance coverage as long as the total \$20 million required is available and in force throughout the Contract Period. A \$2 million/\$4 million per occurrence/aggregate in conjunction with \$170 million excess liability policy represent adequate coverage limits. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the CMR 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 CMR shall provide a certificate of insurance that names Arlington Public Schools Arlington School Board, including elected and appointed officials, agents and employees as an additional insured. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington Public Schools, et al. If the insurance policy represented by certificate requires endorsement in order to add Arlington Public Schools, et al., as an additional insured's, then such endorsement must accompany the Certificate.
 2. The CMR 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 CMR, naming the Owner as an additional insured.
 3. Worker's Compensation and Employer's Liability Insurance for the CMR's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The CMR 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 CMR shall provide similar protection for these employees in amounts not less than the legal

requirements. The amount of Employer's Liability Insurance for the CMR and each of his subcontractors shall be not less than \$1 million.

4. Automobile Liability Insurance, including coverage for non-owned and hired vehicles with limits not less than \$1 million per occurrence/\$5 million aggregate. The \$5 million aggregate may be reached in conjunction with excess general liability policy equal to or greater than the \$5 million aggregate limit.
5. All risk insurance covering damage, loss or injury to the Work, excluding earthquake damage. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the CMR of its obligations under this Contract and, upon such performance, shall be released to the CMR. Such policy shall be in an amount equal to the Contract Sum.
6. Proof, to the satisfaction of the Owner, of insurance for each type of coverage listed herein shall be provided within ten (10) days of the CMR's receipt of the Notice to Proceed, and no Work shall commence until all such insurance is in effect. The CMR 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 CMR and found to be in accordance with the requirements set forth herein. The CMR 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.
7. In the event that a claim is filed by Arlington Public Schools et al., and the CMR or one of its Subcontractors has a deductible (an uninsured portion which is the responsibility of the Contractor), it is the CMR's responsibility for this uninsured liability.

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

PART 13 POWERS OF THE PURCHASING AGENT

The Owner's Purchasing Agent, in addition to those matters expressly made subject to his determination, direction or approval shall have the power:

- A. 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.
- B. To modify or change this Contract in accordance with Part 9 of these Terms and Conditions 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.
- C. 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.
- D. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before Substantial Completion or Final Completion thereof, the Purchasing Agent or his designee, the Owner's Project Manager, shall deem it necessary.

- E. The Purchasing Agent may delegate his authority/power to his designee, the Owner's Project Manager, for those matters set forth in this Terms and Conditions 13 but only to the extent the CMR has been given written Notice by the Purchasing Agent of such delegation.

PART 14 CMR'S DEFAULT AND TERMINATION

14.1. OWNER'S RIGHT AND NOTICE:

A. The parties agree that:

1. If the CMR fails to begin the Work when required to do so; or
2. If, at any time during the progress of the Work, the Owner determines that the CMR is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or
3. If the force of workmen or the quality or quantity of services or product furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or
4. If the CMR fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or
5. If the CMR fails in any manner of substance to observe the provisions of this Contract; or
6. If any of the Work is defective and is not replaced as herein provided;

then the Owner's Representative shall certify such fact or condition to the Owner without prejudice to any other rights or remedies Owner may have hereunder, and the Owner shall have the right to declare the CMR in default in whole or in part. In the event the Owner elects to declare the CMR in default, the Owner shall notify the CMR by written Notice describing the nature of the default and providing the CMR a right to cure such default within three (3) calendar days after the date of the Notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in Paragraph 14.3 of these Terms and Conditions.

B. The parties further agree that:

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
2. If the CMR is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
3. If in any proceeding instituted by or against the CMR, 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
4. If a receiver or trustee is appointed for the CMR or the CMR's property; or
5. If the Contract or any part hereof is sublet without the prior written consent of the Owner; or

6. If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the CMR, otherwise than as herein specified; or
7. If the Work to be done under this Contract is abandoned;

then such fact or condition shall be certified by the Owner's Representative to the Owner and thereupon, without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written Notice to the CMR or, in the Owner's sole discretion, exercise any other rights available to it.

14.2. **CMR'S DUTY UPON DEFAULT:** Immediately, but no later than three (3) days after receipt of Notice that it is in default hereunder, the CMR shall discontinue all further operations in connection with the Work, or such specified part thereof.

14.3. **COMPLETION OF WORK AFTER DEFAULT:**

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

1. Have the defaulted Work performed by others;
2. Supplement the CMR's work force;
3. Withhold payments due the CMR and use such payments to satisfy any claims for moneys owed by the CMR in connection with the Project, in accordance with any provisions of the Contract Documents;
4. Replace or repair any defective Work;
5. Terminate the CMR's performance of the Contract.

B. The CMR 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 CMR. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the CMR shall pay to the Owner the amount of any deficiency.

14.4. **PARTIAL DEFAULT:** In the event the Owner declares the CMR in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the CMR 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 CMR was declared in default. The expense of such completion shall be paid by the CMR as provided in the Contract Documents.

14.5. **DEATH OR INCOMPETENCE OF CMR:** In the event of the death, dissolution or legal incompetence of a CMR who shall be an individual or surviving member of a sole proprietor contracting firm, such death or adjudication of incompetence shall not terminate the Contract, but shall constitute a default hereunder to

the effect provided in Paragraphs 14.1, 14.2 and 14.3 of these Terms and Conditions, and the estate of the CMR and his sureties, if any, shall remain liable hereunder to the same extent as though the CMR remained living or competent. Notice of default, as provided in Paragraph 14.1 of these Terms and Conditions, shall not be required to be given in the event of such death or adjudication of incompetence.

- 14.6. **OWNER'S RIGHT TO TERMINATE:** 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 CMR. In such event, the CMR shall be paid an amount equal to the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%. Each subcontract shall contain a similar termination provision for the benefit of the CMR and the Owner. The CMR shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the CMR to be due under this Paragraph. The Owner shall have the right of audit (and CMR shall have the obligations) stated in Paragraph 9.3 of these Terms and Conditions, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the CMR's remedies shall be limited as provided in this Paragraph 14.6.

- END OF SECTION -

Attachment B

Project Name: New Elementary School at the Reed Site (“Project”)

CONSTRUCTION MANAGER AT RISK STANDARD SCOPE OF SERVICES

This document contains the standard services for the Construction Manager at Risk (CMR). It is divided into three sections: (I.) CMR Responsibilities, (II.) Pre-Construction Phase Services, and (III.) Construction Phase Services. Section I. CMR Responsibilities include general responsibilities applicable to both sections II, Pre-Construction Phase Services, and III. Construction Phase Services.

I. CMR RESPONSIBILITIES.

A. General Responsibilities. The CMR shall perform all the services required under the CMR Contract(s) as directed in writing by APS and as specified in Change Orders. The CMR is responsible for providing the management, quality control, budget control, schedule control, and administrative tasks needed to perform the services in an expeditious and economical manner consistent with the CMR Contract and the best interests of APS.

B. Services to be provided. The CMR will provide Pre-Construction Phase Services and, if a Guaranteed Maximum Price (GMP) is agreed, Construction Phase Services, and also professional, technical, administrative, and clerical personnel as needed to complete the Construction Phase Services including, but not limited to, those described in this RFP. The services described or specified shall not constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The lump sum prices offered in the attached Proposal shall include all services described in this RFP, except those specifically designated as additional services. The CMR shall provide additional services on the basis of priced Change Orders.

C. CMR Staff.

1. **Core CMR Staff.** The CMR shall assign and dedicate personnel to this Project sufficient in number, and with the requisite expertise and experience, to perform the duties described in the CMR Contract. APS anticipates that the CMR will supplement the core staff as needed throughout all phases with other employees, and/or Subcontractors who will support the core staff on a daily basis and/or bring special skills and expertise to the Project.

Such supplemental staff will be provided at no additional cost to APS. Having adequate CMR staff at all phases of the Project is a requirement of the Contract and is the responsibility of the CMR. APS has the right to request additional staff with requisite experience be added to the Work at any time at no cost to APS if, in its sole discretion, it feels the Project is under or incorrectly staffed.

2. **Removal of CMR Employees.** APS shall have the right to remove immediately any CMR employee at any time during the duration of the Pre-Construction Phase Services Contract and, if awarded, the Construction Phase Services Contract if it determines, in its sole discretion, that the employee is not of the level of competence or ability required under the Contract, or if the employee is for any other reason found to be unsuitable for the Work.
3. **Personnel Replacements.** In the event that any personnel named in the Proposal is unable to perform their duties due to death, illness, resignation from the CMR's employ, APS request for removal, or any other reason, the CMR shall promptly submit to APS, in writing, the name and qualifications of a proposed replacement according to the approved succession plan. The CMR shall make any approved

substitutions at no increase in the Contract Price and the first 30 days of any replacement personnel shall be at no cost to APS to allow for a transition period.

4. **Failure to Provide Qualified Personnel.** CMR personnel must meet the stated requirements in the Request for Qualifications and Request for Proposal documents and be acceptable to APS to perform the contracted services. APS may deem repeated failure or excessive delay by the CMR to provide qualified personnel, or qualified replacement personnel, sufficient reason to terminate the Contract in whole or in part.
5. **Subcontractors.** APS shall approve in writing any proposed Subcontractor required by the CMR for services covered by the CMR Contract before the CMR awards the Subcontract or agreement. APS has the right to remove any Subcontractor's employee APS deems to be incompetent, careless, not working in harmony with others on the Project, or otherwise objectionable. Any substitution of approved Subcontractors shall likewise be subject to prior approval of APS.

D. Record Keeping and Progress Reports

1. **Record Keeping.** A primary responsibility of the CMR is to prepare correspondence and other documentation and to maintain accurate and detailed records of the Project's progress during each Phase. The CMR will research and prepare draft submittals for APS and the A/E in connection with APS's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.
2. **Progress Reports.** The CMR shall prepare periodic reports for APS to document Project actions and to keep APS's Project Manager apprised of progress. The reports shall cover all relevant topics, including Project Schedule, budget, submittals, Change Orders, clarifications, meetings, and other topics conducive to the success of the Project. The CMR shall maintain frequent contact by email, telephone, site visits, meetings, etc., with all parties involved with the Project and submit prepared progress reports to APS no less than monthly.

E. Project Schedule. (See Specification Section 01 32 00 Construction Progress Documentation).

F. Meetings. The CMR will schedule and conduct meetings as necessary for the successful completion of the Project and as directed by APS. In conjunction with meetings, the CMR will schedule and arrange for meeting places; provide advance notice of meetings to attendees; prepare and distribute agenda to all attendees before meetings; and chair meetings, addressing all old and new business, recording minutes, and controlling discussions to focus on results and the resolution of problems.

G. Office Facilities. Prior to the commencement of construction, the CMR is required to set up and maintain any required IT services for the Site offices.

1. **CMR Staff.** (See Specification Section 01 50 00 Temporary Facilities and Controls).
2. **APS Staff.** The CMR is to include on Site equivalent connected work space for two (2) APS staff located within temporary facilities separate from the CMR staff. APS staff will provide their own computer-related equipment.
3. **A/E Staff.** A/E staff will be on Site and require space for one (1) staff personnel in the shared workspace area.

H. Subcontractors. The CMR shall hold Project marketing conferences with the trade community. The CMR shall be responsible for completing a trade packages procurement plan.

- I. Limitations on Authority.** APS reserves for itself certain duties and authority, and the CMR shall not perform them. The CMR shall provide recommendations on the following items on its own initiative for APS approval and authorization:
- Deviations from the Construction Contract Documents.
 - Substitutions of materials or equipment.
 - Obligation of expenditure of APS funds.
 - Initiation of any action unilaterally which will create a financial obligation, time delay or extension, or reduce the Project quality.
- J. Disposition of Materials.** Upon termination or completion of all Work under the Contract, the CMR shall dispose of all excess materials and debris produced during the performance of the Contract as directed by APS, or as specified in other provisions of the Contract Documents. All materials produced, or required to be delivered under the Contract become and remain the property of APS at the time of their creation or delivery.
- K. Additional Services.** APS may issue individual Change Orders for Additional Services as required. Such Change Orders will specify work for the CMR to perform and APS and CMR will agree to a total price according to the unit prices offered for the effective Project Phase in the Proposal, and the direct Subcontractor cost. The CMR will price each Change Order and will provide a time of performance determination for APS review and approval. The CMR shall perform the Additional Services upon the direction of APS by Change Order. The Terms and Conditions and General Conditions as applicable of the CMR Contracts apply to Additional Services performed. See Specification Section 01 26 00 Contract Modification Procedures.
- L. Outreach.** The CMR shall participate in outreach efforts as necessary in order to communicate Project issues with school staff, county staff, and/or general public.
- M. Building Information Modeling.** The CMR will provide all necessary technical resources to support the creation, use and maintenance of the BIM model in Revit from the completion of the Schematic Design Phase through Project Closeout.

II. PHASE 1 - PRE-CONSTRUCTION PHASE SERVICES

- A. General CMR Responsibilities.** During the Pre-Construction Phase, the CMR shall expeditiously review the design documents. Design submissions within the Pre-Construction Phase include concept design, schematic design, design development, 65% Construction Documents, and 95% Construction Documents. At the concept design phase the A/E will develop a minimum of three (3) design concepts representing a range of construction costs, namely a minimum, mid-range, and maximum cost. The CMR shall provide Pre-Construction Phase Services described herein for each of the concept options. At the conclusion of the concept design phase a single design concept will be selected. The CMR shall work with the A/E, APS, and APS consultants in a cooperative team effort to thoroughly review the documents and provide a complete bid package(s). As part of the A/E's planning effort, the CMR shall participate with APS and the A/E in advising a potential "Early Start" for construction packages and phasing of the multiple Project components. The CMR's principal tasks during the Pre-Construction Phase are as follows:
- Reviewing Documents
 - Reviewing and preparing cost estimates
 - Preparing and updating proposed construction schedules
 - Participating in Value Engineering exercises
 - Developing construction Subcontractor trade packages and contracts
 - Performing administrative and other services
 - Providing Construction Phase safety plan
 - Providing Construction Phase QA/QC plan
 - Providing a GMP for the construction of the Project

B. Project Procedures Manual. The CMR shall meet with both APS and the A/E immediately upon notification of selection to develop a Project Procedures Manual. The purpose of the Project Procedures Manual is to establish administrative procedures for guidance to the CMR in the performance of CMR services. This document is not a Contract Document and shall not modify in any way any requirement, provision, term, right or obligation set forth in the Contract Documents. Unless directed otherwise by APS, the CMR shall submit the manual to APS for approval within twenty-one (21) days of issuance of the Pre-Construction Phase notice to proceed (NTP).

The CMR shall be responsible for creating and maintaining any revisions to the Project Procedures Manual which will contain, but is not limited to, the following:

1. **PURPOSE:** statement of purpose of the manual
2. **KEY PROJECT PERSONNEL:** list of all key personnel, titles, addresses, telephone numbers, brief Project job description – includes CMR, APS, A/E, etc.
3. **CORRESPONDENCE:** list types of written communications, identifying the key personnel responsible for each type of communication, who must be informed and copied, how to document meetings and record telephone conversations or instruction and confirm such, etc.
4. **REPORTS TO APS:** list the reports, due dates, contents of each, and distribution
5. **RELATIONSHIP WITH A/E, APS, and APS CONSULTANTS:** the following minimum items are to be covered in order to clarify relationships and responsibilities: Special Conditions, General Conditions, and Supplemental General Conditions, Drawings and Specifications, Substitution Policy, Shop Drawings, Modifications and Changes, Surveys and Testing Laboratories, Proposed Bid Packages, Approved Procurement Documents, Subcontractor Pre-Qualifications, On-Site Inspection, Plan Interpretations, etc.
6. **HOME OFFICE RESPONSIBILITIES:** List responsibilities to be directed and coordinated by the CMR Construction Executive such as Resource Allocation, Overall Project Schedule and Cost Control, General Home Office Supervision, and what is included.
7. **FIELD RESPONSIBILITIES:** Responsibility for performance of all work at the job site will be delegated to the CMR Project Manager. List all duties and responsibilities, and supplementary reporting and record requirements.
8. **REPORTS AND CORRESPONDENCE SUMMARY:** Summarize all the above reference reporting and correspondence procedures, providing index and copy of forms.

C. Document Review. The CMR will participate in all A/E document reviews including, but not limited to, APS, Regulatory, ADA, and Constructability reviews. The CMR shall advise APS of any defects, conflicts, ambiguities, discrepancies, or lack of clarity in contract documents, and/or the applicability of proprietary materials or processes. Unless directed otherwise by APS, complete document review comments shall be provided to APS within twenty-one (21) days after submission of the A/E documents and shall be in a format compatible with the design phase quality control software described in section II.C.3.

1. **Submissions.** The CMR shall expeditiously conduct reviews appropriate to the level of document development. The CMR will perform document reviews on all A/E submissions. Traditional design is divided into Concept, Schematic, Design Development, and Construction Document Phases. Each submission may require multiple revisions and reviews as a Basic Service before approval by APS. The CMR reviews shall be for the purpose of advising on all design, constructability, and maintainability issues including but not limited to Site use and improvements, selection of materials, availability of long-lead items, building systems and equipment, and construction phasing. The CMR shall perform detailed design reviews of all building systems, including but not limited to, sprinkler systems, fire alarm systems,

gress (safety) requirements, security systems, and assure that designs of these systems and elements comply with APS project requirements. The CMR shall also perform detailed technical and code review of all drawings.

2. **Types of Document Reviews.** APS requires that A/E document submissions undergo the following general types of document review.

APS Review. APS's Design & Construction office and other various APS Departments perform a review to ensure that the Design Documents satisfy established functional and space requirements of the Project. The CMR will assist APS in conducting these reviews. This review will include, but is not limited to erosion and sediment controls, stormwater management, LEED/sustainability, construction phasing, and occupied construction, as applicable.

Constructability Review. The CMR is responsible for expeditiously conducting the constructability review. The required primary elements of the CMR's constructability review are:

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

Building Envelope & Commissioning Review. APS will use term contract consultants to conduct Design Document reviews and provide comments. The CMR will assist APS in coordinating these reviews and tracking action items.

3. **Document Review Reports and Design Review.** For all document submissions from the A/E, the CMR shall administer and maintain a design phase quality control software, such as Dr. Checks (supplied by APS), in order to document, track, and manage all design comments/input to ensure they are resolved, responded to, and incorporated into the documents as required. The CMR shall be responsible for entering all issues in the software at each Design Phase, ensuring the A/E team provides a sufficient response to each issue in the software, and back checking to ensure all relevant responses are included in the Construction Phase bid documents. The CMR shall consolidate review comments into a single document review report, including the CMR's cost estimate review comments and APS review comments. At the completion of each Design Phase, the CMR shall attend and participate in a focused design review.

D. Progress Document Reviews. During the entire design process, the CMR shall make periodic reviews of the Drawings to advise the designer on design decisions that do not fit within the Project budget or Project Schedule. These reviews should be performed as required by the Project demands but no less than monthly.

E. Cost Management.

1. **Cost Model.** The CMR shall lead the Project team in collaboratively creating a cost model for the Project based on the approved Project construction costs and submit to APS for approval within fourteen (14) days of issuance of the NTP. The model is to identify the cost of each of the areas of the work based on the building component format, or other format as agreed by APS, and the specific assumptions used to develop the cost. The CMR costs (general conditions, fee, and CMR contingency) are shall NOT be

subject to escalation and/or design contingency. The cost model will provide the base from which the subsequent cost estimates can be evaluated to identify areas of cost concern.

2. **Cost Studies/Estimates.** The CMR will prepare a complete Cost Study at the end of each phase of the design; this includes the concept, schematic, design development, 65% Construction Documents, and 95% Construction Document phases. Unless directed otherwise by APS, the Cost Study shall be provided to APS within twenty-one (21) days after submission of the A/E documents. Due to the changing economic climate, all cost estimates are to be construction-based not data-based, that is, the CMR is to develop its estimates with its in-house capabilities and test its estimates from pricing of trade work directly from the market place rather than exclusively based on the data retained in the CMR's files. During development of the Cost Study, the CMR shall work closely with the A/E to understand the various aspects of the design and components of the Project.

Cost Studies shall include the following:

- Detailed Estimate – showing work items and the methodology for establishing the value for each item. Estimates shall be in a format acceptable to APS and shall include a complete detailed take-off reflective of the level of development provided in the drawings and specifications.
- Contingency – contingency shall be included in every cost study and finalized in the GMP.
- Escalation – escalation costs/factors shall be considered and identified
- Pricing of alternative design options
- Clarifications and Qualifications indicating any specific assumptions made in the development of the estimate
- Identification of all documents used in the development of the Cost Study
- Value analysis options including the associated cost savings or added costs and any benefits/disadvantages related to each option
- Identification of Project Schedule demands that significantly affect Project cost
- Comparison to previous estimates and the reasons for any differences

The A/E is also required to provide a cost estimate at the end of each design phase. The CMR will work with the A/E to reconcile the cost estimates and ensure that both estimates are based on the same scope and assumptions. The result of the reconciliation process shall be a single estimate to which both the CMR and A/E agree reflects the estimated cost of the Project. The reconciled cost estimate will be used to determine whether the A/E has met their contractual obligation to design the Project within the budget. Following APS approval of the reconciled cost estimate the CMR shall prepare an expenditure-forecast schedule (Project cash flow) based on the cost estimates.

In the event that the cost estimate exceeds the approved Project funding available APS reserves the right to direct the CMR to (and the CMR shall) work in conjunction with the A/E to redesign the Project as necessary to maintain the Project requirements and meet the approved funding available without any additional compensation to the CMR. The CMR shall provide timely advice to APS on cost reducing alternatives which can be employed without impairing the overall quality level of the Project, and participate in all cost reduction work sessions conducted by APS. The CMR, at no extra cost, is also required to provide cost estimates on an ad hoc basis in the early design phases to respond to reviews of different design options as well as cost comparisons of different building systems.

After the CMR develops the first Project cost estimate based on its review of the A/E drawings and commentary, and after each successive design phase Project cost estimate and cost reconciliation, the CMR will produce and maintain a Trending Log to track and show the cost impact to the estimate of Project decisions made during the design phase. The CMR will update the Trending Log and distribute it to the Project team (APS, A/E, CMR) at least every month until the Construction Documents are approved for construction.

- F. **Schedule Control.** Immediately following CMR selection, a Project Schedule, inclusive of both Phase 1 (Pre-Construction) and Phase 2 (Construction) Work, shall be developed by the CMR and unless directed

otherwise, submitted to APS for approval within fourteen (14) days of NTP. The CMR shall consult APS, the A/E, governing entities, and other Project stakeholders to understand all Project activities and projected timelines. At minimum, the Project Schedule shall be updated monthly thereafter. This Project Schedule shall include, at a minimum, activities for: developing Drawings and Specifications for the various stages of design, CMR estimating activities, preliminary Project construction activities, permitting and other regulatory reviews, various V/E and systems analysis activities, key APS and Project team decisions, and Project milestones. The CMR may also be asked to develop schedules related to construction sequencing options. The CMR is responsible to monitor the schedule during the Pre-Construction Phase to ensure that the schedule is maintained, advising APS of any deficiencies in adhering to the schedule by any party.

- G. Staging, Logistics, and Phasing Review.** The CMR shall work with APS and the A/E to establish the limits of construction, routes for deliveries, staging areas, parking areas for construction personnel, working hours, pedestrian/vehicular access and egress, erosion and sediment controls, stormwater management, tree protection/preservation, construction sequencing/phasing, and any other items that affect the areas adjacent to the Project site so as to limit the impact of construction activities to adjacent areas or operations while minimizing Project costs given the Site constraints, including all conditions of the Use Permit. The CMR shall produce illustrations showing recommendations for staging, logistics, and phasing elements.
- H. Cash Flow Forecasts.** The CMR shall provide, at APS's request, forecasts on anticipated billings for the Project. Such forecasts are for planning purposes only and shall not in any way dictate the actual billings or payments made during construction.
- I. Record Keeping.** The CMR shall maintain file copies for APS and the A/E's in connection with APS's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project. The CMR shall maintain file copies of all Design Document submissions and review comments. The CMR will organize, index, and maintain the hard copy paper and computer records so they are easily accessible and retrievable. The CMR shall use the contract and document management software specified by APS.
- J. Value Engineering (VE).** The CMR shall, after a complete review of the Project program and understanding of the intent of APS and the A/E, provide VE services as described below and offer cost savings suggestions and best value recommendations to APS. All recommendations must be fully reviewed with APS and approved prior to implementation. APS views VE as an ongoing process. The CMR is expected, therefore, to be pro-active and participate on an ongoing basis relative to VE ideas.

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

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

1. Develop VE concepts for consideration at the session noted in (2) below (it is anticipated that the A/E will be concurrently conducting a similar activity);
2. Brainstorming session(s) with design team;

3. Written cost studies shall be produced and submitted to APS within one (1) week of the final brainstorming session and shall include the original cost of the VE item based on the original design and the cost of the VE item to identify the cost savings or add for each item;
4. Formal presentation of the study to be conducted by the CMR with the Project Team at which time APS will make its VE decisions; it is anticipated that this presentation will be a 1-day effort; and,
5. Formal submission of the VE study document inclusive of a summary of VE items, applicable cost savings, selected items and their corresponding cost savings.

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

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

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

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

- K. High-Performance Building, Net-Zero Energy, Water Reclamation and Sustainability.** The CMR shall implement practices and procedures to meet APS’s high performance building goals, which may include, but is not limited to, achieving net-zero energy, water reclamation and reuse, WELL Building Standard certification & LEED Platinum certification. Specific Project goals that impact the CMR include:
- Coordination of all trades and Work required to meet or exceed the building performance model(s).
 - Oversight and verification of the data required to be captured from all building systems specified and controlled and relayed to the Building Automation System and Building Dashboard system.
 - Coordination and oversight of the building envelope construction and testing
 - Coordination of Subcontractors (waste haulers) related to Construction and Demolition Waste Management.
 - Coordination of Subcontractors related to compliance with a Construction Indoor Air Quality Management Plan.
 - Special Substitution Requests for WELL and LEED Initiatives.
 - Compliance with Specified Material and Documentation Requirements Related to the Use of Recycled-Content Materials; Use of Locally/Regionally-Manufactured Materials; Use of Low-Emitting Materials; and Use of Certified Wood Products.

Note that Commissioning will be performed by an independent 3rd party commissioning agent, in accordance with net-zero energy, WELL & LEED requirements.

The CMR shall help ensure that the requirements related to these goals, as defined in the Project Specifications, are implemented to the fullest extent. Substitutions or other changes to the Work shall not be allowed if such changes substantially compromise the specified Building Performance Criteria.

- L. Quality Control Program.** The CMR shall develop a quality control program to be incorporated into the Project Specifications.

- M. Safety Program.** The CMR shall develop a safety program to be incorporated into the Project Specifications.
- N. Extended Transition to Operations Protocol (eTOP).** The CMR shall assist with implementing eTOP into the Construction Documents.
- O. Use and Building Permits.** The CMR shall assist in preparing documents for Use Permit and Building Permit submission and in obtaining Use Permit and Building Permit approval from the Arlington County Government.
- P. Design-Assist Subcontracting.** The CMR shall provide recommendations on potential Design-Assist (D-A) subcontracting and provide an explanation on why it is expected to be in the best interests of APS. If approved by APS, the CMR shall issue the Design Development documents to solicit D-A subcontractors to include, but not be limited to, MEP, exterior skin, and structural trades as recommended by the Project team.

The CMR's award to the selected D-A subcontractor shall be based on technical qualifications and an initial guaranteed maximum price (iGMP). The iGMP shall consist of a complete take-off broken down into material and labor (including productivity factors), itemized general conditions, overhead and profit, contingencies, escalation, assumptions, and any supporting documentation prepared in the take-off of the work. The AE will review and comment in the iGMP. The CMR shall recommend D-A subcontractor award for APS approval. If approved by APS, a target design value (TDV) shall be assigned.

The CMR, A/E, and D-A subcontractors shall prepare independent estimates at the subsequent A/E document milestones. The estimates shall be reconciled with that participation of the A/E. Final GMP shall be awarded on the basis of 95% Construction Documents, including all applicable Addenda, with a complete take-off and wage rates. Discrepancies with the TDV must be justified and itemized scope changes quantified with a complete breakdown of costs.

Any D-A subcontractor shall be an active participant in the design process, suggesting alternatives, testing the market, and providing constructability comments and ad hoc estimating services. The CMR shall be responsible for overseeing and managing D-A subcontractors and ensuring that they are performing the appropriate services.

At any point prior to the CMR's award for construction to a D-A subcontractor, APS may, at its sole discretion and without penalty, have the CMR discontinue with the applicable D-A subcontractor and direct the CMR to bid the applicable trade package based on the 95% Construction Documents.

- Q. GMP and Procurement Services.** At the point of 95% completion of the Construction Documents for the Project, or as otherwise directed by APS, the CMR shall develop and provide to APS a GMP that will include all construction costs, and all other projected costs inclusive of the CMR's quoted Construction Phase and General Conditions fees and CMR Contingency but excluding the Owner's Construction Contingency. The GMP shall display each proposed trade contract amount; the CMR's fixed fee; and all Project related costs, i.e. bonds, personnel, payroll benefits, etc. **Unless directed otherwise by APS, the CMR shall provide the GMP to APS within 6-8 weeks of issuance of the 95% Construction Documents.** The CMR shall hold all construction Subcontractor, equipment, and materials contracts directly, and have full responsibility. The CMR may only self-perform 10% of the Work, by value, and, for the remaining 90% of the Work, by value, the CMR must procure it by publicly advertised, competitive sealed bidding to the maximum extent practicable.

The GMP must not exceed the approved Project funding available. In the event that the cost estimate exceeds the approved Project funding available APS reserves the right to direct the CMR to (and the CMR shall) work in conjunction with the A/E to redesign the Project as necessary to maintain the Project requirements and meet the approved funding available without any additional compensation to the CMR.

Unless directed otherwise by APS, the CMR shall utilize the 95% Construction Documents as prepared by the A/E to invite and receive competitive bids on all trade packages and/or materials as a basis for each GMP

submission.

APS expects to be a full participant in the qualification, evaluation, and selection of trade package Subcontractors. The CMR shall make available at any time prequalification forms, trade package scope of work documents, trade package bid forms, etc. such that the GMP development remains open and transparent.

The CMR shall provide the services described here including, but not limited to, the following:

1. **Procurement Plan.** The CMR shall expeditiously prepare a Procurement Phase plan and estimated procurement schedule, to include all planned Subcontractor packages, any anticipated groupings of packages, all potential Offerors and/or Bidders listed by package, and all activities necessary to award all construction Subcontractor, equipment, and material contracts including Pre-Proposal and Pre-Bid Conferences. The Procurement Plan shall be submitted to APS for review and approval.
2. **Long Lead Items.** The CMR shall identify, expedite, and coordinate with all Subcontractors and/or suppliers the ordering and delivery of any materials requiring a long lead time and/or mock-ups to review technical and aesthetic criteria. Long lead items are defined as items which may affect the orderly and timely completion of the Project or any component thereof.
3. **Prequalification.** The CMR will administer the prequalification of prospective Subcontractors for certain critical construction packages, subject to final approval by APS. Prequalification criteria shall include experience, past performance, financial capability, technical capability, and quality capability.
4. **Scope of Work for Trade Packages.** The CMR will develop draft scopes of work based on the 65% Construction Documents; in addition, each scope of work shall include but not be limited to, anticipated working hours to address APS's concerns with noise and vibration, coordination between or among trades, outages, temporary facilities, (if required), temporary heat and electric (if required), hoisting, etc. and identification of Work to be performed that is not specifically noted in the primary specifications sections for the specific trade. The CMR shall base the final scopes of work on the 95% Construction Documents.
5. **Marketing.** The CMR shall procure Subcontractor packages by publicly advertised, competitive sealed bidding to the maximum extent practicable. In addition, the CMR will canvas the market to evaluate contractor interest, and prepare a source list of potential equipment and material vendors and construction Subcontractors for APS. The CMR shall document all contacts made as part of this process. At the request of APS, the CMR will suggest strategies for expanding competition by stimulating more contractor interest.
6. **Pre-proposal and/or Pre-bid Conference(s).** The CMR shall conduct Pre-proposal and/or Pre-bid Conference(s) for the benefit of potential construction Subcontractors. The CMR shall schedule the meeting(s), publicize the meeting(s), prepare agendas, and record minutes. The CMR shall invite APS to attend.
7. **Site Visits.** The CMR shall conduct Site visit(s) for the benefit of potential construction Subcontractors. The CMR will be responsible for scheduling and/or publicizing the visit(s).
8. **Addenda /Amendments.** The A/E will prepare Construction Document addenda/amendments, with the assistance of the CMR and APS, for the construction Subcontractors as necessary and in response to the CMR's request for information and/or clarification.
9. **Bid/Proposal Evaluation.** The CMR will prepare technical analyses of Subcontractor bids and proposals, compare and evaluate the bids and proposals, and make recommendations to APS regarding award by the CMR of the equipment and material contracts, Construction Subcontracts, and any additive bid items.

10. **Negotiation.** The CMR will provide all support and conduct equipment, material, and construction Subcontractor negotiations, if necessary, before finalizing the corresponding Subcontract(s).
11. **Distributing Information.** The CMR will distribute all information to potential Subcontractors as required for marketing.
12. **GMP Proposal Submission.** Based on the trade bids received, the CMR shall develop a GMP Proposal Submission and shall include the following elements:
- A list of Drawings, Specifications, and Addenda on which the GMP is based.
 - A list of Unit Prices and Allowance items as well as a statement of their basis.
 - A list of assumptions and clarifications made in preparing the GMP, noting in particular any exclusions. The CMR shall document any differences between the Drawings and Specifications and the modifications made in the assumptions and clarifications; specifically addressing any changes in the Project’s aesthetics, functionality, or performance.
 - Proposed GMP, including a statement of the detailed cost estimate organized by trade categories, Allowances, CMR Contingency, CMR fee, and other items that comprise the GMP.
 - An update to the Project’s Schedule to which the CMR shall agree to be bound.

R. Services Covered in Lump Sum Price. The list of services described in Pre-Construction Phase Services, is not a complete list of the Basic Services APS will require the CMR to perform during the Pre-Construction Phase. During the Pre-Construction Review Phase, the CMR may be required to perform other various tasks for APS within the scope of the Pre-Construction Phase Contract. The CMR is responsible for performing all such services as required by APS, within the Contract Price, to achieve the Project goals, including, but not limited to, the services described in this Pre-Construction Phase Services and Standard CMR Services.

S. Key Deliverables. The table below outline key CMR Pre-Construction deliverables. This list is not intended to be exhaustive.

	SOW Ref.	At NTP	Concept	SD	DD	65CD	95CD	GMP
Project Procedures Manual*	II.B	X						
Cost Model	II.E.1	X						
Submission Package								
• Cost Study	II.E.2		X	X	X	X	X	
• Trending Log**	II.E.2		X	X	X	X	X	
• Value Engineering (VE) Log	II.J		X	X	X	X	X	
• Project Schedule**	II.F	X	X	X	X	X	X	
• Staging/Logistics/Phasing Review	II.G		X	X	X	X	X	
• Cash Flow Forecast	II.H		X	X	X	X	X	
• Document Review Comments	II.C		X	X	X	X	X	
Administer Design Review QA/QC	II.C.3		X	X	X	X	X	
VE Study Report	II.J				X			
Quality Control Plan	II.L					X		
Safety Plan	II.M					X		
ETOP into CDs	II.N					X		
Procurement Plan	II.Q.1					X		
Pre-qualified Subcontractor List	II.Q.3						X	
Scope of Work for Trade Packages	II.Q.4					X	X	
GMP Submission	II.Q.12							X

*Updated throughout pre-construction as information becomes available/developed.

**Updated monthly throughout pre-construction.

III. PHASE 2 - CONSTRUCTION PHASE SERVICES.

A. General CMR Services. The performance period for the CMR's Construction Phase Services, if awarded, extends beyond the date of Substantial Completion. The CMR shall coordinate and manage the Work to be performed by all of the Subcontractors through to Final Completion. The CMR shall be responsible for keeping the Project on schedule, and ensuring that the Subcontractors furnish materials and perform the Work in strict compliance with the Contract Documents.

The CMR shall have the authority to require the prompt execution of the Work and to give instructions to require corrective work, whenever such action may be necessary in its opinion to ensure the proper execution of the Contract Documents and/or to protect the interests of APS. The CMR shall coordinate trade contractors and other construction personnel to ensure that the amount, quality, acceptability, fitness, and progress of the Work is in compliance with the Contract Documents. All Work is subject to the final review of APS and A/E. APS will not routinely require prior approval of these actions but reserves the right of review and approval at the discretion of the APS Project Manager.

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

- Keeping records
- Reporting progress monthly
- Controlling schedules to ensure compliance with the Project Schedule
- Conducting meetings
- Processing submittals
- Processing progress payments
- Coordinating/scheduling/monitoring safety
- Inspecting
- Monitoring testing
- Confirm existing conditions
- Reviewing and managing Subcontractor requests for information (RFIs)
- Reviewing, managing and negotiating Subcontractor change orders
- Processing Subcontractor contract change orders
- Maintaining as-built Drawings
- Performing photographic services
- Coordination of construction sequences and phases
- Generation and presentation to APS of construction phasing
- Use Permit responses
- LEED documentation
- Coordination Drawings
- Community liaison activities
- Procurement of trade permits
- Schedule and coordinate AHJ inspections
- Procurement of inspection and certificate of occupancy approvals
- Ensure compliance with Arlington County erosion and sediment controls and stormwater management
- Ensure compliance with safety and quality control plans
- Coordination with APS forces, vendors, contractors, and consultants
- Extended Transition to Operations Protocol (eTOP) integration

B. Record Keeping. The CMR will maintain at the Project Site, on a current basis, one record copy of all Contract Documents and records, including copies of all correspondence, submittals, progress reports, inspection reports, and related documentation throughout the duration of construction. The CMR will maintain the hard copy paper and computer files according to a filing system provided by or agreeable to APS. The CMR will turn these documents and files over to APS for record purposes as a condition precedent

to close out of the Construction Phase Contract. The CMR must use APS contract and document management software for record keeping. Examples of documents and files to be maintained (but not limited to) are:

- Correspondence
- Annotated submittals, including approved shop drawings, product data, and samples
- Formal and pending Subcontract and Construction Phase Contract Change Orders and directives with documentation
- Value engineering change proposals
- Claims and supporting documentation
- Minutes from progress meetings
- Budget records to include invoices and supporting documentation
- Documentation of all clarifications and decisions
- Documentation of all dust, noise, fumes or vibrations complaints and their resolution
- Inspection and progress reports
- CMR's monthly status reports
- Construction Trade, material, and equipment contracts/purchase orders
- Drawings and Specifications updated on a current basis to record changes and selections made
- Addenda and Modifications
- Permits, certificates, and governmental approvals
- Phone logs and memos
- Expense records
- Warranties and guarantees
- Project photographs
- Commissioning paperwork and certifications
- Stormwater Pollution Prevention Plans (SWPPP) documentation
- Subcontractor criminal certifications
- Safety log
- Security badge log
- Project Schedule update
- Additional MS4 documentation
- Project closeout implementation

The CMR shall also maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations to include utility layouts (complete with depth of burial) certified by a licensed surveyor or engineer. The CMR will review any surveys and make recommendations to APS for approval or rejection.

C. Progress Reporting. The CMR shall keep accurate and detailed written records of Project progress during all stages of construction. The CMR will prepare progress reports in the format and frequency required by APS, which shall include information on each Subcontractor and its work, as well as the entire Project. APS will provide or approve formats for periodic status reports, including daily diaries, weekly reports, monthly status reports, etc. The CMR will maintain a detailed daily diary of all events that occur at the Site or elsewhere, which affect, or may be expected to affect, Project cost, quality, scope, or progress. The CMR's daily diary shall contain at a minimum a record of the weather, each Subcontractor's work on the site, number of workers, identification of equipment and deliveries, work accomplished, problems encountered, and other similar relevant data as APS may require. The CMR will submit weekly reports to APS and A/E on the status of construction, including updated copies of all logs maintained at the Site for Subcontractor and Construction Phase Contract Change Orders, claims, submittals, etc. The CMR will submit monthly reports by the 5th Working Day of each month in 8 1/2" x 11" format including the following information:

- Update of the Project Schedule with analysis
- Percentage of construction in place, planned and actual, for each Subcontractor and the total Project
- Inspection report, list of inspections that the Contract Documents require, and deficiencies, delays, and omissions
- Summary of outstanding and potential problems and issues, including notices of intent to file claims; this monthly report shall not modify any notice of claim or claim submission requirements set forth in the Contract Documents.

- Summary of issues resolved, decisions reached, clarifications, instruction, commissioning etc.
- Summary report on submittals
- Progress Photos documenting ongoing work during the reporting period
- Minutes from meetings held during the month
- CMR Contingency log
- Change Order log
- Request for Information log
- Deficiency log
- MS4 certification/compliance

APS will identify other required reports such as on-Site logs and will furnish or approve formats. Progress reports will always be available to APS and A/E, and the CMR shall turn them over to APS upon request and at completion of the Contract.

- D. Construction Cost Control.** The CMR shall recognize that it is responsible to maintain cost control based on the final approved GMP and advocate accordingly in APS' best interest. The CMR shall develop and maintain an effective system of Project cost control. The CMR shall refine and update the approved GMP, incorporate changes as they occur, and develop reports and forecasts as needed, or as directed by APS. The CMR shall identify variances between actual and estimated costs and advise APS whenever projected cost exceed allowances or estimates.

The CMR shall check and supervise all material deliveries, equipment, and labor entering the site. The CMR shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requirement accounting records, and afford APS access to these records.

- E. Schedule Control.** The CMR will provide administrative, management, and related services to coordinate the sequence of construction and all related activities, with those of APS and the A/E to manage the Project according to the latest approved Project Schedule. The CMR shall coordinate the sequence of construction and assignment of space in areas where the Subcontractors are performing and will perform Work.

The CMR will generate, at Project's beginning, a Project Schedule. This Project Schedule will break down, by months, all CMR and Subcontractor Project activities through Substantial Completion. In addition to the requirements of Specification 01 32 00 it shall also include APS activities which impact the Project Schedule and the APS occupancy requirements. It shall be kept up to date to reflect construction phasing and commissioning activities.

The CMR will continuously monitor actual progress against the Project Schedule and identify any delays or potential delays. If the CMR encounters or anticipates delays, it will recommend recovery actions to APS's Project Manager to mitigate the delays and implement approved, remedial measures.

- F. Meetings.** The CMR will coordinate, schedule, and conduct: 1) weekly progress meetings; and 2) other meetings that APS deems necessary to discuss such matters as procedures and scheduling. The CMR shall prepare and promptly distribute minutes from each meeting to APS
1. **Progress Meetings.** The CMR will conduct and chair weekly progress meetings held at or near the Site to discuss such matters as procedures, progress, problems, and scheduling.

- G. Safety.** See Part 12 of Specification Section 00 70 00 General Conditions.

- H. Quality Assurances/Inspection.** The CMR shall have the overall responsibility for scheduling, coordinating, and inspecting all of the Subcontractors' workmanship, materials, and equipment to ensure strict compliance with requirements of the Contract Documents (including the Drawings and Specifications, subsequent Contract Change Orders, and approved submittals). The CMR shall coordinate with APS third party inspectors and Arlington County inspectors.

The CMR shall provide a Quality Control Superintendent (QCS) with the following duties:

- Manage the approved Quality Control (QC) Plan
- Conduct QC meetings for each definable feature of work
- Ensure that the process for quality control is occurring, including testing, inspections, mock-ups, and the identification and correction of deficiencies
- Manage the process for identifying and documenting deficiencies on a QC log, and facilitate the process for correction and documentation that the corrections have been properly completed, and
- Ensure the overall compliance of the work with the Contract Documents

The QCS shall have experiencing managing and executing quality-assurance and quality-control procedures similar in nature and extent to those required for the Project. The QCS shall have experiencing in areas of hazard identification and safety compliance. The QCS shall NOT also serve as the Senior Project Manager, Project Manager, or Field Superintendent.

The QCS will make quality determinations based on the records and inspections, to protect APS against defects, deficiencies, omissions, and delays. The CMR shall advise APS and the AE of any apparent variation and deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations within the terms of the Contract Documents. Throughout construction the CMR will maintain an up-to-date list of defects, deficiencies, delays, and omissions as well as corrective actions taken.

1. **Substantial Completion Inspection.** See Part 11 of Specification Section 00 70 00 General Conditions
2. **Final Punchlist Inspection.** See Part 11 of Specification Section 00 70 00 General Conditions.
3. **Warranty Inspection.** The CMR shall administer the correction of all warranty claims that originate during the period of the Contract and resolve all claims during the full Warranty Period. The CMR shall participate in a warranty inspection with APS, Commissioning Agent and A/E approximately 9 months into the 1 year Warranty Period and provide a plan for all necessary repairs, replacements, and/or corrective work.

I. Monitor Testing. Under direct contract to APS, third party structural testing and commissioning will be responsible for conducting the required verification tests, retaining all samples, and for submitting test results to APS, A/E, and CMR. The CMR will identify all tests required by the Contract Documents to be performed by the APS contractors, prepare a complete testing schedule, and include such testing schedule in the Project Schedule. The Commissioning Agent will be integral to the generation/verification of this testing schedule. The CMR's responsibilities with regard to testing shall include:

- Verifying that tests are conducted as scheduled
- Coordination with testing agency for scheduling of test
- Witnessing tests selected by the CMR, A/E, Commissioning Agent, and APS Project Manager
- Reviewing test and retesting results and documenting with Contract Documents
- Retaining test and retesting records
- Summarizing significant test results in progress reports
- Notifying immediately APS of test failures and, with A/E, planning corrective actions
- Overseeing corrective actions and retesting until issue resolution

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

K. APS Furnished Materials and Equipment. The CMR shall arrange for the delivery, storage, and security for APS furnished materials and equipment.

- L. SWM Certification.** An onsite CMR team member shall hold and maintain for the duration of the Project the Virginia Department of Environmental Quality (VDEQ) Erosion and Sediment Control (E&SC) and Storm Water Management (SWM) inspector certification. Per the certification, this member shall ensure proper record keeping of the Stormwater Pollution Prevention Plan (SWPPP) by the CMR, conduct self-inspections of the Site at least every four (4) days, and ensure compliance with APS' Municipal Separate Storm Sewer System (MS4) Permit as it relates to Site storm water runoff control and proper E&SC. The CMR shall also provide on-Site personnel certified for and designated as the Registered Land Disturber (RLD).
- M. Contract Change Orders.** See Specification Section 01 26 00 Contract Modification Procedures.
- N. Photography.** The CMR is responsible for procuring at its expense; construction photographs of items that may be the subject of Subcontractor claims, or that require documentation. The CMR shall also provide preconstruction photographs, periodic construction photographs, and other Owner-directed construction photographs. Before commencement of demolition, the CMR shall take preconstruction photographs of the Project site and surrounding properties, including existing items to remain during construction, from different vantage points, as directed by the Owner and as required by the Use Permit. The CMR shall provide periodic construction photographs showing the full scope of ongoing Work; these shall be no less than twenty (20) photographs monthly. From time to time, the Owner or Owner's Representative will instruct the CMR about number and frequency of photographs and general directions on vantage points. Photographs shall be in electronic format, organized and identified by location and/or trade, and date. Photographs in electronic format shall be turned over for record purposes at Project close-out.
- O. Project Commissioning.** APS will engage third-party commissioning agents ("Commissioning Agent") to conduct enhanced commissioning of building systems. Prior to this, the CMR shall coordinate a systematic process to ensure that the mechanical, electrical and plumbing (MEP), audio-visual, security, communications, and all other systems are fully functional in accordance with the design intent generated by the Contract Documents and APS's operational needs, and the personnel charged with maintaining and operating them are trained (not merely familiarized) to perform operation and maintenance. The CMR will ensure all necessary approvals exist prior to equipment procurement and subsequent installation. The CMR will coordinate and chair pre-installation meetings for major MEP, structural and building envelope as well as other systems and equipment. The CMR will coordinate and participate, along with the A/E, in each Subcontractor's initial equipment testing and final systems testing, start-up demonstrations, and training for utilities, operational systems, and equipment with the A/E, Construction Manager Advisor and the Owner's operations and maintenance personnel. The CMR shall prepare all minutes of these items and prepare documentation of the actions, activities, and results obtained. All training will be video-taped, and tapes will be provided to the Owner as a component of the Operations and Maintenance Manuals.
- The CMR will ensure that the Subcontractors have a complete understanding of the systems testing and commissioning requirements placed on them by the Contract. This includes, but is not limited to, providing single-line diagrams and sequences of operations as required. The CMR will also ensure that the Subcontractors have a complete understanding of all associated trades' work that integrates/interacts or is dependent upon their own.
- P. Extended Transition to Operations Protocol (eTOP).** The CMR shall input all required Operations & Maintenance (O&M) information from submittals into APS' maintenance software.
- Q. Project Closeout.** As a condition precedent to Final Completion and final payment, the CMR shall comply with all of the following requirements. The CMR shall secure and transmit to the A/E all warranties, operations and maintenance manuals, and similar submittals required by the Contract Documents, for approval by the A/E, before delivery to APS. The CMR shall also deliver all keys, record documents, and maintenance stocks to APS. The CMR shall be evaluated on future projects, to the extent possible, on the performance during the Project closeout and the duration of Final Completion (including all closeout requirements).

1. The CMR is required to bring on staff a Project Close Out Engineer, at the appropriate time but no later than two (2) months prior to the Substantial Completion date, to solely handle Project close out activities, which include punch list, completion and verification of the Building Automation System, scheduling of the required demonstrations and testing, and reviewing and submission of the O&M manuals. Note: This position cannot be done by someone who has been assigned to other positions during the Construction Phase.
2. The CMR is responsible for compliance with all Contract Close Out items per the Contract Documents. The CMR shall obtain data from Subcontractors and maintain a current set of record Drawings, Specifications and operating manuals.
3. With mechanical and electrical equipment, the CMR is to obtain the Operating & Maintenance (O&M) manuals at least two (2) months prior to the demonstration for such equipment. These O&M manuals are to be sent to APS Project Manager who is to forward one (1) set to APS's Department of Facilities and Operations for review prior to the equipment demonstration.
4. At the completion of the Project, and before final payment, the CMR shall deliver all such records to APS along with completion set of as-built Drawings and a complete and verified Building Automation System for approval by the A/E.
5. Provide final Project construction costs in a format(s) acceptable to the Owner for its historical cost data base.

Attachment C

SECTION 00 7000 STANDARD GENERAL CONDITIONS FOR CONSTRUCTION MANAGER AT RISK

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PART 1 DEFINITIONS

- 1.1. **ACCEPTANCE OF PROPOSAL:** Offeror has been approved as the Construction Manager at Risk for the Construction Phase. The Construction Manager at Risk should proceed with bond requirements.
- 1.2. **ADDENDA or ADDENDUM:** Changes to the Request for Qualifications and Request for Proposal issued prior to receipt of Proposals.
- 1.3. **AMENDMENT:** Written authorization executed by the Purchasing Agent, acknowledging the Change Order(s) Modification, revised Contract Sum and current Contract Period.
- 1.4. **ARCHITECT, ENGINEER, ARCHITECT/ENGINEER OR A/E:** The term used to designate the Architect and/or the Engineer who or which contracts with the Owner to provide the Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.
- 1.5. **CHANGE ORDER:** A written order to the CMR, signed by the Owner and the Owner's Representative, which authorizes a change in the Work, and adjustment to the Contract Sum, and/or an adjustment to the Contract Period, if any. A **Unilateral Change Order** is a Change Order signed only by the Owner and the Owner's Representative addressing any Modification to the Contract Sum or the Contract Period to which the Owner agrees. A **Mutual Change Order** is a Change Order signed by both the Owner and the Owner's Representative and by the CMR reflecting agreement on all terms, conditions, and requirements set forth therein. A Unilateral Change Order may be converted to a Mutual Change Order upon agreement being reached between the parties. Change Orders shall be initiated and processed as set forth in Part 9 of this subsection and Specification Section 01 2600. The latest edition of the AIA Standard Form G701 shall be utilized and shall be provided by the Owner's Representative.
- 1.6. **CMR CONTINGENCY:** The Construction Management at Risk Contingency is generally defined as that component of the Guaranteed Maximum Price set aside to address the cost of the Work or other components of the GMP that were reasonably unforeseen at the time the GMP was developed. Potential costs include, but are not necessarily limited to: refinements to the Project documents as a result of the continuing development of the design, scope gaps between trade contractors, contract default by subcontractors, costs of corrective work not provided for elsewhere, constructability issues, and issues related to field conditions which a prudent CMR reasonably should have detected during discharge of any preconstruction duties provided by this CMR. The CMR Contingency is not intended to address the cost of project scope changes made after the GMP was developed.

The CMR Contingency may be applied to any Work or other component of the GMP without the necessity of a Change Order. Use of a portion of the CMR Contingency does not change the Contract Sum which is based on the GMP, but does increase the amount of money to be paid the CMR for the Work while simultaneously and equally decreasing the amount of money remaining in the CMR Contingency.

Use of the CMR Contingency may only be made with the written approval of the Owner. The Owner shall specify the procedure for the CMR to request the use of any portion of the CMR Contingency. The CMR shall periodically report to the Owner as is reasonably determined by Owner to be necessary but no less than monthly specifying: the amount of the CMR Contingency used, the reasons for the requirement to use the CMR Contingency, and the justifications for the use of the CMR Contingency. Unless otherwise specified in the Contract, all CMR Contingency remaining at Project conclusion shall be retained by the Owner. The Owner may, through Supplemental General Conditions, define subcategories of the CMR Contingency and prescribe the uses of funding within the subcategories.

- 1.7. **CONSTRUCTION MANAGER AT RISK'S FEE:** The sum included in the GMP for home office expenses, overhead, profit, and general management of the Contract during the construction phase of the Contract, subject to modification by Change Order.

- 1.8. **CONSTRUCTION MANAGER AT RISK (CMR):**
The person, firm or other legal entity with whom or with which the Owner has entered into a contractual agreement to provide all construction Work and services for the Project for a Guaranteed Maximum Price (GMP) and to be “At Risk” for providing the Work within the GMP amount stated in the Contract. The Construction Manager at Risk may also be called the Contractor in the Contract Documents.
- 1.9. **CONTRACT:** The signed Agreement between Owner and CMR is the Contract.
- 1.10. **CONTRACT DOCUMENTS:**
- A. The Contract Documents are as defined in the Contract.
- B. In case of a conflict between the Contract Documents, the following shall be the order of precedence, with any Addendum or Modification having precedence over preceding provisions:
1. The Contract
 2. The General Conditions
 3. Supplemental General Conditions, if any
 4. The Specifications
 5. The Drawings, including Use Permit and all conditions. Within the Drawings, stated dimensions shall take precedence over scaled dimensions.
 6. Scope of Construction Phase Services
 7. GMP Cost Study submitted by the CMR
 8. The Notice to Proceed
 9. The Request for Proposal Documents
 10. The Proposal
 11. The Request for Qualifications
 12. Response to the Request for Qualifications
 13. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail.
 14. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.
- 1.11. **CONTRACT PERIOD or CONTRACT TIME:** The period allotted in the Contract Documents for Substantial Completion, and thereafter Final Completion, of the Work, together with any extension of time granted in accordance with the provisions of the Contract Documents.
- 1.12. **CONTRACT SUM:** The total amount payable to the CMR for performance of the Work. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions

of the Contract Documents. The Contract Sum also is referred to in the Contract Documents as the GMP or Guaranteed Maximum Price, as defined below.

- 1.13. **CONTRACTOR:** See Construction Manager at Risk. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.
- 1.14. **COST OF THE CONSTRUCTION WORK:** Cost of the Construction Work as used in the Contract Documents means the direct costs of labor, materials, equipment, and associated costs of the trades/subcontracts which are incorporated into the completion of the Project.
- 1.15. **DATE OF FINAL COMPLETION or FINAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, is completely finished pursuant to the requirements of the Contract Documents, which date shall occur within thirty (30) calendar days after the Date of Substantial Completion of all Work, or a Phase of the Work, unless otherwise specified in the Contract Documents.
- 1.16. **DATE OF SUBSTANTIAL COMPLETION: or SUBSTANTIAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, has been completed pursuant to the requirements of the Contract Documents.
- 1.17. **DAY:** The term "day" or "Day" shall mean "calendar day" unless otherwise noted. When any provision in 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 business day thereafter
- 1.18. **FINAL COMPLETION:** "Final Completion" or the state of being "Finally Complete" shall mean total completion of all Work required by or reasonably contemplated by the Contract Documents. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Final Completion is established. More specific requirements for Final Completion as to the Work or a defined portion thereof may be set forth in the Specifications.
- 1.19. **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.
- 1.20. **GENERAL CONDITIONS FEE:**
 - A. The "General Conditions Fee" is the total compensation amount payable to the CMR for its on-site supervision, project-specific management personnel such as project managers and office engineers, inspections, labor, etc. including markups as required by the General Conditions during the construction phase of the Contract. This General Conditions Fee is included as a separate line item in the Guaranteed Maximum Price (GMP) and is subject to modification by Change Order.
 - B. The CMR General Conditions Fee is a fixed amount for the entire Project Scope of Work as defined by the Contract Documents. The CMR General Conditions Fee includes both project site and home office costs required to execute the entirety of the Work. The CMR's General Conditions Fee Proposal attached to the Contract shall include a unit rate that would be used as a basis for any increase in the Fixed General Conditions amount should a major change in the Project Scope of Work take place.
- 1.21. **GUARANTEED MAXIMUM PRICE (GMP):** The Guaranteed Maximum Price, also referred to as the "GMP," is the sum total of the "Cost of Construction Work," the "CMR Contingency," the "General Conditions Fee," the "Insurance and Taxes Fee," and the "Construction Manager at Risk's Fee" which the CMR agrees is the total compensation payable to the CMR for performing the Work. The GMP may be

modified only by Change Order for work directed by the Owner which was not previously in the Project Scope of Work or not reasonably foreseeable as required to complete the Work.

- 1.22. **HOLIDAY:** Holidays recognized by the Owner which shall not be considered Normal Working Hours 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.
- 1.23. **INSURANCE AND TAXES FEE:** The Taxes and Insurance Fee is the total of all insurance costs such as but not limited to general liability insurance, builder's risk insurance, payment bond and performance bonds, and any other insurance costs that are required by the Contract Documents, and any taxes such as but not limited to local business license or other taxes that are required for the completion of the Work expressed as a percentage. The Insurance and Taxes Fee includes all items not included in the "Cost of Construction Work," the "CMR Contingency," the "General Conditions Fee," or the "Construction Manager at Risk's Fee" necessary to complete the Work.
- 1.24. **MODIFICATION:** Any written change to any provision of the Contract Documents, whether by Work Order, Change Order or other means provided by the Contract Documents.
- 1.25. **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 CMR'S office at the Project Site or to the business address of the CMR as stated in its Proposal; or if delivered in person to the CMR's foreman or superintendent for the Project, or to any officer or director of the CMR.
 - B. Delivered by mail, express mail, or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207; or, when expressly so stated in the Contract Documents, delivered by mail, express mail, email or hand delivery to the Owner's Representative.
 - C. 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.
- 1.26. **NOTICE TO PROCEED:** A written Notice from the Owner to the CMR, which gives consent for commencement of the Work. For projects with phased work, a Notice to Proceed will be issued prior to the commencement of each Phase, if a Notice to Proceed is required by the Contract Documents. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Work schedules shall be based upon that date.
- 1.27. **OWNER:** Arlington Public Schools (APS) and employees authorized to represent APS.
- 1.28. **OWNER'S PROJECT MANAGER:** APS' employee authorized to act on behalf of the Owner regarding matters related to the Contract, Contract Documents, and on-site construction. The Project Manager may designate additional on-site construction personnel as Owner's Representative to act on the Owner's behalf.
- 1.29. **OWNER'S REPRESENTATIVES:** Owner's Representatives include the Architect and Project Manager and such additional construction personnel who have been designated by the Project Manager to act on behalf of the Owner. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the project Architect or the Project Manager. CMR will be given written direction regarding the individuals employed by either the Architect or the Project Manager with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's

Representative are set forth in Part 3 of these General Conditions. Notwithstanding any other provision in the Contract Documents to the contrary, any Modification of the Contract Sum or of the Contract Period may be made only by writing signed by the Arlington Public Schools Purchasing Agent or the designee thereof as identified to the CMR by writing issued by and signed by the Arlington Public Schools Purchasing Agent.

- 1.30. **PROJECT:** The construction services as performed by the CMR, in accordance with the Contract Documents; collectively all of the improvements contemplated by the Contract; synonymous with the term “Work” as the context may require.
- 1.31. **PROJECT SITE:** The location at which the improvements which are the subject of the Work are to be or are being constructed.
- 1.32. **PROPOSED MODIFICATION:** A request by the Owner or the Owner’s Representative for the CMR’s estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and processed as set forth in Specification Section 01 2600.
- 1.33. **PURCHASING AGENT:** The employee of the Owner with authority to execute contracts, Amendments, and Modifications on behalf of the Owner, and with such other authority as may be set forth in the Contract Documents. See General Conditions Part 16.
- 1.34. **SPECIFICATIONS:** Those portions of the Contract Documents which consist of written technical descriptions of materials, equipment, constructions systems, standards and workmanship to be applied to the Work and certain administrative details, procedures and requirements applicable thereto.
- 1.35. **SUBCONTRACTOR:** Any individual, firm or organization other than an employee of the CMR, who contracts with the CMR to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the CMR in connection with the Work.
- 1.36. **SUB-SUBCONTRACTOR:** Any individual, firm or organization, other than an employee of the CMR 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.
- 1.37. **SUBSTANTIAL COMPLETION:** “Substantial Completion” or the state of being “Substantially Complete” shall be that degree of completion of the Work which is sufficient to provide the Owner, in its sole discretion, with the full time use of the Project in all manners or modes of operation and for the purpose or purposes for which it was intended. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Substantial Completion is established. More specific requirements for Substantial Completion as to the Work or a defined portion thereof may be set forth in the Specifications.
- 1.38. **SURETY:** Any person, firm or corporation that has executed as Surety the CMR’s performance or payment bonds securing performance of this Contract or providing for protection of claimants who have and fulfill contracts to supply labor or materials to the CMR or to a Subcontractor in connection with the Work. 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.
- 1.39. **WARRANTY PERIOD:** All warranties and guarantees against any defect in the Work shall apply from the date of Final Completion of the Work and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Owner occupies and commences using in the manner intended any designated portion of the Work prior to Final Completion thereof, the one (1) year Warranty as to such defined portion of the Work shall commence on the date the Owner commences such occupancy and use. Provided further, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

- 1.40. **WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.
- 1.41. **WORK ORDER:** A written directive to the CMR issued on or after the Effective Date of the Agreement which directs changes in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Period, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the CMR shall promptly proceed with the change in the Work involved and advise the Owner's Representative of the CMR's agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. Even if the CMR disagrees with the terms of the Work Order, the CMR must proceed with the changes as directed.

PART 2 EXECUTION AND INTENT OF THE CONTRACT

- 2.1. **CONTRACT SIGNATURE:** Four (4) copies of the Agreement Between the Owner and the CMR shall be signed by both the Owner and the CMR. CMR shall not commence any Work prior to submission to the Owner of fully executed payment bond and performance bond in the form provided by the Owner in the amount of the GMP. The Performance Bond and the Payment Bond shall be in effect as of the date the successful Offeror signs the Contract, and shall remain in effect through the later of the expiration of all applicable Warranty Periods or final conclusion of all third party claims against the Offeror, including all appeals. If executed prior to the date the successful Offeror signs the Contract shall include written certification from the surety that the bond is effective as of the date of the Contract.
- 2.2. **EXECUTION OF AGREEMENT:** Execution of the Contract by the CMR is a certification that the CMR has examined the site, 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, Drawings, and Specifications, as required by the Contract.
- 2.3. **INTENT OF THE CONTRACT DOCUMENTS:** 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. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. 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.
- 2.4. **DRAWINGS AND SPECIFICATIONS:**
- A. 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 CMR in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The CMR shall be responsible for segregating the Work among the various trades.
 - B. 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 CMR 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 CMR of the responsibility for completion of the work reasonably intended by the Drawings and Specifications to be included in the Contract.

- C. In the case of conflict or inconsistency between the Drawings and Specifications or within Drawings, or Specifications not clarified by Addendum, the CMR 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 CMR shall notify the Owner's Representative of discrepancies found before materials are fabricated or Work performed.
- D. The CMR 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 CMR in the field prior to proceeding.
- E. If the CMR also was the CMR for the Pre-Construction Phase Services, CMR shall be entitled to no increase in the Contract Sum and to no extension of the Contract Time arising from or related to any inconsistency, conflict, error or omission in the Drawings or Specifications which the CMR in the exercise of reasonable care reasonably should have discovered during the Pre-Construction Phase Services.

2.5. **CONTRACT INTERPRETATIONS:**

- A. The Owner and/or the CMR may request Contract interpretations in writing from the Owner's Representative. Such requests for interpretations must be submitted sufficiently in advance of the date upon which the interpretation is actually required by the Owner or the CMR to allow the Owner's Representative to issue the interpretation so as not to delay the Work. CMR shall be responsible for any delay resulting from failure to submit a request for interpretation in a timely manner. Written interpretations so requested shall be issued by the Owner's Representative in a manner commensurate with the timely execution of the Work, shall be consistent with the intent of the Contract Documents, and shall be in accordance with established progress schedules.
- B. The CMR shall pay to Owner any amounts paid by the Owner's Representative for the Owner's Representative to evaluate and respond to the CMR's request for interpretation, where such information was available to the CMR from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, CMR-prepared coordination drawings, or prior Project correspondence or documentation.

2.6. **COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:**

- A. The CMR **will not** be provided with hard copies of the Drawings, Project Manual and other Documents prepared by the Owner's Representative. The CMR will be provided access to an FTP site or online electronic storage site where electronic copies, in PDF file format, of the aforementioned documents will be available free of charge. The CMR shall bear any costs of training required to access the FTP or electronic storage site. Should the mode of storage of electronic documents change during the Contract Period, the CMR shall not be entitled to a change in the Contract Sum.
- B. Original Drawings and Specifications are the property of the Owner, and the CMR may not use the Drawings and Specifications produced pursuant to this Agreement for any purpose not relating to the Project without the Owner's consent.
- C. The Owner's Representative will make available to the CMR, versions of the Drawings, Specifications, and Addenda in electronic format (i.e. PDF file formats). The Contract Drawings executed or identified in accordance with Paragraph 1.10 shall prevail in cases of an inconsistency with subsequent versions made through manipulative electronic means involving computers.

D. The CMR shall not transfer or reuse Drawings and Specifications in electronic or machine-readable form without prior written consent of the Owner's Representative.

2.7. **SUBSTITUTIONS:** Substitutions are not permitted after Proposals are received, except as set forth in Division 1, Section 01 2500.

PART 3 OWNER'S REPRESENTATIVE

3.1. **ADMINISTRATION OF CONTRACT:** The Owner's Representative shall provide administration of the Contract in accordance with the Contract Documents between the Owner and the Owner's Representative.

3.2. **OWNER'S REPRESENTATIVE:** The Architect and the Project Manager, shall serve as the Owner's representative during construction, until final payment is due, and with the Owner's concurrence, from time to time during the Warranty Period. The Owner's Representative shall advise and cooperate with the Owner and shall act on the Owner's behalf in accordance with the Contract Documents. The Owner shall issue instructions to the CMR or, at the Owner's option, elect to have the Owner's Representative issue instructions to the CMR.

3.3. **SITE VISITS:** The Owner's Representative shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. Based upon its on-site evaluations, the Owner's Representative will advise the Owner of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work. The Owner's Representative 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's Representative shall not be responsible for the failure of the CMR, subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.

3.4. **CERTIFICATION OF PAYMENTS:** Based upon the Owner's Representative's observations and evaluations of the CMR's Application for Payment, the Owner's Representative shall review and certify the amounts due the CMR from the Owner.

3.5. **INTERPRETATION OF CONTRACT:** The Owner's Representative shall interpret the Contract requirements in accordance with General Conditions Paragraph 2.5, and shall serve as an advisor to the Owner concerning the performance of the Work. The presence of any onsite Owner's Representative shall in no way constitute an approval of means, methods or materials which do not conform to the requirements of the Contract Documents.

3.6. **REJECTION OF WORK:** 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. In the event rejected Work requires additional testing or additional inspections, CMR shall pay the Owner all amounts paid by the Owner to the Owner's Representative and other third party consultants for any such additional testing or inspections. The Owner's Representative and/or the Owner shall have the authority to order special inspections or tests, regardless of whether or not the Work has been fabricated, installed or completed. Such special inspections or tests shall be performed at the CMR's sole expense and no increase to the Contract Sum. No responsibility or duty of the Owner's Representative and/or the Owner to the CMR, Subcontractors, or Sub-subcontractors shall be created by this authority or by good faith decisions rendered in the exercise of this authority. At all times the CMR is fully responsible for the quality of the Work and full and complete performance of the terms and specifications of the Contract. The Owner then has the right to issue a Unilateral Change Order deducting the cost of correcting the deficiencies, including any charges for special inspections or tests as well as charges by the Architect, plus a markup of ten percent (10%) to cover administrative costs, from the balance due to the CMR. If the balance due to the CMR is not sufficient to cover the deduction established by the Unilateral Change Order, then the CMR shall pay to the Owner the difference.

- 3.7 **ADMINISTRATION OF CONTRACT:** The Owner's Representative shall prepare Change Orders, shall observe the Work to determine the Dates of Substantial and Final Completion, shall review all required documents submitted by the CMR, and shall issue Certificates of Substantial Completion and Final Completion in accordance with the provisions of General Conditions Paragraphs 11.6 and 11.7.

PART 4 OWNER

- 4.1. **SITE SURVEYS:** The Owner shall make available to the CMR 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 provisions of such information shall not relieve the CMR 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 CMR relies on such information solely at its own risk.

The CMR shall confirm locations of existing utilities by performing test pits, or using other means and methods as outlined by the State of Virginia Miss Utility laws, at the CMR's sole expense and no increase to the Contract Sum. 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 CMR's sole expense and no increase to the Contract Sum. All discrepancies will be noted on the As-Builts and documented at the CMR's sole expense and no increase to the Contract Sum.

- 4.2. **REJECTION OF WORK:** The Owner shall have the right but not the obligation to reject Work in accordance with General Conditions Paragraph 3.6 or of any other provision of the Contract Documents, without waiver of the CMR's obligation to fully perform under the Contract.
- 4.3. **CERTIFICATION OF PAYMENTS:** The Owner shall have the right but not the obligation to review, revise, and approve the Owner's Representative's certifications concerning payment.
- 4.4. **RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES:** If the CMR does not correct non-complying Work, or is consistent in not supplying and/or furnishing labor, material, and equipment necessary to Work performance, then the Owner has the right to order the CMR to stop the Work until such time as the cause of the order has been corrected. Should the CMR default, fail to perform the Work, or improperly perform the Work, the Owner has the right, after three (3) days written notice, to correct the deficiencies. The CMR shall pay to the Owner the Owner's cost of correcting the deficiencies, including any charges for special inspections or tests as well as charges by the Architect, plus a markup of ten percent (10%) to cover administrative costs. The Owner's exercise of the right to correct deficiencies shall in no way prejudice or limit any other remedy that the Owner may have.

PART 5 CONSTRUCTION MANAGER AT RISK

- 5.1. **GENERAL REVIEW OF CONTRACT DOCUMENTS:**
- A. The CMR shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. The CMR shall be responsible for the entire Work until Final Completion of all Work has been achieved.
 - B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.

- C. Supervisor and Construction Procedures: The CMR shall supervise and direct the Work and coordinate the Work with that of separate Contractors using CMR's best skill and attention, with at least the use of an onsite full-time superintendent, onsite full-time project engineer and full-time project manager. Unless otherwise noted herein, the CMR 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. Unless otherwise expressly provided, the means and methods of construction shall be such as the CMR may choose; provided, however, that the CMR shall employ adequate and safe procedures, methods, structures and equipment. Neither the Owner's Representative's approval nor its failure to exercise its right of approval shall relieve the CMR of its obligation to accomplish the result intended by the Contract, nor shall the Owner's Representative's approval or failure to approve create a cause of action for damages against the Owner's Representative or the Owner, or provide a defense by the CMR in any cause of action by the Owner against the CMR.
- D. The CMR shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The CMR shall be responsible for advising the Owner's Representative and the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered by it.
- E. The CMR shall be responsible for all costs or delays resulting from the CMR's or a Subcontractor's failure to obtain and review Contract Documents provided by the Owner.

5.2. **CHARACTER AND COMPETENCY:**

- A. The CMR and its Subcontractors represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction services required hereunder. The CMR 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 CMR 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 construction services of high quality. The CMR agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.
- B. The Owner, upon written notice to the CMR, and in the Owner's sole discretion, shall have the right to direct the CMR 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.
- C. The CMR will ensure that no Work shall be performed in occupied areas during school 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.
- D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site and will constitute grounds for immediate removal of any employee of the CMR or of any Subcontractor from the Project Site. Sexual harassment, profanity, and inappropriate behavior are not permitted on the Project Site and will constitute grounds for immediate removal of any employee of the CMR or of any of its Subcontractors.
- E. No Smoking Policy on Arlington Public Schools' property: The CMR, all Subcontractors and all Sub-subcontractors, including their employees or agents, performing work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.

F. 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 CMR agrees to:

1. Provide a drug-free workplace for the CMR's employees;
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 CMR's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
3. State in all solicitations or advertisements for employees place by or on behalf of the CMR that the CMR maintains a drug-free work place; and
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.

G. CMR Certification Regarding Criminal Convictions

1. As a condition of awarding a contract for the provision of Work that require the CMR or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Arlington School Board shall require the CMR to provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The CMR certification covers its employees, its Subcontractors and the employees thereof.
2. The CMR certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The CMR, upon demand from APS, shall provide all information which allowed for the CMR's certification.
3. The CMR shall submit to the Owner a completed CMR Certification Regarding Criminal Convictions on the form provided by the Owner (see RFP attachment).

5.3. **PERMITS, FEES AND NOTICES:**

A. The CMR shall comply with all local, state and federal laws, rules or ordinances applicable to this Contract and the Work to be performed hereunder. The CMR shall also obtain, at its expense, all permits, inspections, licenses, fees and other authorizations necessary for the prosecution of the Work, except that the Owner shall obtain, at its expense, the building permit or easement agreement necessary and indispensable to the completion of the Project.

- B. The CMR 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 CMR 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 suitable approved Modification. If the CMR 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 CMR shall accept all responsibility and bear all cost relating thereto.
- C. The CMR shall comply with all conditions in the approved Use Permit for the Project and shall comply with all requirements for Permits and Occupancy. The CMR shall meet all the requirements of the Use Permit to achieve the Permits and various Certificates of Occupancy for the Project, Interim, Partial or Final. Should the CMR not meet the stipulated contractual dates for Permits, Inspections and Occupancy, the Owner may issue a deduct Change Order to cover any and all costs, overtime fees and other related costs to the delay in obtaining the required Permits, Inspections or Occupancy.

5.4. **RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE:** The CMR shall be responsible as a part of the Work to use such software or software products as may be designated by the Contract Documents or otherwise directed for use by the Owner in performing all obligations, and exercising all rights, under the Contract Documents. Should there be any changes in any such software requirements during the Contract Period such change shall not be the basis of any claim of any sort by CMR.

5.5. **RESPONSIBILITY FOR THOSE PERFORMING THE WORK:** The CMR shall be responsible and accountable to the Owner for the acts and omissions of the CMR'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 CMR or a contract with a Subcontractor. The CMR shall be responsible for maintaining the cleanliness on the Project Site at all times and shall exercise dust control when required.

5.6. **DRAWINGS AND SPECIFICATIONS AT THE SITE:** The CMR shall maintain one full size copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications at the Project Site. The CMR will also retain all permits sets in good condition at the Project Site. All of the documents are to be kept in good order and marked to record all changes made during construction. The documents shall be made available to the Owner and Owner's Representative during performance of the Work. Upon completion of the Work, these As-Built drawings together with all changes and revisions made during construction shall be delivered to the Owner's Representative, with one digital copy.

5.7. **SHOP DRAWINGS:**

- A. The CMR shall prepare, review, approve and submit to the Owner's Representative Shop Drawings and similar submittals required by the Contract Documents with promptness and in accordance with the Submittal Schedule so as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the CMR which are not required by the Contract Documents may be returned without action. Shop Drawing submittals are to be prepared and submitted as set forth in Submittals, Section 01 3300 of the Specifications to allow for review and approval by the Owner and not affect the procurement and installation of the submitted items. CMR

shall not be entitled to any Modification of the Contract Sum or of the Contract Period for any consequence of failure of the CMR to comply strictly with any submittal requirement.

- B. The CMR shall perform no portion of the Work requiring submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be performed in accordance with the approved submittals.
- C. By approving and submitting Shop Drawings and similar submittals, the CMR represents that the CMR has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- D. The CMR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings or similar submittals unless the CMR has specifically informed the Owner's Representative in writing of such deviation at the time of submittal and the Owner's Representative has given written approval to the specific deviation. The CMR shall not be relieved of responsibility for errors or omissions in Shop Drawings or similar submittals by the Owner's Representative's approval thereof.
- E. The CMR shall direct specific attention, in writing or on resubmitted Shop Drawings or similar submittals, to revisions other than those requested by the Owner's Representative on previous submittals.
- F. Informational submittals upon which the Owner's Representative is not required to take responsive action may be so identified in the Contract Documents.
- G. Additional requirements are contained in Submittals, Section 01 3300 of the Specifications.

5.8. **INSPECTION OF WORK:** The CMR shall be responsible for inspection of portions of Work or Phases of Work already performed hereunder to determine that such portions are in proper condition to receive subsequent Work. In calling for inspections, the CMR certifies that the Work being called for inspection meets the Contract and all code requirements for completeness and quality. Irrespective of any third party inspections, the CMR remains responsible for any after discovered defects in Work and is fully responsible for any delays and costs associated with such defective, insufficient or non-compliant Work.

5.9. **TESTS AND INSPECTIONS:** Unless otherwise provided in the Contract Documents, the CMR shall be responsible for scheduling, compliance and costs associated with all tests or inspections required by local authorities having jurisdiction over the Project. The CMR shall give the Owner and the Owner's Representative 48-hour notice of the date and time of all required tests and inspections, including third party inspections under the purview of the Owner. CMR shall assist and coordinate with third party inspections as required. CMR shall notify the Owner and Owner's representatives of the cancellation of any inspections either by the local authorities or third party inspections at least 24 hours prior to the scheduled inspection. The CMR shall be responsible for any associated added costs incurred due to cancellation of inspections, including but not limited to, any added cost required by local authorities or third party inspectors due to a failure of inspection from deficient work or re-work resulting in the need for additional inspections.

5.10. **USE OF SITE:**

- A. The CMR shall confine the Work to areas of the Project Site permitted by the Contract Documents and shall comply with all applicable laws, ordinances, permits related to the Project Site.
- B. The CMR shall establish and maintain security procedures controlling access to the Project Site. These procedures shall include the maintenance of a centrally located sign-in/sign-out log and the

issuance of temporary security badges to short term visitors to the site. The Owner's Representative (Project Manager) will provide project specific hardhat stickers to all CMR and Subcontractor employees assigned to work on the Project. Request for such stickers will not be valid unless accompanied with a completed "Construction Manager at Risk Certification Regarding Criminal Convictions" form.

- C. CMR workers shall not be present in any building and/or property owned or controlled by Owner without an Owner employee present nor without a CMR issued APS hard hat sticker. In the event the CMR desires to perform Work on weekends, outside normal working hours or a Holiday in any building and/or property owned or controlled by Owner, CMR 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 CMR workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the CMR 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 CMR to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the CMR for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday work shall be paid by the CMR at a rate of \$150 per hour.
- D. The CMR shall maintain the building interior and exterior grounds of the Project Site in a clean and orderly state. The CMR shall conduct periodic cleaning of the building interior, grounds, parking lots, driveways and sidewalks to assure that construction debris and unnecessary material and equipment do not accumulate. The CMR shall also conduct periodic landscape maintenance of vegetated areas of the site.
- E. If in the Owner's sole discretion, the Project Site requires cleaning, landscape maintenance, or excess material removal, in total or in part, the Owner shall request the CMR conduct the necessary cleaning and removal. Should the CMR fail to accomplish the requested cleaning within three (3) business days, the Owner reserves the right to use outside sources to conduct the cleaning or maintenance and to charge the CMR for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.
- F. The CMR shall be responsible for the protection and security of the Project Site and shall have in place procedures to maintain positive control over vehicular and pedestrian traffic entering the site and maintain a security perimeter around the construction site by employing the following measures:
 - 1. Completely enclose the Project Site at the outer limits of the construction area with a chain link fence with a minimum of six feet height. The fence shall be firmly anchored in the ground or into concrete bases to prevent movement, lifting, or passage beneath the fence. The fence shall be continuous and securely fastened at seams to prevent gaps greater than 3 inches in width at any point.
 - 2. The perimeter fence may be penetrated to provide vehicular and pedestrian access. These entrance penetrations must be capable of being closed and locked and shall be constructed of chain link to a minimum of height of six feet when closed.

5.11. **INDEMNIFICATION:** The CMR covenants to save, defend, hold harmless, and indemnify the Owner, Arlington School Board, 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 CMR'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 on the Project Site. This indemnification obligation shall survive the termination of this Contract.

5.12. CONFLICT OF INTEREST:

- A. § 2.2-4367. Purpose - The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100, et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438, et seq.), and 3 (§ 18.2-446, et seq.) of Chapter 10 of Title 18.2.
- B. The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act. (1982, c. 647, § 11-72; 1987, Sp. Sess., c. 1;2001, c. 844.)

5.13. EMPLOYMENT DISCRIMINATION BY CMR PROHIBITED: During the performance of this Contract the CMR agrees as follows:

- A. The CMR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CMR. The CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The CMR, in all solicitations or advertisements for employees placed by or on behalf of the CMR, will state that the CMR is an Equal Opportunity Employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The CMR will include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.
- E. Arlington Public Schools does not discriminate against faith-based organizations.

5.14. ASBESTOS ABATEMENT: If the Work involves any aspect of asbestos abatement, the CMR, if not licensed as an asbestos abatement contractor in accordance with Va. Code Ann. §54.1-514, shall have all asbestos-related Work performed by Subcontractors who are duly licensed as asbestos contractors for the Work required.

5.1.5. LEAD BASED PAINT ACTIVITIES: If the Work involves lead based paint present on existing materials, components, or surfaces, the CMR shall comply with all applicable federal and Commonwealth statutes and regulations in dealing with lead based paint.

5.16. LAND DISTURBING ACTIVITIES: If the Work includes any land disturbing activities, the CMR shall have on-site an individual certified by the Virginia Department of Environmental Quality as a Responsible Land Disturber in accordance with Va. Code Ann. §10.1-563. The Responsible Land Disturber shall, on behalf of the CMR, be the person responsible for the installation, inspection and maintenance of erosion

control and stormwater management measures and devices. It also shall be the responsibility of the CMR to prevent soil erosion from the Site, the runoff of silt, and the washing or blowing of debris from the Site.

PART 6 SUBCONTRACTORS

- 6.1. **ABSENCE OF CONTRACTUAL RELATIONSHIP:** 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.
- 6.2. **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:**
- A. The CMR may only self-perform 10% of the work, and, for the remaining 90% of the work, the CMR must procure it by publically advertised, competitive sealed bidding to the maximum extent practicable. No award shall be made to a Subcontractor if that entity would be deemed not responsible in a solicitation by Owner or any other public body.
 - B. Upon request, the CMR promptly shall file with the Owner a copy of any one or more of its subcontracts. The CMR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CMR in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CMR the same power to terminate any subcontract that the Owner may exercise to terminate the CMR under the provisions of these Contract Documents. The CMR shall bear all additional expenses due to its exercising of its rights under this paragraph.
 - C. The Owner's review or acceptance of Subcontractors as described herein shall not relieve the CMR of any of its responsibilities, duties and liabilities under the Contract Documents. The CMR shall be responsible to the Owner for the acts, defaults, or omissions of the CMR's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.
- 6.3. **SUBCONTRACTOR AND SUB-SUBCONTRACTOR AGREEMENTS:** Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the CMR, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement shall be submitted by the CMR to the Owner's Representative within ten (10) days of the Subcontractor award and shall:
- A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;
 - B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;
 - C. Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the CMR may in turn promptly process such applications or claims in conformance with the Contract Documents;
 - D. 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 General Condition 13. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
 - E. Make specific reference to the conditions of this General Conditions Paragraph 6.3 as a mutually binding provision; and

- F. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work.

6.4. **PAYMENTS OF SUBCONTRACTORS:**

- A. Within seven (7) days after receipt of payment from the Owner, the CMR shall:
 - 1. Pay each Subcontractor an amount equal to the percentage of the work attributable to such Subcontractor, less an amount equal to the percentage of payments to be retained by the Owner from the CMR as retainage; or
 - 2. Notify the Owner and the Subcontractor in writing of the intention to withhold all or part of the amount due a Subcontractor and state the reason for such withholding.
- B. In the event the CMR fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the CMR, the Subcontractor shall have the right to be paid by the CMR upon demand of the amounts due.
- C. The CMR shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the CMR's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld pursuant to Paragraph 6.4.A.2 shall not accrue interest.
- D. Insurance proceeds received by the CMR under the insurance policies described in Paragraph 13.1 shall be equitably distributed to the Subcontractors affected by the insured loss.
- E. Information concerning percentages of completion of work performed by a Subcontractor as shown in Application for Payment may be made available to that Subcontractor upon determination of the Owner.
- F. The CMR shall include in each subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of this Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.
- G. The CMR's obligations with respect to payments to its Subcontractors as outlined in this Paragraph 6.4 above shall not operate to create any obligation or contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.
- H. The CMR's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A Contract Modification shall not be made for the purpose of providing reimbursement for

the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

- I. The CMR shall include in each subcontract the same requirements as appear in this General Conditions Paragraph 6.4 and shall require the completion of the Construction Manager at Risk Certification Regarding Criminal Convictions set forth in General Conditions Paragraph 5.2.

PART 7 SEPARATE CONTRACTS

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS:

- A. The Owner reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate contract for construction.
- C. At no additional cost to the Owner, the CMR shall coordinate the Work with the activities of each separate Contractor. When directed to do so by the Owner, the CMR shall participate with separate Contractors and the Owner in reviewing their separate construction schedules and shall make any revisions to incorporate that activity into the Critical Path Method (CPM) Construction Schedule necessitated thereby.
- D. The CMR shall afford the Owner and any separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- E. If part of the CMR's Work depends for proper execution or results upon construction or operations by a separate Contractor, the CMR 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 CMR to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the separate Contractors' completed or partially completed construction is fit and proper to receive the CMR's Work, except as to defects not then reasonably discoverable.

PART 8 MISCELLANEOUS PROVISIONS

- 8.1. **GOVERNING LAW:** The Contract Documents shall be governed by 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, the CMR shall comply with applicable federal, state, and local laws, ordinances and regulations.
- 8.2. **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who was an unsuccessful Offeror, who was deemed not to be qualified, or who was

or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.

- 8.3. **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.
- 8.4. **ROYALTIES AND PATENTS:** The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the CMR is required or desires to use any design, device, material or process covered by letters of patent or copyright, the CMR shall indemnify and save harmless the Owner and Owner's Representative, their 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 and the Owner's Representative, their 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.
- 8.5. **CLAIMS FOR DAMAGES:** If the CMR 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 CMR, the CMR 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 CMR'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.
- A. The CMR 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, to the Purchasing Agent, and to the Owner's Project Manager 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.
- B. If the Owner within five (5) business days following receipt of such Notice of claim does not direct the CMR otherwise, the CMR 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, to the Owner's Project Manager, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.
- C. The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Subparagraph B above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90th) day. A final decision by the Owner shall be a condition precedent to institution by the CMR of any judicial claim for relief on the claim. The CMR'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 CMR in support of any claim shall extend this six month limitation.

- D. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
- E. No claim whatsoever shall be made by the CMR against any officer, authorized representative or employee of the Owner or Owner's Representative for, or on account of, anything done or omitted to be done in connection with this Contract.
- F. 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.
- G. In the event the CMR 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 CMR 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.
- H. If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the CMR 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.
- I. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

8.6. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The CMR 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.

8.7. **ASSURANCES OF COMPLIANCE:** The CMR shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.

8.8. **CONFLICT WITH PROVISIONS OF THE CODE OF VIRGINIA:** In the event that there is a conflict between the language of this Agreement and any mandatory provisions or requirements of the Code of Virginia, and specifically Chapter 43, Title 2.2, ("Virginia Public Procurement Act"), the Code of Virginia shall control.

8.9. **VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT:**

A. During the performance of this Contract the CMR agrees as follows:

- 1. The CMR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CMR. The CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The CMR, in all solicitations or advertisements for employees placed by or on behalf of the CMR, will state that such CMR is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this action.
4. The CMR will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order over \$10,000.00, in order that the provisions above will be binding upon each Subcontractor.

B. Nothing contained in this provision shall be deemed to require CMR to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by CMR in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the state.

C. Arlington Public Schools does not discriminate against faith-based organizations.

8.10. **SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES:**

The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, 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 and Minority Business Enterprises.

A. In seeking subcontractors, suppliers and vendors necessary to perform the Work, the CMR shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses and service disabled veteran-owned businesses. At a minimum, for any portion of the Work the CMR is not going to perform with its own forces, the CMR 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 CMR shall directly solicit bids from at least one certified business in each category 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.

B. As used in this section:

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:
 - a. "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.
 - b. "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.

- c. “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.
 - d. “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.
- 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.
 - 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.
 - 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.
 - 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.
 - 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.

8.11. **LABOR UNIONS AND RIGHT TO WORK:**

- A. The CMR 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.

- B. Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Articles 1, 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The CMR 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.

PART 9 CHANGES IN THE WORK

9.1. MINOR CHANGES:

- A. 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 CMR 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.
- B. 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 CMR, when ordered by the Owner's Representative, 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 CMR by the Owner within fourteen (14) days. The Owner's Representative shall act as an advisor to the Owner in what constitutes a minor change for which no additional compensation shall be allowed. If the CMR 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 Representative's written direction for such minor change shall be deemed to be the occurrence.
- C. The CMR may be entitled to an extension of time for such minor changes only for the number of days which the Owner's Representative may determine to be necessary to complete such changes and only to the extent that such changes actually affect the critical path and delay the completion of the Project, and then only if the CMR shall have strictly complied with all the claims submittal requirements of the Contract Documents.

9.2. EXTRA WORK:

- A. The Owner may, in its sole and absolute discretion, at any time by a Work Order or Change Order, and without notice to the Sureties, require the performance of such Extra work as it deems necessary or desirable. Procedures and authorization for extra work shall be subject to the provisions set forth in Section 01 2600 of the Specifications.
- B. The CMR shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in General Conditions 10.3, for any extra work performed by the CMR without a valid Work Order or Change Order, and the Owner may order the removal or alteration at the CMR's expense of any extra work performed without a validly issued Work Order or Change Order.
- C. A Change Order covering extra work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to initiation of such work. When signed by the CMR, CMR

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 therein.

- D. A Work Order shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to the initiation of the work described therein. A Work Order directs changes in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the CMR shall promptly proceed with the change in the Work involved and advise the Owner's Representative of the CMR's agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. Even if the CMR disagrees with the terms of the Work Order, the CMR must proceed with the changes as directed.
- E. The amount of compensation to be paid to the CMR for any extra work so ordered shall be determined in accordance with Section 01 2600 of the Specifications.
- F. Regardless of the manner in which the adjustment to the Contract Sum on account of extra work is determined, such adjustment shall be deemed to include all known amounts, as outlined in Section 01 2600 of the Specifications. The adjustment in the Contract Sum, if any, shall constitute full and mutual accord and satisfaction for all costs related to such change.
- G. Records of extra work performed hereunder, if any, shall be submitted to the Owner's Representative, within 24 hours of the work being complete. Advanced notification must be provided to the Owner and/or Owner's Representative prior to the initiation of the work described therein. Strict compliance with these requirements shall be a condition precedent to compensation for such work but compliance of itself shall not establish entitlement. Duplicate copies of accepted records shall be made and signed by both CMR or its representative and the Owner's Representative, and one copy retained by each.
- H. Any right of the CMR to an extension of time for extra work duly authorized by the Owner or Owner's Representative shall be determined under the provisions of General Conditions Part 10.3 below and Specifications Section 01 2600.

9.3. OMITTED OR DELETED WORK:

- A. The Owner may at any time by a written order and without notice to any Surety require the omission or deletion of such Work as the Owner may find necessary or desirable in its sole and absolute discretion.
- B. An order for omission or deletion of Work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative, upon the issuance of which the Work so ordered must be omitted by the CMR. The amount by which the Contract Sum shall be reduced shall be determined in accordance with Section 01 2600 of the Specifications.
- C. CMR shall not be entitled to any extension of the Contract Period as a direct or indirect result of any omission or deletion of Work by Owner.

9.4. AUDIT:

- A. The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the CMR 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 CMR hereby covenants to maintain the Records in good order for such time and to deliver promptly the Records to the Owner upon request.

- B. The CMR 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.

9.5. DISPUTED WORK:

- A. If the CMR is of the opinion that any work required, necessitated, or ordered by the Owner's Representative or the Owner, or any action required or ordered by the Owner's Representative or the Owner to be taken or not taken is not Work included within the Contract Sum, 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.
- B. No payment shall be made to CMR for any disputed work for which Owner's final determination is that CMR is not entitled to receive any increase in the Contract Sum for such Work. Payment for Work not in dispute shall continue to be made to the CMR in accordance with the Contract Documents.

PART 10 TIME

10.1. TIME OF START AND COMPLETION:

- A. The CMR shall commence Work within ten (10) days after receipt of the Notice to Proceed. Time being of the essence with respect to this Contract, the CMR 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. The CMR shall provide a Critical Path Method (CPM) Construction Schedule as prescribed in Section 01 3200 of the Specifications. By submitting a Proposal, the CMR confirms that the Contract Period is a reasonable period for performing the Work. The CMR shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.
- B. The Owner and the CMR hereby acknowledge and agree that time is of the essence with respect to this Contract and that in the event the CMR fails to complete the Work within the Contract Period, the Owner and the CMR agree to liquidated damages for late completion as set forth in the Contract. The CMR and its Surety hereby agree that the stated sum per day for each such day of delay shall be deducted and retained out of the moneys which may become due hereunder and if not so deductible, the CMR and its Surety shall promptly make payment to Owner of the amount due upon receipt of demand therefore.

- 10.2. CONSTRUCTION MOBILIZATION:** The CMR's mobilization to perform the Contract Work shall commence at the issuance of a written Notice to Proceed and shall be completed within thirty (30) days of the date of the Notice to Proceed. At a minimum, the construction mobilization phase shall include the following:

- A. Submission of an acceptable detailed Schedule of Values immediately after Notice to Proceed and prior to the submission of the first request for payment, as required by Part 11.2 of these General Conditions;
- B. Submission of an acceptable Startup Construction Schedule within seven (7) days of Notice to Proceed as required by Section 01 3200 of the Specifications.
- C.
- D. Submission of a proposed List of Sub-contractors within ten (10) days of Notice to Proceed as required by Part 6 of these General Conditions;
- E. Submission of an acceptable CMR Quality Control Plan within ten (10) days of Notice to Proceed as required by Section 01 4000 of the Specifications;
- F. Submission of an acceptable Critical Path Method schedule as required by Section 01 3200 of the Specifications;
- G. Submission of an acceptable Submittal Schedule as required by Submittals, Section 01 3300 of the Specifications;
- H. Submission of an acceptable Erosion and Sedimentation Control Plan as required by Section 01 5000 of the Specifications;
- I. Completed installation of required Phase 1 Erosion & Sediment Controls, perimeter construction fence and CMR and Owner's Representative's onsite construction trailers, as required by the Contract Documents;
- J. Submission of an acceptable Waste Management Plan as required by Section 01 7419 of the Specifications.

10.3. **EXTENSION OF TIME:**

- A. The parties agree that no extension beyond any required date of completion, whether Substantial Completion or Final Completion, fixed by the terms of the Contract shall be effective unless granted in writing, and signed by the Owner's Purchasing Agent or his designee. All time requirements set forth herein shall be of the essence. It shall be a condition precedent to any claim for extension of time that the CMR comply strictly with the following requirements:
 - 1. Give notice of delay in writing to the Owner's Representative, to the Owner's Project Manager, and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with the requirements of the Contract Documents. 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 CMR 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.

2. The CMR shall submit to the Owner's Representative, to the Project Manager, and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this article and by any applicable Contract Specifications, within twenty-one (21) days after the delay has ceased.
 3. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
 4. The CMR 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.
 5. 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.
- B. The CMR 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, A/E or Owner's separate contractors, 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 CMR. The CMR shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner's Representative 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 CMR shall have strictly complied with all applicable claims submission requirements of this Contract, including, without limitation, Paragraph 10.1. To the extent any delay for which the CMR seeks an extension of time is due concurrently to causes for which CMR may be entitled to a delay and to causes within the reasonable control or foreseeability of the CMR, the CMR shall not be entitled to any extension of time.
- C. The CMR is to assume a maximum of twenty (20) Days delay from the date of Notice to Proceed to the date of Project Substantial Completion. These twenty (20) Days shall include a combined total of allowed Owner delays and inclement weather delays allowed as defined in paragraph 10.8 below. These twenty (20) delay Days are the responsibility of the CMR and shall be included in the Contract Period, the Contract Sum, and incorporated in the CPM construction schedule. The CMR will not be compensated, neither monetarily nor have any right to a time extension, for a cumulative delay of twenty (20) or less Days.
- D. The Owner's Purchasing Agent or his designee shall issue the Owner's final decision on any claim for delay within ninety (90) Days following receipt of the CMR's final submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to issue a written decision shall be deemed a final decision to deny the claim as of the ninetieth (90) Day. A final decision by the Owner shall be a condition precedent to institution by the CMR of any judicial proceeding for relief on the claim. The CMR'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 CMR in support of any claim shall extend this six month period.

- E. Delays caused by the failure of the CMR'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 Construction Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.
- F. If the CMR makes a claim against the Owner for costs or damages due to unreasonable delays caused by the Owner, and its agents or employees, it 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 CMR's total delay claim which is determined through litigation to be incorrect or to have no basis in law.
- G. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

10.4. **RECOVERY SCHEDULE:**

- A. Should the approved Construction Schedule show at any time during CMR's performance, in the sole opinion of the Owner, that the CMR is 14 days or more behind schedule for any specific critical path milestone date, or should the CMR be required to undertake actions under Paragraph 10.7 of this section, the CMR shall submit a Recovery Schedule to the Owner within five (5) days after receiving a written request from the Owner to do so. The Recovery Schedule shall explain and display how the CMR intends to reschedule its Work at no additional cost to the Owner, in order to regain compliance with the Construction Schedule during the immediate subsequent pay period.
- B. If the CMR believes that all of the time can be recovered during the subsequent pay period, the CMR will be permitted to prepare a Recovery Schedule as set forth below. However, if the CMR believes it will take more than thirty (30) days to recover all of the lost time, it shall prepare and submit a request for revision of the Construction Schedule and comply with all of the requirements for a Schedule Revision.
 - 1. The CMR shall prepare and submit to the Owner a one-month maximum duration Recovery Schedule, incorporating best available information from Subcontractors and others which will permit return to the approved Construction Schedule at the earliest possible time. The CMR shall prepare a Recovery Schedule to the same level of detail as the Construction Schedule for a maximum duration of one month. This Recovery Schedule shall be prepared in coordination with other separate Contractors on the Project.
 - 2. Within two (2) days after submission of Recovery Schedule to the Owner, the CMR shall participate in a conference with the Owner to review and evaluate the Recovery Schedule. Within two (2) days of the conference, the CMR shall submit the revisions necessitated by the review for the Owner's review and approval. The CMR shall use the approved Recovery Schedule as its plan for returning to the Construction Schedule.
 - 3. CMR shall confer continuously with the Owner to assess the effectiveness of the Recovery Schedule. As a result of these conferences, the Owner will direct the CMR as follows: (i) If the Owner determines the CMR is still behind schedule, the Owner will direct the CMR to prepare a revised Recovery Schedule and comply with all of the requirements of a Schedule Revision as stated herein and the other requirements of the Contract Documents; provided, however, that nothing herein shall limit in any way the rights and remedies of the Owner as provided elsewhere in the Contract Documents. (ii) If the Owner determines the CMR has successfully complied with provisions of the Recovery Schedule, the Owner will direct the CMR to return to the use of the approved Construction Schedule.

- 10.5. **PHASING MILESTONES:** Substantial Completion and Final Completion Dates for each Phase must be accomplished in an orderly and timely manner in order to complete the Project on schedule and not delay or hinder the Owner's occupancy of the completed Project. The Substantial Completion and Final Completion Dates are set forth in the Contract. These dates shall be binding upon the CMR, subject to the provision of the Contract Documents allowing for agreed upon extensions of the Contract Period. The CMR shall include each of these dates on its CPM schedule in accordance with scheduling standards set forth in Specification Section 01 3200.
- 10.6. **CMR DELAYS:** The CMR agrees that wherever it becomes apparent from review of the current monthly CPM schedule update that delays to the critical path have resulted and, hence, that any Substantial Completion Date or Final Completion Date established by the Contract will not be met, or when so directed by the Owner, the CMR shall take some or all of the following actions at no additional cost to the Owner:
- A. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
 - B. Increase the number of working hours per shift; shifts per working day, or days per week; the amount of construction equipment; the forms for concrete work or other trade specific materials or equipment; or any combination of the foregoing to substantially eliminate the backlog of Work;
 - C. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and comply with those revisions;
 - D. The CMR shall submit to the Owner's Representative for review, a written statement of the steps the CMR intends to take to remove or arrest the delay to the schedule. If the CMR shall fail to submit a written statement of the steps it intends to take or should fail to take such steps as required by the Contract, the Owner or the Owner's Representative may direct the level-of-effort in manpower (trades), equipment, and work schedule (overtime, weekend and Holiday work, etc.) to be employed by the CMR in order to remove or arrest the delay to the critical path in the accepted schedule, and the CMR shall promptly provide such level-of-effort at no additional cost to the Owner. In addition, should schedule delays persist, the CMR's Surety will be asked to attend meetings to update the schedule.
 - E. Should it be deemed necessary, in the Owner's sole discretion, that delays or incomplete work have warranted the use of outside sources to arrest a delay or to complete incomplete work, the Owner reserves the right to back-charge the CMR for all costs incurred by the Owner in the use of outside sources.
- 10.7. **WEATHER DELAYS:** The Contract Period shall be adjusted to account for unusually severe weather conditions which prevent or inhibit the CMR's performance of the Work and lengthen the critical path indicated on the Schedule. Such unusually severe weather conditions are referred to herein as "Inclement Weather". The CMR shall notify the Owner's Representative in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather and shall describe in reasonable detail the type of Inclement Weather encountered by the CMR and the work thereby interfered with or interrupted, in accordance with the provisions of Paragraph 10.3 above. The Owner's Representative shall determine the CMR's entitlement to an extension of the Contract Period for inclement weather by comparing weather conditions during the period beginning on a date 15 days prior to the onset of the Inclement Weather and ending on a date 15 days after the conclusion of the Inclement Weather (the "Comparison Period"). This comparison during the Comparison Period shall be based upon the accumulated record monthly or daily mean values (the choice of monthly or daily values being made by the Owner's Representative in his sole and absolute discretion) from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration using the Reagan National Airport reporting data. The Comparison Period shall not include days outside the Contract Period. The CMR shall be entitled to an extension of the Contract Period only to the extent that the total number of days of Inclement Weather

claimed during an inclement period exceeds the total number of days of Inclement Weather conditions during the Comparison Period. Throughout a construction Phase as defined in the Contract, the CMR shall be entitled to an extension of the Contract Period only to the extent that the total Inclement Weather days approved exceed the assured number of delay days stipulated in Paragraph 10.3.C.

PART 11 PAYMENTS AND COMPLETION

11.1. PRICES:

- A. For the CMR's complete performance of the Work, the Owner agrees to pay, and the CMR agrees to accept, subject to the terms and conditions hereof, the Contract Sum, plus the amount required to be paid for Extra Work approved under Paragraph 9.2 hereof, less credit for any work omitted pursuant to Paragraph 9.3 hereof, and any other credits or offsets, including reimbursements or liquidated damages to which the Owner is entitled.
- B. The amount awarded as a unit price for any unit price Contract item shall represent payment in full, including overhead and profit, for all material, equipment and labor necessary to complete, in conformity with the Contract Documents, each unit or item of work shown, specified, or required under the said unit price Contract item.
- C. No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract item or a unit price Contract item, unless specific provision is made therefore in the Contract Documents.

11.2. **SUBMISSION OF SCHEDULE OF VALUES:** CMR shall organize and provide detail on the Schedule of Values in a manner acceptable to the Owner and as set forth in Section 01 2900 of the Specifications. The Schedule of Values, once accepted by the Owner's Representative, may be used for verifying the CMR's applications for partial payments hereunder but shall not be binding upon the Owner for any purpose whatsoever.

11.3. APPLICATION FOR PAYMENT:

- A. The CMR must submit applications for payment using AIA Document G702 - Application and Certificate for Payment. Affidavits from each Subcontractor verifying receipt of payments of amounts billed in the previous payment request must accompany each application for payment. Failure to submit all affidavits will delay payment.
- B. Upon the request of the Owner's Representative, as a condition precedent to payment pursuant to the terms of this Contract, the CMR shall give the Owner a statement that no employee of the Owner has received or has been promised, directly or indirectly, any financial benefit, by way of a fee, commission, finder's fee or in any other manner, remuneration arising from or directly or indirectly related to this Contract. All parties agree that the Owner shall have the right, in its sole and absolute discretion, to withhold payment to the extent of any such fee or commission. The CMR shall not be entitled to interest and shall not have any claim on account of any payments being withheld under this paragraph.

11.4. PARTIAL PAYMENTS:

- A. On or about the first of each month, the CMR shall make and certify an estimate of the amount and fair value of the Work performed and may apply for partial payment therefore. The Owner's Representative shall revise the estimate to show the value of Work completed in accordance with the Owner's Representative's observation of the Work and knowledge, information and belief. The

CMR agrees to be bound by the Owner's Representative's revisions to the applications for partial payment.

- B. Whenever the monthly estimate, after approval by the Owner's Representative, shows that the value of the work completed during the previous month exceeds \$1,000.00, the Owner's Representative will certify the CMR's Application and Certificate for Payment for such Work. Such Application and Certificate for Payment as approved by the Owner's Representative will authorize payment by the Owner in an amount equal to the value of the Work completed less any sums retained or deducted by the Owner under the terms of the Contract Documents, and less retainage of five (5) percent of payments approved.
- C. An Application and Certificate for Payment shall not be considered received by the Owner unless accompanied by the following:
1. An affidavit that payrolls, bills for materials and equipment, Subcontractors invoices, and all other indebtedness in connection with amounts paid by the Owner to the CMR under previous Application and Certificates for Payment have been paid and otherwise satisfied; and
 2. All construction photos as required by Contract Specification 01 3233;
 3. A revised CPM schedule as required by Contract Specification 01 3200.
- D. Within forty-five (45) days after receipt of each approved Application and Certificate for Payment, the Owner shall pay the CMR in accordance with the applicable Certificate and the Contract Documents.
- E. Unless otherwise provided herein, no payment will be made for any materials or equipment supplied hereunder before they are:
1. Incorporated in the work in a permanent manner required by the Contract Documents,
 2. Properly stored at the site of the Project, or
 3. Properly insured and stored in a bonded warehouse to the satisfaction of the Owner.
- F. The cost of equipment and non-perishables delivered and stored only at the Project Site and tested for adequacy may be included in the CMR's Application and Certificate for Payment; provided, however, that the CMR shall furnish written evidence satisfactory to the Owner that the CMR has clear title to such materials or equipment at the time of payment therefore by the Owner and that such equipment is being stored and maintained in accordance with the Contract Documents and the Drawing's recommendations. The amount to be paid by the Owner for such equipment and non-perishables will be 100 percent (100%) of the invoice cost to the CMR as supported by receipted bills, less the specified retainage. Such payment shall not relieve the CMR of full responsibility for completion of the Work and for protection of materials and equipment until incorporated in the Work in a permanent manner as required by the Contract Documents.
- G. Before any payment will be made under this Contract, the CMR and every Subcontractor, if required, shall deliver to the Owner's Representative a written, verified statement, in satisfactory form, showing in detail all amounts then due and unpaid by the CMR to all laborers, workers, and mechanics, employed under the Contract for the performance of the Work at the Project Site, for daily or weekly wages, or to other persons for materials, equipment, or for supplies delivered at the Project site during the period covered by the payment request.

11.5. **DELAYED PAYMENTS:**

- A. Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner in consultation with the Owner's Representatives to protect the Owner due to loss because of:
1. Defective work not remedied,
 2. Third party claims filed or reasonable evidence indicating probable filing of such claims,
 3. Failure of the CMR to make payments properly to Subcontractors or for labor, materials or equipment,
 4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
 5. Damage to the Owner or another Contractor,
 6. Reasonable evidence that the Work will not be completed within the time required for completion,
 7. Persistent failure to carry out the Work in accordance with the Contract Documents, or
 8. Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors of others, caused by the act or neglect of the CMR of any of its Subcontractors.
- B. The Owner shall have the right, as an authorized representative for the CMR and without the Surety's consent, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. The application of these amounts shall be deemed payments for the account of the CMR and shall reduce the Owner's obligation to the CMR accordingly. The CMR may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If CMR does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the CMR shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

11.6. **SUBSTANTIAL COMPLETION**

- A. **WRITTEN NOTIFICATION:** When the CMR considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the CMR shall provide the Owner and the Owner's Representatives written notification of such fact accompanied by a complete list of Contract Work items remaining to be completed (CMR's Punch List) and as set forth in Specifications Section 01 7700.
- B. **PUNCH LISTS:**
1. Within fourteen (14) days following receipt of the CMR's written notification of Substantial Completion (including a CMR's Punch List, as set forth in Paragraph 11.6.A), the Owner's Representative shall conduct an inspection of the Work and compile a comprehensive list of deficiencies and incomplete Work (i.e. Architect's Punch List). The Owner's Representative shall then issue a Consolidated Punch List incorporating the CMR's and the Architect's Punch Lists into a single list in a uniform format ("Consolidated Punch List").

2. Following issuance of the Consolidated Punch List, the CMR shall have thirty (30) days to complete the Work contained thereon and to achieve Final Completion, unless otherwise specified in the Contract Documents. If the Work for which Final Completion is requested is not Finally Complete within the required period, it is understood and agreed by all parties that the CMR shall become liable to the Owner for Liquidated Damages as established by the Contract, which shall continue in effect until the applicable Final Completion has been achieved.
3. Except with the consent of the Owner, the Owner's Representative shall perform no more than two Substantial Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Substantial Completion inspections be required, the CMR shall pay the Owner any amounts paid by the Owner to the Owner's Representative and other third party consultants for any additional inspections.
4. Should the CMR fail to complete or correct any item on the Consolidated Punch List within the required period, the Owner may, at any time thereafter, complete one or more items on the list with its own forces or with such other Contractors as it deems advisable and recover from the CMR the cost for performing such work plus a markup of ten percent (10%) to cover administrative costs. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents. All such completed Work shall be subject to the Warranty provisions of the Contract Documents.

C. **SUBSTANTIAL COMPLETION CERTIFICATION:** When the CMR considers that the Work, or such portion or Phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the CMR shall submit to the Owner and the Owner's Representative a written request for an inspection of the Work and a Certificate of Substantial Completion. Sufficient notice shall be given to allow the Owner and Owner's Representative to schedule the inspection. Prior to requesting Owner's and Owner's Representative's inspection for Certification of Substantial Completion, the following must be completed:

1. Submit a progress payment request coincident with or following the Substantial Completion date claimed, showing one hundred (100 %) percent completion for the portion of the Work claimed as Substantially Complete.
2. Submit all outstanding changes to the Contract Sum which are not barred by the claims submission procedures of the Contract Documents.
3. Advise Owner of pending insurance changeover requirements.
4. Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, and similar documents.
5. Obtain and submit final releases of liens, which may reserve rights for Work performed after the date of the release, (include with Certificate of Substantial Completion) from all Subcontractors, construction materials suppliers, and services and utilities, enabling the Owner's full and unrestricted use of the Work and access to services and utilities, and including (where required) occupancy permits, facility operating certificates, and similar releases from authorities having jurisdiction.
6. Submit two (2) electronic copies and three (3) paper copies (8- 1/2" x 11" page format in 3-ring notebook binders, with a table of contents) of Project record documents, maintenance manuals, final Project photographs, damage or settlement survey, property survey, and similar final Project record information.

7. Submit certifications of compliance for each test and inspection required by all Sections of the Project Manual. The certifications shall be signed by the CMR and by the parties conducting the test.
 8. Deliver tools, spare parts, extra stocks of materials, and similar physical items to Owner.
 9. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.
 10. Complete start-up testing of systems, water and air balancing, adjust and calibrate temperature control system, fire alarm system, generator (as required, if included in the design). Clean all HVAC units, ducts if necessary. Remove temporary filters and install new filters in all air-handling units and in all unit ventilators.
 11. Complete all commissioning and acceptance tests.
 12. Complete instruction for Owner's operating/maintenance personnel for all equipment and machinery installed under the Contract Work as specified by the Owner.
 13. Discontinue (or change over) and remove from project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
 14. Complete Final Cleaning and Repair of the Work as specified in Specifications Division 1 Section, "Closeout Procedures".
 15. Touch up and otherwise repair and restore marred exposed finishes.
 16. Warranties shall become effective once Owner and Owner's Representative determine that the CMR has achieved Substantial Completion and execute the Certificate of Substantial Completion.
 17. If the Owner partially occupies the Project Site, this shall not indicate acceptance of Substantial Completion or activation of warranties.
 18. The CMR shall provide extended warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.
- D. Upon receipt of CMR's request, the Owner and Owner's Representative will either proceed with inspection or advise the CMR of pre-requisites not fulfilled. Following inspection, the Owner and Owner's Representative will either prepare the Certificate of Substantial Completion, or advise the CMR of Work, or additional Work, which must be performed prior to issuance of the Certificate of Substantial Completion. Should the Owner and/or Owner's Representative determine that the Work is not Substantially Complete, notification in writing will be given to the CMR stating the reasons therefore. CMR shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative a second written notice of Substantial Completion. The Owner and Owner's Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the provisions of General Condition 11.6.B.3 shall be applicable until the Certificate of Substantial Completion is issued.
- E. When the Owner and Owner's Representative concur that the Work is Substantially Complete, the Owner's Representative shall:

1. Prepare a Certificate of Substantial Completion on AIA Form G704 accompanied by CMR's list of items to be completed or corrected to achieve Final Completion, as verified and amended by the Owner's Representative.
2. Submit the Certificate of Substantial Completion to the Owner and the CMR for their written acceptance of the responsibilities assigned to them in the Certificate.
3. Notify the CMR to submit Final As-Built Mylar drawings and one digital copy, which are to be labeled "FINAL AS-BUILTS" and submitted to the Owner's Representative for approval. Approval and acceptance by Owner of Final As-Builts shall be a condition precedent to CMR requesting Final Completion approval.

11.7. FINAL COMPLETION

- A. Upon written notification by the CMR that the Work is Finally Complete, and upon the CMR's submission of a final Application and Certificate for Payment, the Owner's Representative will conduct a final inspection of the Work. If the Owner's Representative determines that the Work is not Finally Complete, a Final Completion Punch List will be issued to CMR. CMR may request a second inspection when CMR deems the Final Completion Punch List to have been completed. If the Certificate of Final Completion is not issued following the second inspection, the provisions of General Condition 11.6.B.3 shall be applicable until the Certificate of Final Completion is issued. When the Owner's Representative determines that the Work has been satisfactorily completed and the Contract Documents fully performed, the Owner's Representative shall promptly prepare and issue a Final Certificate for Payment stating that to the best of the Owner's Representative's knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the Contract Documents is due and payable. Final Completion shall occur within thirty (30) calendar days after the Date of Substantial Completion, or as otherwise specified in the Contract Documents.
- B. Except with the consent of the Owner, the Owner's Representative shall perform only Final Completion inspection for any designated portion of the Work or for the entirety of the Work. Should more than one Final Completion inspection be required, the CMR shall pay the Owner amounts paid by the Owner to the Owner's Representative for any additional inspections necessary to achieve Final Completion.
- C. The Owner shall, within thirty (30) days after receipt of the approved Final Application and Certificate for Payment, pay the CMR the amount stated therein.

11.8. CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD:

- A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the CMR shall, within three days after written notice from the Owner, commence removal of all defective and deteriorated Work and materials and replace it at the CMR's expense with Work and materials in accordance with the requirements of the Contract Documents and shall complete all incomplete Work in accordance with the Contract Documents within a reasonable time period.
- B. In the event the CMR fails to commence the removal, replacement, completion or correction of such Work within three days (3) after the date of written notice from the Owner and to complete such Work within a reasonable time period thereafter, the Owner will cause such Work to be performed by other Contractors and the CMR and its Surety under the Performance Bond will be obligated to pay the Owner all costs incurred in the performance of such Work plus an administrative fee of ten percent (10%) within thirty (30) days following submission by Owner to CMR of such demand for payment.

- C. The CMR's Warranty obligations shall remain in full force and effect regardless of whether the Warranty Work was performed by the CMR or by the Owner.
- D. Defects or nonconformities which are remedied as a result of Warranty obligations shall subject the remedied portion of the Work to an extended Warranty Period of one (1) year from the date upon which such defect or nonconformity was fully remedied or from the date of Final Completion of the Project as a whole, whichever is later, whether such Warranty Work was performed by the CMR or by the Owner. Any repetitive defect, failure or malfunction identified within the Warranty Period shall remain under Warranty until it has been fully corrected and has performed without defect, failure or malfunction for a period of one (1) year.

11.9. **EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE COVERAGE:** Neither final payment nor any retainage shall become due until the CMR submits to the Owner's Representative (i) an affidavit that payrolls, bills for materials and equipment, and all other indebtedness in connection with the Work for which any third party claim against the Owner might be asserted have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force following final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days' prior written notice has been provided to the Owner; (iii) a written statement that the CMR knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of the Surety to final payment: and (v) all fully executed and effectual warranties and guaranties associated with the Work, (vi) if required by the Owner, other data establishing the payment or satisfaction of obligations (such receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract) and such guaranties and indemnities all in such form and detail as may be required by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner, in its sole and absolute discretion, sufficient to indemnify the Owner against any claim or lien. If any such claim or lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim or lien, including all costs associated therewith, including reasonable attorneys' fees. Provided, however, that nothing herein shall be deemed a waiver by the Owner of its sovereign immunity from mechanic's liens.

11.10. **CMR'S ACCEPTANCE OF FINAL PAYMENT:** The CMR's acceptance of final payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment submitted in strict compliance with the claims submission requirements of the Contract Documents and not finally resolved. If at the time CMR requests Final Payment there are claims pending which were submitted in strict compliance with the claims submission requirements of the Contract Documents, the Owner may pay undisputed portions of the Final Application and Certificate for Payment as if it were an Application and Certificate for Partial Payment. No payment, final or otherwise, shall operate to release the CMR, or its Surety, from any obligations under the Contract.

11.11. **RELEASE AND REQUEST FOR FINAL PAYMENT:** Upon completion of the Work and before final payment, the CMR will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment in the form provided by the Owner (see RFP attachment).

PART 12 CMR'S RESPONSIBILITY FOR SAFETY PROCEDURES:

12.1. **SUPERVISION:** The CMR 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 school or jurisdictional authorities in order to prevent injury, damage or loss to:

- A. All persons involved in performance of the Work.

- B. All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work.
 - C. The Work, materials and equipment to be incorporated therein, whether in storage on or off the site.
 - D. Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.
- 12.2. **SAFETY BARRIERS AND HAZARD WARNINGS:** The CMR 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. The CMR shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.
- 12.3. **USE OF EXPLOSIVES:** The CMR's use of explosives on the Owner's property shall be limited to that necessary for the performance of the Work, and will be permitted only after submission of a written request by the CMR to the Owner, and receipt of written approval from the Owner. The Owner may in its sole discretion deny such request if the use of explosives is not called for by the Specifications. The Owner may in its sole discretion as a condition of granting any approval for the use of explosives set specific times when the explosives may be used, including outside normal working hours and the CMR shall comply with such time restrictions without additional cost to the Owner. The use of all explosives by the CMR shall be carried out by qualified personnel in accordance with applicable safety laws and regulations.
- 12.4. **PROTECTION OF PROPERTY AND PROPERTY DAMAGE:** During performance of the Work and until Final Completion thereof, the CMR shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The CMR shall take proper precautions to protect the finished Work from loss or damage, pending completion and Final Completion of all Work included in the Contract. Such precautions shall not relieve the CMR from all liability and responsibility for loss or damage to the Work occurring before Final Completion by the Owner. Such loss or damage shall be at the risk of and borne by the CMR, whether arising from acts or omissions of the CMR or others and whether or not covered by the CMR's builder's risk insurance. In the event of any such loss or damage, the CMR shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise specified in the Contract Documents. The CMR shall take special precautions throughout all its operations to guard against fire and shall limit the amount of inflammable materials stored at the Project Site to the minimum amount necessary to perform the Work and consistent with the proper handling and storing of such materials.
- 12.5. **ACCIDENT PREVENTION SUPERVISOR:** The CMR shall select one or more on-site personnel whose duty shall be site safety and accident prevention. One such person shall be the CMR's Superintendent, or another key personnel member of its on-site project management team unless otherwise designated by the CMR in writing to the Owner and the Owner's Representative.
- 12.6. **OVERLOADING OF STRUCTURES:** The CMR 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.

PART 13 INSURANCE

13.1. CMR'S INSURANCE:

- A. During the term of this Contract, the CMR shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:
1. Commercial General Liability insurance with combined limits not less \$20 million. The \$20 million insurance requirement may be reached through a combination of general liability and excess liability insurance coverage as long as the total \$20 million required is available and in force throughout the Contract Period. A \$2 million/\$4 million per occurrence/aggregate in conjunction with \$170 million excess liability policy represent adequate coverage limits. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the CMR 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 CMR shall provide a certificate of insurance that names Arlington Public Schools Arlington School Board, including elected and appointed officials, agents and employees as an additional insured. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington Public Schools, et al. If the insurance policy represented by certificate requires endorsement in order to add Arlington Public Schools, et al., as an additional insured's, then such endorsement must accompany the Certificate.
 2. The CMR 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 CMR, naming the Owner as an additional insured.
 3. Worker's Compensation and Employer's Liability Insurance for the CMR's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The CMR 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 CMR shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the CMR and each of his subcontractors shall be not less than \$1 million.
 4. Automobile Liability Insurance, including coverage for non-owned and hired vehicles with limits not less than \$1 million per occurrence/\$5 million aggregate. The \$5 million aggregate may be reached in conjunction with excess general liability policy equal to or greater than the \$5 million aggregate limit.
 5. All risk insurance covering damage, loss or injury to the Work, excluding earthquake damage. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the CMR of its obligations under this Contract and, upon such performance, shall be released to the CMR. Such policy shall be in an amount equal to the Contract Sum.
 6. Proof, to the satisfaction of the Owner, of insurance for each type of coverage listed herein shall be provided within ten (10) days of the CMR's receipt of the Notice to Proceed, and no Work shall commence until all such insurance is in effect. The CMR 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 CMR and found to be in accordance with the requirements set forth herein. The CMR 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.

7. In the event that a claim is filed by Arlington Public Schools et al., and the CMR or one of its Subcontractors has a deductible (an uninsured portion which is the responsibility of the Contractor), it is the CMR's responsibility for this uninsured liability.

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

13.2. **PROPERTY INSURANCE:**

A. The CMR shall purchase Builder's Risk insurance in the amount of the Work at the site on a replacement cost basis. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:

1. Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).
2. Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).
3. Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).
4. Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.
5. Coverage of CMR's labor, overhead and profit.
6. Coverage of materials stored or installed on the Project Site, until said materials are accepted by the Owner per Substantial Completion and Acceptance requirements. Payment by Owner for materials stored or installed on the Project Site does not eliminate CMR's responsibility or liability with regards to theft and vandalism or other damage.

B. At the Owner's sole discretion, Builder's Risk insurance may be purchased by the Owner as specified above. In this event, cost for such coverage shall be deducted from the Contract Sum.

PART 14 CONTRACT SECURITY

14.1. The CMR shall execute and deliver to the Owner Performance and Labor and Material Payment Bonds on the forms provided in the Contract Documents, each in an amount equal to the Contract Sum. The Performance and Labor and Material Payment Bonds 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. These bonds 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 and Labor and Material Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract consistent with the requirements of the Virginia Public Procurement Act. The premiums on the Performance and Labor and Material Payment Bonds shall be paid by the CMR and shall be included in the Contract Sum.

- 14.2. If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such bonds shall cease to be adequate security for the CMR, the CMR shall within ten (10) days after notification of such fact, substitute acceptable bonds 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 CMR and shall be included in the Contract Sum. No further partial payments shall be deemed due nor shall be made until the new Bonds are in effect and provided to and approved by Owner.
- 14.3. Alternative Forms of Security: Any payment bond or 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 bid bond, payment bond or 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.

PART 15 UNCOVERING AND CORRECTION OF WORK

15.1. UNCOVERING OF WORK:

- A. If a portion of the Work is covered contrary to the Owner's Representatives' request or to the requirements contained in the Contract Documents, the CMR shall, at its own expense and upon the written request of the Owner's Representative, uncover and replace such Work without an adjustment to the Contract Period or Contract Sum.
- B. If a portion of the Work has been covered which the Owner's Representative and/or Arlington County Inspector has not specifically requested to observe prior to its being covered and is, under the Contract Documents, allowed to be covered without observation of the Owner's Representative or Owner or applicable law or regulation, the Owner's Representative and/or Arlington County Inspector may request to see such Work and it shall be uncovered by the CMR. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order process as outlined in Specification Section 01 2600, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the CMR shall pay the costs of uncovering and replacing such Work.

15.2. CORRECTION OF WORK:

- A. The CMR shall promptly correct any Work which fails to conform to the requirements of the Contract Documents (the "Rejected Work"), whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The CMR shall bear all costs associated with the correction of any Rejected Work, including additional testing and inspections and compensation for the Owner's Representative's services and expenses made necessary thereby.

- B. Nothing contained herein shall affect the Owner's right to correct non-conforming Work pursuant to the provisions of the Contract Documents.

15.3. **ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK:** The Owner reserves the right to accept any defective or non-conforming Work; provided, however, that in such event the Contract Sum shall be reduced by an appropriate and equitable amount to account for such defect or nonconformity. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall not constitute a waiver of approval of the performance requirements of the Contract Documents.

PART 16 POWERS OF THE PURCHASING AGENT

The Owner's Purchasing Agent, in addition to those matters expressly made subject to his determination, direction or approval shall have the power:

- A. 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.
- B. To modify or change this Contract in accordance with Part 9 of these General Conditions 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.
- C. 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.
- D. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before Substantial Completion or Final Completion thereof, the Purchasing Agent or his designee, the Owner's Project Manager, shall deem it necessary.
- E. The Purchasing Agent may delegate his authority/power to his designee, the Owner's Project Manager, for those matters set forth in this General Condition 16, but only to the extent the CMR has been given written notice by the Purchasing Agent of such delegation.

PART 17 CMR'S DEFAULT AND TERMINATION

17.1. OWNER'S RIGHT AND NOTICE:

- A. The parties agree that:
 - 1. If the CMR fails to begin the Work when required to do so; or
 - 2. If, at any time during the progress of the Work, the Owner determines that the CMR is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or
 - 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
 - 4. If the CMR fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or

5. If the CMR fails in any manner of substance to observe the provisions of this Contract; or
6. If any of the Work, machinery, or equipment is defective and is not replaced as herein provided; then the Owner's Representative shall certify such fact or condition to the Owner without prejudice to any other rights or remedies Owner may have hereunder, and the Owner shall have the right to declare the CMR in default in whole or in part. In the event the Owner elects to declare the CMR in default, the Owner shall notify the CMR and its Sureties by written notice describing the nature of the default and providing the CMR a right to cure such default within three (3) calendar days after the date of the notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in Paragraph 17.3 hereof.

B. The parties further agree that:

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
2. If the CMR is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
3. If in any proceeding instituted by or against the CMR, 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
4. If a receiver or trustee is appointed for the CMR or the CMR's property; or
5. If the Contract or any part hereof is sublet without the prior written consent of the Owner; or
6. If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the CMR, otherwise than as herein specified; or
7. If the Work to be done under this Contract is abandoned; then such fact or condition shall be certified by the Owner's Representative to the Owner and thereupon, without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written notice to the CMR or, in the Owner's sole discretion, exercise any other rights available to it.

17.2. **CMR'S DUTY UPON DEFAULT:** Immediately, but no later than three (3) days after receipt of notice that it is in default hereunder, the CMR shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the Project Site, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.

17.3. **COMPLETION OF WORK AFTER DEFAULT:**

- A. If the CMR defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the CMR'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:

1. Have the defaulted Work performed by others;
2. Supplement the CMR's work force;
3. Withhold payments due the CMR and use such payments to satisfy any claims for moneys owed by the CMR in connection with the Project, in accordance with any provisions of the Contract Documents;
4. Replace or repair any defective Work;
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;
6. Terminate the CMR's performance of the Contract.

B. The CMR and its Sureties shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-letting, the amount of any liquidated damages, 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 CMR. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the CMR and its Surety shall pay to the Owner the amount of any deficiency.

17.4. **PARTIAL DEFAULT:** In the event the Owner declares the CMR in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the CMR 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 CMR was declared in default. The expense of such completion shall be paid by the CMR and its Sureties as provided in the Contract Documents.

17.5. **DEATH OR INCOMPETENCE OF CMR:** In the event of the death, dissolution or legal incompetence of a CMR who shall be an individual or surviving member of a sole proprietor contracting firm, such death or adjudication of incompetence shall not terminate the Contract, but shall constitute a default hereunder to the effect provided in Paragraphs 17.1, 17.2 and 17.3 hereof, and the estate of the CMR and his sureties, if any, shall remain liable hereunder to the same extent as though the CMR remained living and competent. Notice of default, as provided in Paragraph 17.1 hereof, shall not be required to be given in the event of such death or adjudication of incompetence.

17.6. **OWNER'S RIGHT TO TERMINATE:** 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 CMR. In such event, the CMR shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%; or (2) the pro rata percentage of completion based upon the approved Schedule of Values, Section 01291 of the Specifications, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the CMR and the Owner. The CMR shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the

CMR to be due under this Paragraph. The Owner shall have the right of audit (and CMR shall have the obligations) stated in Paragraph 9.4, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the CMR's remedies shall be limited as provided in this Paragraph 17.6.

PART 18 MISCELLANEOUS SPECIAL CONDITIONS

- 18.1. **LAYING OUT WORK:** The CMR shall, upon entering the Project Site for the purpose of commencing the Work, locate all general reference points and take all such action as is necessary to prevent their destruction; lay out the Work, except where otherwise required by Contract Documents, and be responsible for all lines, elevations, measurements of buildings, grading, paving, utilities and other Work executed under the Contract. If benchmarks or other general reference points necessary for layout of the Work supplied by the Owner are impaired or destroyed by the CMR, the CMR shall be responsible at its cost to re-establish such bench marks or general reference points. The CMR shall exercise proper and reasonable care in verifying figures shown on the Drawings before laying out the Work and will be held responsible for any error resulting from its failure to exercise such care. The CMR shall establish permanent benchmarks referenced to finish floor lines. CMR shall employ a licensed surveyor who shall, after masonry corners have been set, certify on a drawing over its seal to the Owner that the building is located properly in relation to property lines and in accordance with the Drawings.
- 18.2. **INSPECTION AND APPROVAL OF SITE IMPROVEMENTS:**
- A. On-site and off-site improvements shall conform to Arlington County Design and Construction Standards.
 - B. The CMR shall notify the Owner's Representative three (3) days prior to the beginning of all street or storm sewer Work.
 - C. All Work shall be staked out by a certified surveyor and cut sheets shall be submitted to the Arlington County Department of Environmental Services with a copy to the Owner's Representative before commencing such Work.
 - D. The CMR shall perform the Work in such a manner as to control surface flow of water to minimize its impact upon the Work or adjacent properties, in accordance with all State of Virginia and Arlington County regulations and to prevent the washing of any soil, silt or debris onto adjacent properties. The CMR shall be held responsible for any damage resulting from its failure to control surface flow or to prevent the washing of such materials upon adjacent properties for a period of one year after Final Completion of the completed Work.
- 18.3. **PARTIAL USE OR OCCUPANCY:**
- A. The CMR shall permit the Owner to use and occupy any defined portion or unit of the Project prior to Substantial Completion of the portion of the Project of which it is a part.
 - B. The Owner's use and occupancy shall not constitute Substantial Completion or Final Completion of the Work and shall in no event relieve the CMR of its obligation to maintain the insurance coverage described in General Conditions Paragraph 13.1.

- 18.4. **RELEASE OF BONDS:** No bond required by the Contract Documents shall be deemed released without a written release from the Owner specifically granting such release.
- 18.5. **MATERIALS AND EQUIPMENT:** No materials or equipment containing asbestos or any other hazardous material recognized and identified by the State of Virginia Department of Environmental Quality shall be utilized in the construction of the Project. In the event a substitute product is needed and time does not allow for the mandated submittal process, the CMR shall confirm these materials do not contain asbestos or any other hazardous material as noted above in writing to the Owner or Owner's Representative and will provide the MSDS sheets to the Owner and Owner's Representative prior to being allowed to install the product on the Project.

END OF SECTION

ATTACHMENT D

APS DIVISION 01 GENERAL REQUIREMENTS

The following sections do not represent the entire final Division 01 General Requirements for the Project, but will be included in the final version of the Project Specification and shall be considered requirements of the Project.

SECTION 01 1000 SUMMARY

1.1 ACCESS TO SITE

- A. General: Contractor shall have limited use of Project Site for construction operations as indicated on Drawings by the Contract limits and as indicated by requirements of this Section.
- B. Use of Site: Limit use of Project Site to areas within the Contract limits indicated. Do not disturb portions of Project Site beyond areas in which the Work is indicated.
 - 1. Limits: Confine construction operations to areas permitted by the Use Permit and approved by the Owner.
 - 2. Driveways, Walkways and Entrances: Keep driveways, loading areas, and entrances serving premises clear and available to Owner, Owner's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
 - a. Schedule deliveries to minimize use of driveways and entrances by construction operations.
 - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.

1.2 WORK RESTRICTIONS

- A. Work Restrictions, General: Comply with restrictions on construction operations.
 - 1. Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction. Conditions of the Use Permit must be met.
 - a. Work within the public way may occur between 9:00 a.m. and 3:30 p.m. Monday through Friday and/or between 10:00 a.m. and 6:00 p.m. on weekends and holidays.
 - b. Work within the public way shall not occur between 6:00 a.m. and 9:00 a.m. or between 3:30 p.m. and 6:30 p.m. Monday through Friday.
- B. On-Site Work Hours: Limit work in the existing building to normal business working hours of 7:00 a.m. to 6:30 p.m., Monday through Friday, unless otherwise indicated.
 - 1. Weekend and Holiday Hours: 10:00 a.m. to 6:30 p.m.
 - 2. Hours for Utility Shutdowns: As permitted by the Owner.
- C. Maintenance of Street Surfaces During Construction: Clean, smooth and devoid of potholes at all times during construction.

- D. Existing Utility Interruptions: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after providing temporary utility services according to requirements indicated:
 - 1. Notify Owner not less than two (2) days in advance of proposed utility interruptions.
 - 2. Obtain Owner's written permission before proceeding with utility interruptions.
- E. Noise, Vibration, and Odors: Coordinate operations that may result in high levels of noise and vibration, odors, or other disruption to Owner occupancy with Owner.
 - 1. Notify Owner not less than two (2) days in advance of proposed disruptive operations.
 - 2. Obtain Owner's written permission before proceeding with disruptive operations.
- F. Nonsmoking Campus: Smoking on the Owner's property is not permitted.
- G. Controlled Substances: Use of tobacco products and other controlled substances on Project Site is not permitted.
- H. Employee Identification: Provide identification tags for Contractor personnel working on Project Site. Require personnel to use hard hat identification stickers at all times.
- I. Employee Screening: Comply with Owner's requirements for drug and background screening of Contractor personnel working on Project Site.
 - 1. Maintain list of approved screened personnel with Owner's Representative.

END OF SECTION

SECTION 012600 CONTRACT MODIFICATION PROCEDURES

PART 1 GENERAL

1.1 SUMMARY

- A. Section includes administrative and procedural requirements for handling and processing Contract Modifications.
- B. Related Requirements:
 - 1. Section 01 2100 "Allowances" for procedural requirements for handling and processing allowances.
 - 2. Section 01 2200 "Unit Prices" for administrative requirements for using unit prices.
 - 3. Section 01 2500 "Substitution Procedures" for administrative procedures for handling requests for substitutions made after the Contract award.

1.2 MINOR CHANGES IN THE WORK

- A. Owner's Representative will issue supplemental instructions directing Minor Changes in the Work, not involving adjustment to the Contract Sum or the Contract Period, as a Proposed Modification document generated by the Owner's software.

1.3 PROPOSAL REQUESTS

- A. Proposed Modifications: Owner's Representative will issue a detailed description of proposed changes in the Work prepared by the Architect that may require adjustment to the Contract Sum or the Contract Period. If necessary, the description will include supplemental or revised Drawings and Specifications.
 - 1. A Proposed Modification is not an instruction either to stop Work in progress or to execute the proposed change.
 - 2. Within time specified in Proposed Modification or, if time not specified, in twenty (20) Days after receipt of the Proposed Modification, Contractor shall submit a Proposed Change Order (PCO) indicating adjustments to the Contract Sum and/or the Contract Period, if any, the Contractor deems necessary to execute or resulting from the proposed change.
 - a. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities
 - b. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 - c. Include costs of labor and supervision directly attributable to the change.
 - d. Include an updated Project Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Period.

- e. Quotation Form: Use cover sheet generated by the Owner's software.
- B. Contractor-Initiated modifications: If in the opinion of Contractor latent or changed conditions require modifications to the Contract, Contractor may initiate a claim by submitting a PCO designated on the face thereof as a Notice of claim.
 - 1. Include a statement outlining reasons for the proposed change and the effect of the proposed change on the Work. Provide a complete description of the proposed change. Indicate the effect of the PCO on the Contract Sum and/or the Contract Period, if any.
 - 2. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
 - 3. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 - 4. Include costs of labor and supervision directly attributable to the proposed change.
 - 5. Include an updated Project Schedule that indicates the effect of the proposed change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Period.
 - 6. Comply with requirements in Section 01 2500 "Substitution Procedures" if the proposed change requires substitution of one product or system for product or system specified.
 - 7. PCO Form: Use cover sheet generated by the Owner's software.

1.4 ADMINISTRATIVE CHANGE ORDERS

- A. Allowance Adjustment: See Section 01 2100 " Allowances" for administrative procedures for preparation of PCO for adjusting the Contract Sum to reflect actual costs of allowances.
- B. Unit-Price Adjustment: See Section 01 2200 "Unit Prices" for administrative procedures for preparation of PCO for adjusting the Contract Sum to reflect measured scope of unit-price work.

1.5 CHANGE ORDER PROCEDURES

- A. If Owner approves a PCO, Owner's Representative will issue a Change Order, for signatures of Owner and Contractor on document generated by the Owner's software.
- B. The Contractor may not include costs for Change Order work on applications for payment until the Contractor is in receipt of a fully executed Change Order from the Owner's Purchasing Agent.

1.6 WORK ORDER

- A. Work Order: the Owner or Owner's Representative may issue a Work Order generated by the Owner's software. Work Order instructs Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
 - 1. Work Order contains a complete description of change in the Work. It also designates method to be followed to determine change in the Contract Sum or the Contract Period, if any.
 - 2. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job.

3. Upon receipt of a Work Order the Contractor shall promptly proceed with the change in the Work involved and within 10 days from receipt of the Work Order, unless stated otherwise in the Work Order, and advise the Owner's Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum and/or Contract Period. Within 30 days after notifying the Owner's Representative of the Contractor's position regarding the proposed adjustment of the Contract Sum and/or Contract Period, the Contractor shall provide a PCO to the Owner's Representative for Work required by the Work Order. The PCO shall be supported by all documentation and information required by subsection 1.3.B above.
 4. Should the Contractor fail to submit the PCO within twenty-eight (28) days after the Work which is the subject thereof has been completed by the Contractor, any adjustment to the Contract Sum shall be established in one of the following methods in the sole discretion of the Owner:
 - a. The additional compensation to the Contractor shall be the sum of the direct costs of the Contractor approved by the Owner. These direct costs may include all subcontractor costs but shall not include any Contractor Overhead and Profit.
 - b. Costs of the Contractor established by using RS Means or a similar industry standard generated estimate
 - c. Regardless of which of the foregoing alternatives is selected by Owner, Owner shall issue a Unilateral Change Order which shall be deemed full and final compensation to the Contractor for the changed Work.
 - d. Owner may reject the PCO in its entirety if for any reason it determines that the subject Work has no impact on Contract Sum or Contract Period.
 5. If the Contractor disagrees with the terms of a Work Order, Unilateral Change Order, or other written directive of the Owner regarding the Contractor's PCO, the Contractor shall continue with the disputed Work pursuant to the requirements of General Conditions, and such other provisions of the Contract Documents as may be applicable
- B. Documentation: Maintain detailed records on a time and material basis of work required by the Work Order.
1. After completion of changed Work, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to the Contract, if any. Include the following information:
 - a. Name of Owner's authorized agent who ordered the Work, and date of the order. Include copies of written authorization, when applicable.
 - b. Dates and times that Work was performed, and by whom, verified and signed by Owner's Representative.
 - c. Time record, summary of hours worked and hourly rates paid.
 - d. Receipts and invoices for the following:
 - 1) Equipment used, listing dates and times of use.
 - 2) Products used, including listing of quantities.

3) Subcontracts

1.7 OVERHEAD AND MARKUP FOR CONTRACT MODIFICATIONS

- A. The combined overhead and profit shall not exceed the maximums indicated below. Not more than two percentages, not to exceed the maximum percentages shown below, will be allowed regardless of the number of tiers of Subcontractors; that is, the markup on Work subcontracted by a Subcontractor will be limited to one overhead and profit percentage in addition to the Contractor's commission percentage.
 - 1. Commission: 10 percent to Contractor on Work performed by other than Contractor's own forces. This 10 percent shall apply to Subcontractor direct costs only, not to the allowed Subcontractor markup.
 - 2. Overhead and Profit: 15 percent to Contractor or the Subcontractors for that portion of Work performed by their own respective forces.
- B. Overhead, as employed herein, is defined as and limited to the cost of the administration, field office, and home office costs, other required insurance, materials used in temporary structures (not including formwork), additional premiums on the performance bond of the Contractor, the use of small tools, scheduling costs, and all other costs incidental and non-direct to the performance of the change or the cost of doing business. The costs of additional Contractor supervision, layout, coordination, or other related tasks are considered part of the commission percentage and no compensation will be given for those tasks. Small tools are defined as any tool with a replacement value of less than One Thousand Dollars (\$1,000.00).

1.8 ESCALATION

- A. There will be NO Change Order requests permitted or approved for cost increases caused by escalation of materials and/or labor over the duration of the Project.

PART 2 PRODUCTS

1.1 Not Used

PART 3 EXECUTION

1.1 Not Used

END OF SECTION

SECTION 01 32 00 CONSTRUCTION PROGRESS DOCUMENTATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for documenting the progress of construction during performance of the Work, including the following:
 - 1. Startup construction schedule.
 - 2. Contractor's Project Schedule.
 - 3. Project Schedule updating reports.
 - 4. Daily construction reports.
 - 5. Material location reports.
 - 6. Site condition reports.
 - 7. Special reports.
- B. Related Requirements:
 - 1. Section 01 33 00 "Submittal Procedures" for submitting schedules and reports.
 - 2. Section 01 40 00 "Quality Requirements" for submitting a schedule of tests and inspections.

1.3 DEFINITIONS

- A. Activity: A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. Critical Activity: An activity on the critical path that must start and finish on the planned early start and finish times.
 - 2. Predecessor Activity: An activity that precedes another activity in the network.
 - 3. Successor Activity: An activity that follows another activity in the network.
- B. CPM: Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of Project.
- C. Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no float.
- D. Event: The starting or ending point of an activity.
- E. Float: The measure of leeway in starting and completing an activity.
 - 1. Except as otherwise provided, Float time is not for the exclusive use or benefit of either Owner or Contractor, but is a jointly owned, expiring Project resource available to both parties as needed to meet schedule milestones and Contract completion date.
 - 2. Free Float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total Float is the measure of leeway in starting or completing an activity without adversely affecting the planned Project completion date.

- F. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.4 INFORMATIONAL SUBMITTALS

- A. Format for Submittals: Submit required submittals in the following format:
 - 1. PDF electronic file.
- B. Startup construction schedule. Shall be submitted with seven (7) days of receipt of Notice to Proceed with Administrative and procurement.
- C. Startup Network Diagram: Of size required to display entire network for entire construction period. Show logic ties for activities.
- D. Contractor's Project Schedule: Initial schedule, of size required to display entire schedule for entire construction period. Schedule shall be submitted within fourteen (14) days of receipt of Notice to Proceed with administrative and procurement.
- E. CPM Reports: Concurrent with Project schedule, submit each of the following reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of Total Float.
 - 4. Earnings Report: Compilation of Contractor's total earnings from the Notice to Proceed until most recent Application for Payment.
 - 5. Schedule shall be resource loaded. Provide report detailing all resources for the Project. Specifically labor hours per activity.
 - 6. Report shall clearly show critical path.
- F. Construction Schedule Updating Reports: Submit with Applications for Payment.
- G. Daily Construction Reports: Submit at weekly intervals.
- H. Material Location Reports: Submit at weekly intervals.
- I. Site Condition Reports: Submit at time of discovery of differing conditions.
- J. Special Reports: Submit at time of unusual event.

1.5 QUALITY ASSURANCE

- A. Prescheduling Conference: Conduct conference at Project Site to comply with requirements in Section 01 31 00 "Project Management and Coordination." Review methods and procedures related to the preliminary construction schedule and Project Schedule, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update schedule.
 - 3. Discuss constraints, including phasing, work stages, area separations, interim milestones and partial Owner occupancy.

4. Review delivery dates for Owner-furnished products.
5. Review schedule for work of Owner's separate contracts.
6. Review submittal requirements and procedures.
7. Review time required for review of submittals and resubmittals.
8. Review requirements for tests and inspections by independent testing and inspecting agencies.
9. Review time required for Project closeout and Owner startup procedures.
10. Review and finalize list of construction activities to be included in schedule.
11. Review procedures for updating schedule.

1.6 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors.
- B. Coordinate Project Schedule with the schedule of values, submittal schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from entities involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2 - PRODUCTS

2.1 PROJECT SCHEDULE, GENERAL

- A. Time Frame: Extend schedule from date established for the Notice to Proceed to date of final completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
 2. Schedule shall include Work Breakdown Structures by phase.
- B. Activities: Treat each story or separate area as a separate numbered activity for each main element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than twenty (20) days, unless specifically allowed by Architect.
 2. Procurement Activities: Include procurement process activities for the following long lead items and major items, requiring a cycle of more than thirty (30) days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.
 3. Submittal Review Time: Include review and resubmittal times indicated in Section 01 3300 "Submittal Procedures" in schedule. Coordinate submittal review times in Contractor's construction schedule with submittal schedule.
 4. Startup and Testing Time: Include no fewer than fifteen (15) days for startup and testing.
 5. Substantial Completion and Final Completion: Indicate completion in advance of date established for Substantial and Final Completion, and allow time for Architect's and Owner's Representative's administrative procedures necessary for certification of Substantial Completion.
 6. Punch List and Final Completion: Include not more than thirty (30) days for completion of punch list items and Final Completion.
- C. Constraints: Include constraints and work restrictions indicated in the Contract Documents and as follows in Project Schedule, and show how the sequence of the Work is affected.
 1. Phasing: Arrange list of activities on schedule by phase. Use Work Breakdown Structure (WBS) format.

2. Owner-Furnished Products: Include a separate activity for each product. Include delivery date indicated in Section 01 10 00 "Summary." Delivery dates indicated stipulate the earliest possible delivery date.
 3. Work Restrictions: Show the effect of the following items on the Project Schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 4. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Submittals.
 - b. Purchases.
 - c. Mockups.
 - d. Fabrication.
 - e. Sample testing.
 - f. Deliveries.
 - g. Installation.
 - h. Tests and inspections.
 - i. Adjusting.
 - j. Curing.
 - k. Startup and placement into final use and operation.
 - l. Owner furnished materials and equipment
 - m. Owner contractors
 - n. All State, local, Federal inspections
- D. Milestones: Include milestones indicated in the Contract Documents in Project Schedule, including, but not limited to, Weather Tight (roof complete, building enclosure weather tight, temporary or permanent windows installed), Installation of Ceiling Grid, Above Ceiling Inspections, the Notice to Proceed, Substantial Completion, and Final Completion.
- E. Upcoming Work Summary: Prepare summary report indicating activities scheduled to occur or commence prior to submittal of next Project Schedule update. Summarize the following issues:
1. Unresolved issues.
 2. Unanswered Requests for Interpretation.
 3. Rejected or unreturned submittals.
 4. Notations on returned submittals.
 5. Pending modifications affecting the Work and Contract Time.
- F. Recovery Schedule: When periodic update indicates the Work is fourteen (14) or more calendar days behind the current approved Project Schedule, submit a separate Recovery Schedule indicating means by which Contractor intends to regain compliance with the Project Schedule. Indicate changes to working hours, working days, crew sizes, and equipment required to achieve compliance, and date by which recovery will be accomplished.
- G. Computer Scheduling Software: Prepare schedules using current version of a program that has been developed specifically to manage construction schedules.

2.2 STARTUP CONSTRUCTION SCHEDULE

- A. Bar-Chart Schedule: Using Primavera P6 v 6.2 or later, Submit startup, horizontal, bar-chart-type startup construction schedule within seven (7) days of date established for the Notice to Proceed.
- B. Preparation: Indicate each significant construction activity separately. Identify first workday of each week with a continuous vertical line. Outline significant construction activities for first one hundred twenty (120) days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.

2.3 PROJECT SCHEDULE (CPM SCHEDULE)

- A. General:
 - 1. Primavera P6 v. 6.2 or later software shall be used.
 - 2. Prepare network diagrams using AON (activity-on-node) format.
- B. Startup Network Diagram: Submit diagram within fourteen (14) days of date established for the Notice to Proceed. Outline significant construction activities for the first two hundred forty (240) days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.
- C. CPM Schedule: Prepare Contractor's construction schedule using a resource-loaded, time-scaled CPM network analysis diagram for the Work.
 - 1. Develop network diagram in sufficient time to submit CPM schedule so it can be accepted for use no later than thirty (30) days after date established for the Notice to Proceed.
 - a. Failure to include any work item required for performance of this Contract shall not excuse Contractor from completing all work within applicable completion dates, regardless of Architect's approval of the schedule.
 - 2. Conduct educational workshops to train and inform key Project personnel, including Subcontractors' personnel, in proper methods of providing data and using Project Schedule information.
 - 3. Establish procedures for monitoring and updating Project Schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 - 4. Use "one workday" as the unit of time for individual activities. Indicate nonworking days and holidays incorporated into the Project Schedule in order to coordinate with the Contract Time.
- D. Project Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the startup network diagram, prepare a skeleton network to identify probable critical paths.
 - 1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. Work by Owner that may affect or be affected by Contractor's activities.
 - i. Testing.
 - j. Punch list and final completion.
 - k. Activities occurring following final completion.

2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the Project Schedule within the limitations of the Contract Time.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis using a network fragment to demonstrate the effect of the proposed change on the Project Schedule.
- F. Initial Issue of Project Schedule: Prepare initial network diagram from a sorted activity list indicating straight "early start-total float." Identify critical activities. Prepare tabulated reports showing the following:
1. Contractor or Subcontractor and the Work or activity.
 2. Description of activity
 3. Main events of activity.
 4. Immediate preceding and succeeding activities.
 5. Early and late start dates.
 6. Early and late finish dates.
 7. Activity duration in workdays.
 8. Total float or slack time.
 9. Average size of workforce.
- G. Schedule Updating-monthly: Concurrent with making revisions to Project Schedule, prepare tabulated reports showing the following:
1. Identification of activities that have changed.
 2. Changes in early and late start dates.
 3. Changes in early and late finish dates.
 4. Changes in activity durations in workdays.
 5. Changes in the critical path.
 6. Changes in total float or slack time.
 7. Changes in the Contract Time.
- H. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
1. In first list, tabulate activity number, early finish date, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.

2.4 REPORTS

- A. Daily Construction Reports: Prepare a daily construction report recording the following information concerning events at Project site:
1. List of Subcontractors at Project site.
 2. List of separate contractors at Project site.
 3. Approximate count of personnel at Project site.
 4. Equipment at Project site.

5. Material deliveries.
 6. High and low temperatures and general weather conditions, including presence of rain or snow.
 7. Accidents.
 8. Meetings and significant decisions.
 9. Unusual events.
 10. Stoppages, delays, shortages, and losses.
 11. Meter readings and similar recordings.
 12. Emergency procedures.
 13. Orders and requests of authorities having jurisdiction.
 14. Change Orders received and implemented.
 15. Work Orders received and implemented.
 16. Services connected and disconnected.
 17. Equipment or system tests and startups.
 18. Partial completions and occupancies.
 19. Substantial Completions authorized.
- B. Material Location Reports: At weekly intervals, prepare and submit a comprehensive list of materials delivered to and stored at Project Site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project Site. Indicate the following categories for stored materials:
1. Material stored prior to previous report and remaining in storage.
 2. Material stored prior to previous report and since removed from storage and installed.
 3. Material stored following previous report and remaining in storage.
- C. Site Condition Reports: Immediately on discovery of a difference between Site conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions, together with recommendations for changing the Contract Documents.

2.5 SPECIAL REPORTS

- A. General: Submit special reports directly to Owner within one (1) day of an occurrence. Distribute copies of report to parties affected by the occurrence.
- B. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project Site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise Owner in advance when these events are known or predictable.

PART 3 - EXECUTION

3.1 PROJECT SCHEDULE

- A. The Contract Documents shall form the basis of the Project Schedule (CPM Schedule)
1. It is the Contractor's sole responsibility to understand the Arlington County codes and inspection requirements and process. Any meetings, additional permit or inspection fees the County deems for successful completion of the Work are not the cost of the Owner. If the Owner is charged for additional fees from Arlington County as a result of the Contractor's failure to be informed of this process, re-inspection fees, overtime fees from Arlington County etc., the Owner then has the right to issue a Change Order deducting the cost of the special inspections and/or additional tests, from the balance due to the Contractor. If the balance due to the Contractor is not sufficient to cover the costs, then the Contractor shall

- pay to the Owner the difference in cost within thirty (30) Days following receipt of billing from Owner.
2. Any and all violations or fines assessed against the Owner or Contractor, due to Contractor's negligence, will be paid by the Contractor within three (3) days. Should the Contractor fail to pay these costs, the Owner has the right to issue a Change Order deducting the cost of the special inspections and/or additional tests, from the balance due to the Contractor. If the balance due to the Contractor is not sufficient to cover the costs, then the Contractor shall pay to the Owner the difference in cost within thirty (30) Days following receipt of billing from Owner.
 3. Substantial and Final Completion dates are established in the Project Schedule, are of the essence, and liquidated damages will apply for failure to complete by these dates. Where more than one ground for assessment of liquidated damages exists, Contractor's liability shall be cumulative.
 4. All HAZMAT remediation and removal identified in the Contract Documents including but not limited to section 13 2810, 13 2820 and 13 2830 shall be executed and completed prior to work being performed in areas identified. HAZMAT remediation and removal shall occur at the commencement of each phase requiring abatement and not prior to unless otherwise approved by the Owner or Owner's Representative. Contractor shall obtain all necessary permits and notifications for abatement procedures as not to impact the Contractor's Construction Schedule or project milestones.
- B. Contractor's Project Schedule Updating: At monthly intervals, update Project Schedule to reflect actual construction progress and activities. Issue draft updated Project Schedule one (1) week before each regularly scheduled progress meeting.
1. Revise Project Schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated Project Schedule concurrently with the report of each such meeting.
 2. Include a report with updated Project Schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 3. As the Work progresses, indicate Final Completion percentage for each activity.
- C. Distribution: Distribute copies of approved Project Schedule to the Owner, Owner's Representative, Architect, separate contractors, testing and inspecting agencies, and other parties identified by Contractor with a need-to-know schedule responsibility.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated Project Schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

END OF SECTION

SECTION 01 50 00

TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes requirements for temporary utilities, support facilities, and security and protection facilities.
- B. Related Requirements:
 - 1. Section 01 10 00 "Summary" for work restrictions and limitations on utility interruptions.
 - 2. Section 31 23 19 "Dewatering" for disposal of ground water at Project site.
 - 3. Section 32 12 16 "Asphalt Paving" for construction and maintenance of asphalt pavement for temporary roads and paved areas.
 - 4. Section 32 13 13 "Concrete Paving" for construction and maintenance of cement concrete pavement for temporary roads and paved areas.

1.3 USE CHARGES

- A. General: Installation and removal of and use charges for temporary facilities shall be included in the Contract Sum unless otherwise indicated. Allow other entities to use temporary services and facilities without cost, including, but not limited to, Architect, occupants of Project, testing agencies, and authorities having jurisdiction.
- B. Water Service from Existing System: Water from Owner's existing water system is available for use with metering and Contractor to pay use charges and all costs for material, permits, and inspections, for connections and disconnections. Provide connections and extensions of services as required for construction operations at no cost to the Owner. Meter readings must be confirmed with Contractor and Owner's Representative monthly and before disconnection to retrieve final readings.
- C. Electric Power Service from Existing System: Electric power from Owner's existing system is available for use with metering and Contractor to pay use charges and all costs for material, permits and inspections for connections and disconnections. Provide connections and extensions of services as required for construction operations at no cost to the Owner. Meter readings must be confirmed with Contractor and Owner's Representative monthly and before disconnection to retrieve final readings.

1.4 INFORMATIONAL SUBMITTALS

- A. Site Plan: Show temporary facilities, utility hookups, staging areas, and parking areas for construction personnel.

- B. Fire-Safety Program: Show compliance with requirements of NFPA 241 and authorities having jurisdiction. Indicate Contractor personnel responsible for management of fire-prevention program.
- C. Moisture-Protection Plan: Describe procedures and controls for protecting materials and construction from water absorption and damage.
 - 1. Describe delivery, handling, and storage provisions for materials subject to water absorption or water damage.
 - 2. Indicate procedures for discarding water-damaged materials, protocols for mitigating water intrusion into completed Work, and replacing water-damaged Work.
 - 3. Indicate sequencing of work that requires water, such as sprayed fire-resistive materials, plastering, and terrazzo grinding, and describe plans for dealing with water from these operations. Show procedures for verifying that wet construction has dried sufficiently to permit installation of finish materials.
- D. Dust- and HVAC-Control Plan: Submit coordination drawing and narrative that indicates the dust- and HVAC-control measures proposed for use, proposed locations, and proposed time frame for their operation. Identify further options if proposed measures are later determined to be inadequate. Include the following:
 - 1. Locations of dust-control partitions at each phase of Work.
 - 2. HVAC system isolation schematic drawing.
 - 3. Location of proposed air-filtration system discharge.
 - 4. Waste handling procedures.
 - 5. Other dust-control measures.

1.5 QUALITY ASSURANCE

- A. Electric Service: Comply with NECA, NEMA, and UL standards and regulations for temporary electric service. Install service to comply with NFPA 70.
- B. Tests and Inspections: Arrange for authorities having jurisdiction to test and inspect each temporary utility before use. Obtain required certifications and permits.
- C. Accessible Temporary Egress: Comply with applicable provisions in the U.S. Architectural & Transportation Barriers Compliance Board's ADA-ABA Accessibility Guidelines and ICC/ANSI A117.1.

1.6 PROJECT CONDITIONS

- A. Temporary Use of Permanent Facilities: Engage Installer of each permanent service to assume responsibility for operation, maintenance, and protection of each permanent service during its use as a construction facility before Owner's acceptance, regardless of previously assigned responsibilities.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Portable Chain-Link Fencing: Minimum 2-inch, 0.148-inch- thick, galvanized-steel, chain-link fabric fencing; minimum 6 feet high with galvanized-steel pipe posts; minimum 2-3/8-inch- OD line posts and 2-7/8-inch- OD corner and pull posts, with 1-5/8-inch- OD top and bottom rails. Provide concrete bases for supporting posts.

- B. Polyethylene Sheet: Reinforced, fire-resistive sheet, 10-mil minimum thickness, with flame-spread rating of 15 or less per ASTM E 84 and passing NFPA 701 Test Method 2.
- C. Dust-Control Adhesive-Surface Walk-off Mats: Provide mats minimum 36 by 60 inches.
- D. Insulation: Unfaced mineral-fiber blanket, manufactured from glass, slag wool, or rock wool; with maximum flame-spread and smoke-developed indexes of 25 and 50, respectively.

2.2 TEMPORARY FACILITIES

- E. Field Offices, General: Prefabricated or mobile units with serviceable finishes, temperature controls, and foundations adequate for normal loading.
- F. Field Offices, Storage and Fabrication Sheds locations shall be in accordance with the Use Permit. A plan shall be submitted demonstrating that the trailers are not located in a public right-of-way or within Tree Protection Fence areas. Proposed locations plan must be approved by the County Manager prior to placing any trailers on site.
- G. Provide a Common Use Field Office to accommodate needs of Owner, Architect, Owner's Representative(s), construction personnel office activities, and to accommodate Project meetings specified in other Division 01 Sections. Keep office clean and orderly. The field office shall include one (1) workspace equipped with power and data access for the Owner's exclusive use and one (1) workspace equipped with power and data access for the Architect's exclusive use. Furnish and equip offices as follows:
 - 1. Furniture required for Project-site documents including file cabinets, plan tables, plan racks, and bookcases.
 - 2. Conference room of sufficient size to accommodate meetings of fifteen (15) individuals. Provide electrical power service and 120-V ac duplex receptacles, with no fewer than one receptacle on each wall. Furnish room with conference table, chairs, and 4-foot- (1.2-m-) square tack and marker boards.
 - 3. Drinking water and private toilet.
 - 4. Coffee machine and supplies.
 - 5. Heating and cooling equipment necessary to maintain a uniform indoor temperature of 68 to 72 deg F (20 to 22 deg C).
 - 6. Lighting fixtures capable of maintaining average illumination of 20 fc (215 lx) at desk height.
 - 7. Furniture required for Project site documents including file cabinets, plan tables, plan racks, and bookcases
- H. Storage and Fabrication Sheds: Provide sheds sized, furnished, and equipped to accommodate materials and equipment for construction operations.
 - 1. Store combustible materials apart from building.

2.3 EQUIPMENT

- I. Fire Extinguishers: Portable, UL rated; with class and extinguishing agent as required by locations and classes of fire exposures.

- J. HVAC Equipment: Unless Owner authorizes use of permanent HVAC system, provide vented, self-contained, liquid-propane-gas or fuel-oil heaters with individual space thermostatic control.
 - 1. Use of gasoline-burning space heaters, open-flame heaters, or salamander-type heating units is prohibited.
 - 2. Heating Units: Listed and labeled for type of fuel being consumed, by a qualified testing agency acceptable to authorities having jurisdiction, and marked for intended location and application.
 - 3. Permanent HVAC System: If Owner authorizes use of permanent HVAC system for temporary use during construction, provide filter with MERV of 8 at each return-air grille in system and remove at end of construction and clean ducts, blowers, and coils as required in Section 01 77 00 "Closeout Procedures".

- K. Air-Filtration Units: Primary and secondary HEPA-filter-equipped portable units with four-stage filtration. Provide single switch for emergency shutoff. Configure to run continuously.

PART 3 - EXECUTION

3.1. INSTALLATION, GENERAL

- A. Locate facilities where they will serve Project adequately and result in minimum interference with performance of the Work. Relocate and modify facilities as required by progress of the Work.
- B. Provide each facility ready for use when needed to avoid delay. Do not remove until facilities are no longer needed or are replaced by authorized use of completed permanent facilities.

3.2 TEMPORARY UTILITY INSTALLATION

- A. General: Install temporary service or connect to existing service.
 - 1. Arrange with utility company, Owner, and existing users for time when service can be interrupted, if necessary, to make connections and disconnections for temporary services.
- B. Water Service: Connect to Owner's existing water service facilities. Clean and maintain water service facilities in a condition acceptable to Owner. At Substantial Completion, restore these facilities to condition existing before initial use.
- C. Sanitary Facilities: Provide temporary toilets, wash facilities, and drinking water for use of construction personnel. Comply with requirements of authorities having jurisdiction for type, number, location, operation, and maintenance of fixtures and facilities.
- D. Heating: Provide temporary heating required by construction activities for curing or drying of completed installations or for protecting installed construction from adverse effects of low temperatures or high humidity. Select equipment that will not have a harmful effect on completed installations or elements being installed.
- E. Isolation of Work Areas in Occupied Facilities: Prevent dust, fumes, and odors from entering occupied areas.
 - 1. Prior to commencing work, isolate the HVAC system in area where work is to be performed according to coordination drawings.
 - a. Disconnect supply and return ductwork in work area from HVAC systems servicing occupied areas.

- b. Maintain negative air pressure within work area using HEPA-equipped air-filtration units, starting with commencement of temporary partition construction, and continuing until removal of temporary partitions is complete.
 - 2. Maintain dust partitions during the Work. Use vacuum collection attachments on dust-producing equipment. Isolate limited work within occupied areas using portable dust-containment devices.
 - 3. Perform daily construction cleanup and final cleanup using approved, HEPA-filter-equipped vacuum equipment.
- F. Ventilation and Humidity Control: Provide temporary ventilation required by construction activities for curing or drying of completed installations or for protecting installed construction from adverse effects of high humidity. Select equipment that will not have a harmful effect on completed installations or elements being installed. Coordinate ventilation requirements to produce ambient condition required and minimize energy consumption.
 - 1. Provide dehumidification systems when required to reduce substrate moisture levels to level required to allow installation or application of finishes.
- G. Electric Power Service: Connect to Owner's existing electric power service. Maintain equipment in a condition acceptable to Owner.
- H. Lighting: Provide temporary lighting with local switching that provides adequate illumination for construction operations, observations, inspections, and traffic conditions.
 - 1. Install and operate temporary lighting that fulfills security and protection requirements without operating entire system.
- I. Telephone Service: Provide temporary telephone service in common-use facilities for use by all construction personnel. Install one (1) telephone line(s) for each field office unless indicated otherwise.
 - 1. At each telephone, post a list of important telephone numbers.
 - a. Police and fire departments.
 - b. Ambulance service.
 - c. Contractor's home office.
 - d. Contractor's emergency after-hours telephone number.
 - e. Architect's office.
 - f. Owner's Representative's office.
 - g. Engineers' offices.
 - h. Owner's office.
 - i. Principal subcontractors' field and home offices.
 - 2. Provide superintendent with cellular telephone or portable two-way radio for use when away from field office.
- J. Electronic Communication Service: Provide a desktop computer in the primary field office adequate for use by Architect and Owner to access Project electronic documents and maintain electronic communications. Equip computer with not less than the following:
 - 1. Processor: Intel Pentium D or Intel CoreDuo, 3.0 GHz processing speed.
 - 2. Memory: 4 gigabyte.
 - 3. Disk Storage: 300 gigabyte hard-disk drive and combination DVD-RW/CD-RW drive.
 - 4. Display: 22-inch LCD monitor with 256-Mb dedicated video RAM.
 - 5. Full-size keyboard and mouse.
 - 6. Network Connectivity: 10/100BaseT Ethernet.
 - 7. Operating System: Microsoft Windows XP Professional or Microsoft Windows Vista Business.
 - 8. Productivity Software:

- a. Microsoft Office Professional, XP or higher, including Word, Excel, and Outlook.
 - b. Adobe Reader 7.0 or higher.
 - c. WinZip 7.0 or higher.
9. Printer: "All-in-one" unit equipped with printer server, combining color printing, photocopying, scanning, and faxing, or separate units for each of these three functions.
 10. Internet Service: Broadband modem, router and ISP, equipped with hardware firewall, providing minimum 384 Kbps upload and 1 Mbps download speeds at each computer.
 11. Internet Security: Integrated software, providing software firewall, virus, spyware, phishing, and spam protection in a combined application.
 12. Backup: External hard drive, minimum 40 gigabyte, with automated backup software providing daily backups.

3.3 SUPPORT FACILITIES INSTALLATION

A. General: Comply with the following:

1. Provide construction for temporary offices, shops, and sheds located within construction area or within 30 feet of building lines that is noncombustible according to ASTM E 136. Comply with NFPA 241.
2. Maintain support facilities until Architect schedules Substantial Completion inspection. Remove before Substantial Completion. Personnel remaining after Substantial Completion will be permitted to use permanent facilities, under conditions acceptable to Owner.

B. Temporary Use of Permanent Roads and Paved Areas: Locate temporary roads and paved areas in same location as permanent roads and paved areas. Construct and maintain temporary roads and paved areas adequate for construction operations. Extend temporary roads and paved areas, within construction limits indicated, as necessary for construction operations.

1. Coordinate elevations of temporary roads and paved areas with permanent roads and paved areas.
2. Prepare subgrade and install subbase and base for temporary roads and paved areas according to Section 31 20 00 "Earth Moving."
3. Recondition base after temporary use, including removing contaminated material, regrading, proofrolling, compacting, and testing.
4. Delay installation of final course of permanent hot-mix asphalt pavement until immediately before Substantial Completion. Repair hot-mix asphalt base-course pavement before installation of final course according to Section 32 12 16 "Asphalt Paving."

C. Traffic Controls: Comply with requirements of authorities having jurisdiction.

1. Protect existing site improvements to remain including curbs, pavement, and utilities.
2. Maintain access for fire-fighting equipment and access to fire hydrants.

D. Parking: Provide temporary parking areas for key construction and Owner personnel.

E. Dewatering Facilities and Drains: Comply with requirements of authorities having jurisdiction. Maintain Project site, excavations, and construction free of water.

1. Dispose of rainwater in a lawful manner that will not result in flooding Project or adjoining properties or endanger permanent Work or temporary facilities.
2. Remove snow and ice as required to minimize accumulations.

F. Project Signs: Provide Project signs as indicated. Unauthorized signs are not permitted.

1. Identification Signs: Provide Project identification signs as indicated on Drawings.

2. Temporary Signs: Provide other signs as indicated and as required to inform public and individuals seeking entrance to Project.
 - a. Provide temporary, directional signs for construction personnel and visitors.
 3. Maintain and touchup signs so they are legible at all times.
- G. Construction Waste Management: Comply with requirements specified in Section 01 74 19 "Construction Waste Management and Disposal."
- H. Lifts and Hoists: Provide facilities necessary for hoisting materials and personnel.
 1. Truck cranes and similar devices used for hoisting materials are considered "tools and equipment" and not temporary facilities.
- I. Temporary Elevator Use: Refer to Division 14 Conveying Equipment.
- J. Temporary Stairs: Until permanent stairs are available, provide temporary stairs where ladders are not adequate.
- K. Temporary Use of Permanent Stairs: Use of new stairs for construction traffic will be permitted, provided stairs are protected and finishes restored to new condition at time of Substantial Completion.

3.4 CONSTRUCTION AIDS

- A. Provide, erect, and maintain construction aids necessary for expeditious and proper completion of the Work.
- B. Modifications and alterations to the Project design to accommodate construction aids are not permitted unless authorized by Owner and Architect. Contractor shall reimburse Owner for any structural evaluation, redesign, and supplemental design of the Work by Architect and their consultants, to accommodate construction aids.
- C. Repair and pay for damage, including attachment and support to structure, subgrades, or other portions of the Project, as a result of construction aids.
- D. Do not use construction aids which could stress, strain, or damage any portion of the Project and existing structures.
- E. Contrive to keep temporary work from obstructing Work and access. If, however, conflict with normal access occurs, provide temporary bypass routing until such temporary work is completed.
- F. Remove all temporary work from premises after it is no longer needed and before completion of Contract and repair area to original condition.

3.5 SECURITY AND PROTECTION FACILITIES INSTALLATION

- A. Protection of Existing Facilities: Protect existing vegetation, equipment, structures, utilities, and other improvements at Project site and on adjacent properties, except those indicated to be removed or altered. Repair damage to existing facilities.
- B. Environmental Protection: Provide protection, operate temporary facilities, and conduct construction as required to comply with environmental regulations and that minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects.

1. Comply with work restrictions specified in Section 01 10 00 "Summary."
- C. Temporary Erosion and Sedimentation Control: Comply with requirements of 2003 EPA Construction General Permit or authorities having jurisdiction, whichever is more stringent and requirements specified in Section 31 10 00 "Site Clearing."
- D. Stormwater Control: Comply with requirements of authorities having jurisdiction. Provide barriers in and around excavations and subgrade construction to prevent flooding by runoff of stormwater from heavy rains.
- E. Tree and Plant Protection: Install temporary fencing located as indicated or outside the drip line of trees to protect vegetation from damage from construction operations. Protect tree root systems from damage, flooding, and erosion.
- F. Pest Control: Engage pest-control service to recommend practices to minimize attraction and harboring of rodents, roaches, and other pests and to perform extermination and control procedures at regular intervals so Project will be free of pests and their residues at Substantial Completion. Perform control operations lawfully, using environmentally safe materials.
- G. Site Enclosure Fence: Prior to commencing earthwork, furnish and install site enclosure fence in a manner that will prevent people and animals from easily entering site except by entrance gates.
1. Extent of Fence: As indicated on Drawings.
 2. Maintain security by limiting number of keys and restricting distribution to authorized personnel. Furnish one set of keys to Owner.
- H. Security Enclosure and Lockup: Install temporary enclosure around partially completed areas of construction. Provide lockable entrances to prevent unauthorized entrance, vandalism, theft, and similar violations of security. Lock entrances at end of each work day.
- I. Barricades, Warning Signs, and Lights: Comply with requirements of authorities having jurisdiction for erecting structurally adequate barricades, including warning signs and lighting.
- J. Temporary Egress: Maintain temporary egress from existing occupied facilities as indicated and as required by authorities having jurisdiction.
- K. Temporary Enclosures: Provide temporary enclosures for protection of construction, in progress and completed, from exposure, foul weather, other construction operations, and similar activities. Provide temporary weathertight enclosure for building exterior.
1. Where heating or cooling is needed and permanent enclosure is incomplete, insulate temporary enclosures.
- L. Temporary Partitions: Provide floor-to-ceiling dustproof partitions to limit dust and dirt migration and to separate areas occupied by Owner from fumes and noise.
1. Construct dustproof partitions with gypsum wallboard with joints taped on occupied side, and fire-retardant-treated plywood on construction operations side.
 2. Where fire-resistance-rated temporary partitions are indicated or are required by authorities having jurisdiction, construct partitions according to the rated assemblies.
 3. Insulate partitions to control noise transmission to occupied areas.
 4. Seal joints and perimeter. Equip partitions with gasketed dustproof doors and security locks where openings are required.
 5. Protect air-handling equipment.
 6. Provide walk-off mats at each entrance through temporary partition.

- M. Temporary Fire Protection: Install and maintain temporary fire-protection facilities of types needed to protect against reasonably predictable and controllable fire losses. Comply with NFPA 241; manage fire-prevention program.
1. Prohibit smoking in construction areas.
 2. Supervise welding operations, combustion-type temporary heating units, and similar sources of fire ignition according to requirements of authorities having jurisdiction.
 3. Develop and supervise an overall fire-prevention and -protection program for personnel at Project site. Review needs with local fire department and establish procedures to be followed. Instruct personnel in methods and procedures. Post warnings and information.
 4. Provide temporary standpipes and hoses for fire protection. Hang hoses with a warning sign stating that hoses are for fire-protection purposes only and are not to be removed. Match hose size with outlet size and equip with suitable nozzles.

3.6 MOISTURE AND MOLD CONTROL

- A. Contractor's Moisture-Protection Plan: Avoid trapping water in finished work. Document visible signs of mold that may appear during construction.
- B. Exposed Construction Phase: Before installation of weather barriers, when materials are subject to wetting and exposure and to airborne mold spores, protect as follows:
1. Protect porous materials from water damage.
 2. Protect stored and installed material from flowing or standing water.
 3. Keep porous and organic materials from coming into prolonged contact with concrete.
 4. Remove standing water from decks.
 5. Keep deck openings covered or dammed.
- C. Partially Enclosed Construction Phase: After installation of weather barriers but before full enclosure and conditioning of building, when installed materials are still subject to infiltration of moisture and ambient mold spores, protect as follows:
1. Do not load or install drywall or other porous materials or components, or items with high organic content, into partially enclosed building.
 2. Keep interior spaces reasonably clean and protected from water damage.
 3. Periodically collect and remove waste containing cellulose or other organic matter.
 4. Discard or replace water-damaged material.
 5. Do not install material that is wet.
 6. Discard, replace, or clean stored or installed material that begins to grow mold.
 7. Perform work in a sequence that allows any wet materials adequate time to dry before enclosing the material in drywall or other interior finishes.
- D. Controlled Construction Phase of Construction: After completing and sealing of the building enclosure but prior to the full operation of permanent HVAC systems, maintain as follows:
1. Control moisture and humidity inside building by maintaining effective dry-in conditions.
 2. Use permanent HVAC system to control humidity.
 3. Comply with manufacturer's written instructions for temperature, relative humidity, and exposure to water limits.
 - a. Hygroscopic materials that may support mold growth, including wood and gypsum-based products, that become wet during the course of construction and remain wet for forty-eight (48) hours are considered defective.
 - b. Measure moisture content of materials that have been exposed to moisture during construction operations or after installation. Record readings beginning at time of

exposure and continuing daily for forty-eight (48) hours. Identify materials containing moisture levels higher than allowed. Report findings in writing to Architect.

- c. Remove materials that cannot be completely restored to their manufactured moisture level within forty-eight (48) hours.

3.7 OPERATION, TERMINATION, AND REMOVAL

- A. Supervision: Enforce strict discipline in use of temporary facilities. To minimize waste and abuse, limit availability of temporary facilities to essential and intended uses.
- B. Maintenance: Maintain facilities in good operating condition until removal.
 1. Maintain operation of temporary enclosures, heating, cooling, humidity control, ventilation, and similar facilities on a 24-hour basis where required to achieve indicated results and to avoid possibility of damage.
- C. Temporary Facility Changeover: Do not change over from using temporary security and protection facilities to permanent facilities until Substantial Completion.
- D. Termination and Removal: Remove each temporary facility when need for its service has ended, when it has been replaced by authorized use of a permanent facility, or no later than Substantial Completion. Complete or, if necessary, restore permanent construction that may have been delayed because of interference with temporary facility. Repair damaged Work, clean exposed surfaces, and replace construction that cannot be satisfactorily repaired.
 1. Materials and facilities that constitute temporary facilities are property of Contractor. Owner reserves right to take possession of Project identification signs.
 2. Remove temporary roads and paved areas not intended for or acceptable for integration into permanent construction. Where area is intended for landscape development, remove soil and aggregate fill that do not comply with requirements for fill or subsoil. Remove materials contaminated with road oil, asphalt and other petrochemical compounds, and other substances that might impair growth of plant materials or lawns. Repair or replace street paving, curbs, and sidewalks at temporary entrances, as required by authorities having jurisdiction.
 3. At Substantial Completion, repair, renovate, and clean permanent facilities used during construction period. Comply with final cleaning requirements specified in Section 01 77 00 "Closeout Procedures."

END OF SECTION

**Attachment E
Negotiated Agreement**

ARLINGTON PUBLIC SCHOOLS



APS received via email
January 29, 2018

**Form of Proposal for
Pre-Qualified Construction Manager "at Risk" Services**

Issue Date: November 9, 2017
RFP: 30FY18
Project: New Elementary School at the Reed Site ("Project")
To: Arlington Public Schools
Purchasing Office
1426 N. Quincy St
Arlington, VA 22207
Attn: David J. Webb, C.P.M.

From: Offeror Gilbane Building Company Contact Emre Ozcan
Address 1100 N. Glebe Road, Suite 1000 Phone 703-312-7262
Arlington, VA 22201 Email EOzcan@GilbaneCo.com

Proposal Due Date: **Prior to 2:00 PM on December 5, 2017, Local Prevailing Time**

In compliance with and subject to your Request for Proposal (RFP) and the documents therein specified, all of which are incorporated herein by reference, the undersigned proposes to furnish all labor, equipment, and materials and perform all Work necessary for Pre-Construction Phase Services for this Project as well as the associated CMR Fee, General Conditions Fee, General Conditions Allowance, Insurance and Taxes Fee, bonds, and other items listed below in accordance with the RFP inclusive of all Addenda, for the consideration of the following amounts:

1. Pre-Construction Phase Services Fee (lump sum) – Offeror shall also complete the **Pre-Construction Phase Team Work Plan** at Attachment A.3 and include in Tab 6. The staffing illustrated on the plan shall be the basis of the lump sum fee. Reference the RFP for instructions.

Pre-Construction Phase Services Fee (lump sum):

Phase	In writing	In figures
Concept Design	Fourteen Thousand Two Hundred Eight Seven dollars	\$ 14,287
Schematic Design	Eighty Thousand Six Hundred Sixty Five dollars	\$ 80,665

**Attachment E
Negotiated Agreement**

Design Development	Ninety Three Thousand Four Hundred Eight Five dollars	\$93,485
Construction Documents	dollars	\$ w/ GMP below
GMP & Procurement	Forty Eight Thousand Two Hundred Twenty Two dollars	\$ 48,222
Total	Two Hundred Thirty Six Thousand Six Hundred Fifty-Nine dollars	\$236,659

2. Pre-Construction Phase Allowance (not to exceed) – Offeror shall include this specified not to exceed allowance for activities that may be required during the Pre-Construction Phase Services prior to an agreed GMP. These activities shall be for subcontractor pre-construction services and could include design assist and advanced buys for specialized/long-lead equipment.

Pre-Construction Phase Services Allowance (not to exceed):

Two hundred thousand dollars (\$200,000)

3. General Conditions Fee (lump sum) – Offeror shall provide a lump sum amount General Conditions Fee for CMR Project staff. Offeror shall also complete the **Construction Phase Team Work Plan** at Attachment A.4 and include in Tab 6. The staffing illustrated on the plan shall be the basis of the lump sum fee. It is essential that all anticipated staff General Conditions requirements are included in the lump sum entered below. If field staff are provided with a vehicle for use on site, costs associated with any such vehicle shall be included in this lump sum. No additional General Conditions Fee will be subsequently authorized unless there are compelling reasons for doing so.

Total General Conditions Fee (lump sum):

One Million Four Hundred Eighty Seven Thousand Five Hundred Twenty Nine dollars (\$ 1,487,529)

The maximum amount per day that can be added or subtracted from the total General Conditions Fee for adjustment in the construction schedule when establishing the GMP or relative to change orders for adjustments in general conditions shall be the Total General Conditions Fee amount divided by the project duration: six hundred and forty (**640**) days (time between start of construction and substantial completion as specified in the RFP).

Amount when Total General Conditions Fee is divided by Project duration:

Two Thousand Three Hundred Twenty Four dollars (\$ 2,324) / day

4. General Conditions Allowance (not to exceed) – provide a not to exceed amount for non-personnel General Conditions items. These items are to be reimbursed on an at-cost basis without any CMR mark-up. Offeror shall also complete the **General Conditions Non-Personnel Breakdown Form** at Attachment A.5 and included in Tab 6.

Total General Conditions Allowance (not to exceed):

Two Hundred Eighty One Thousand Nine Hundred Fifteen dollars (\$ 281,915)

5. Insurance and Taxes Fee – stated as a percentage (%) of the cost of the Work, for general liability insurance, builders risk insurance, payment and performance bonds, local business licenses, and any local municipal taxes. (This is the amount that the Offeror will include in any estimates as full and complete payment for these items.)

1.21 % (assumes CCIP coverage for Trade work) (assumes max 24-month construction schedule/minor demolition)

**Attachment E
Negotiated Agreement**

6. CMR Fee (lump sum):

Eight Hundred Forty Three Thousand Seven Hundred Fifty dollars (\$ 843,750)

7. Billable Hourly Rates for On-Site Staff: (excludes, vehicles, travel, lodging, etc)

#	Position	Regular Rate	Overtime Rate	Second Shift Rate
1	Senior Project Manager	\$ 117.56	\$ N/A	\$ N/A
2	Project Manager	\$ 94.29	\$ N/A	\$ N/A
3	Assistant Project Manager	\$ 79.56	\$ N/A	\$ N/A
4	Field Superintendent	\$ 91.18	\$ N/A	\$ N/A
5	Assistant Superintendent	\$ 91.18	\$ N/A	\$ N/A
6	Foreman	\$ N/A	\$ N/A	\$ N/A
7	Project Engineer (A/S/C)	\$ 73.44	\$ N/A	\$ N/A
8	Project Engineer (M/E/P)	\$ 73.44	\$ N/A	\$ N/A
9	Field Secretary/Clerk	\$ N/A	\$ N/A	\$ N/A
10	Clerk/Document Control Person	\$ N/A	\$ N/A	\$ N/A
11	BIM Manager	\$ 108.60	\$ N/A	\$ N/A
12	Quality Control Manager	\$ 112.96	\$ N/A	\$ N/A
13	Close Out Engineer	\$ 73.44	\$ N/A	\$ N/A
14	Field Accountant	\$ 64.75	\$ N/A	\$ N/A

Offeror: Gilbane Building Company

Emre Ozcan

Authorized Personnel Name Printed

Authorized Signature

Date Signed: January 19, 2018

Attachment A.3

To be included in TAB 6

Pre-Construction Phase Team Work Plan

Project:

New Elementary School at the Reed Site ("Project")

Offeror:

Gilbane Building Company

Name, Title/Role	Hours						Total
	Concept Design	Schematic Design	Design Development	Construction Documents	GMP & Procurement		
Anthony Barton	32	164	164	w/ GMP	197		557
Tyler Swartzwelder	18	94	94	w/ GMP	94		300
Titus Sitnik	16	76	76	w/ GMP	76		244
Grace Miller	88	438	438	w/ GMP	525		1,489
Estimators	-	100	200	w/ GMP	-		300
Superintendent	16	16	16	w/ GMP	40		88
Purchasing/Accounting	16	172	172	w/ GMP	172		532
Total Hours	186	1,060	1,160		1,104		3,510

Notes:

1. This attachment is to be included in TAB 6 of the Offeror's Proposal.
2. Provide estimated total hours (based on 2080 hours/year).

**Attachment E
Negotiated Agreement**

**Attachment A.4
To be included in TAB 6**

Construction Phase Team Work Plan

Project: New Elementary School at the Reed Site ("Project")

Offeror: Gilbane Building Company

	12-15	12-16	12-17	12-18	12-19	12-20	12-21	12-22	12-23	12-24	12-25	12-26	12-27	12-28	12-29	12-30	12-31	TOTAL
Project Manager - Swartzwalder	0	184	176	184	180	176	176	176	176	176	176	176	176	176	176	176	184	3540
Project Engineer I - Stroup	160	184	176	184	180	176	176	176	176	176	176	176	176	176	176	176	184	4344
General Superintendent - Fritz	160	184	176	184	180	176	176	176	176	176	176	176	176	176	176	176	184	4000
Finish Superintendent	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1200
QC Superintendent - John Baker	0	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	2520
Closeout engineer	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	688
Project Accountant	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	416
Inform	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	520
TOTAL	320	608	576	608	608	608	608	608	608	608	608	608	608	608	608	608	608	17596

Notes:

1. Refer to the RFP for construction start, Substantial Completion, and Final Completion dates.
2. This attachment is to be included in TAB 6 of the Offeror's Proposal.
3. Provide estimated hours for each staff member by month. Hours Total hours shall be based on 2080 hours/year.
4. Specific personnel required include a Quality Control Superintendent and Close-out Engineer as described at RFP Attachment C.
5. Include all Project staff.

**Attachment E
Negotiated Agreement**

Attachment A.5

To be included in TAB 6

GENERAL CONDITIONS NON-PERSONNEL BREAKDOWN FORM

Project: New Elementary School at the Reed Site ("Project")

Offeror: Gilbane Building Company

ITEM	ESTIMATED COST
Mobilization	N/A
Temporary Facilities inclusive of office trailer(s), field office furniture, field office telephones and supplies, field office electrical power connections and heating/cooling costs, internet connection.	\$281,915
Tools/Equipment – small power/hand tools and equipment as may be required by the CMR firm’s field staff only; establish and maintain an appropriate shipping/receiving system, and miscellaneous materials.	included above
Plans/survey/permits/testing – reproduction costs during construction, surveyors services for site surveys, building and site layouts, etc. as required, required permits, etc.	w/ Trades
Safety/Clean Up- on site safety program through construction inclusive of furnishing and maintain fire extinguishers, first aid station, safety lights, safety barriers and canopies, partition, door, and window closures, ladders, stairs, site fencing, signage. Roads and traffic control devices, daily site clean-up, trash collection, and removal inclusive of rubbish chutes, as applicable (excluding the final cleaning as this is part of demobilization), site security, snow removal and pest control, protection of adjacent property, utilities, etc. Include temporary water for dust control and truck washdown, including equipment for cleaning public right of way.	w/ Trades
General Items (i.e., weather and dust protection, photos, filed office computers, office equipment, two way radios, temporary roads, parking and staging areas, offsite construction worker parking (if not accommodated onsite), temporary environmental protection and temporary conditioning (heating and cooling), mockups; and travel expenses for off-site surveys and inspections)	w/ Trades
Close out/De-mobilization – punch list clean-up inclusive of patching and repainting, as needed, final site/facility clean-up including, but not limited to, floors, walls, doors, windows, glass and hardware, restoration of the site, final lien releases, as-built drawings and project close out documents.	w/ Trades
TOTAL:	\$281,915

Notes:

1. This attachment is to be included in TAB 6 of the Offeror’s Proposal.
2. These General Condition items are to be handled by the CMR on a reimburseable basis and include, but are not necessarily limited to the items described above.