

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

This Contract, dated this \_\_\_\_ day of \_\_\_\_\_, 2017, between Arlington Public Schools (“Owner” or “APS”) and \_\_\_\_\_ (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  
(703) 228-6127  
[David.Webb@apsva.us](mailto:David.Webb@apsva.us)

Construction Manager at Risk:

\_\_\_\_\_  
Name

Virginia Class A Contractor’s License Number: \_\_\_\_\_

Issue Date: \_\_\_\_\_

Current Expiration Date: \_\_\_\_\_

\_\_\_\_\_  
State Corporation Commission ID#

\_\_\_\_\_  
Federal Employer Identification Number/Social Security Number

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Contact Person Telephone

\_\_\_\_\_  
Contact Person Email

**2. SUMMARY OF PROJECT:**

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

Project Title: \_\_\_\_\_

General Project Description: *[insert summary description of Project]*

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 \_\_\_\_\_

[\_\_\_\_\_]. 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. 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. The Request for Proposal (RFP) documents;
6. The Proposal;
7. The Request for Qualifications (RFQ) documents;
8. Response to the RFQ;
9. 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.
10. 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

6. **TIME FOR COMPLETION:** The Work shall be commenced on \_\_\_\_\_ and shall be completed no later than \_\_\_\_\_. 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.

\_\_\_\_\_  
*[Insert name of CMR]*

BY: \_\_\_\_\_

\_\_\_\_\_  
 Print Name

Its \_\_\_\_\_ and authorized agent

Dated: \_\_\_\_\_

ARLINGTON PUBLIC SCHOOLS

BY: \_\_\_\_\_  
David J. Webb, C.P.M.  
Purchasing Agent  
Dated: \_\_\_\_\_

**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)

**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                                    |
| <b>PART 3</b> | <b>OWNER'S REPRESENTATIVE</b>                                      |
| 3.1.          | ADMINISTRATION OF CONTRACT   |
| 3.2.          | OWNER'S REPRESENTATIVE   |
| 3.3.          | CERTIFICATION OF PAYMENTS  |
| 3.4.          | INTERPRETATION OF CONTRACT   |
| <b>PART 4</b> | <b>OWNER</b>   |
| 4.1.          | SITE SURVEYS   |
| 4.2.          | CERTIFICATION OF PAYMENTS  |
| 4.3.          | RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES                   |
| <b>PART 5</b> | <b>CONSTRUCTION MANAGER AT RISK</b>                                |
| 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   |
| <b>PART 6</b> | <b>SUBCONTRACTORS</b>  |
| 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   |
| <b>PART 7</b> | <b>SEPARATE CONTRACTS</b>  |
| 7.1.          | OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS                          |
| <b>PART 8</b> | <b>MISCELLANEOUS PROVISIONS</b>                                    |
| 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 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 (90<sup>th</sup>) 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 shall be in the amount of \$1 Million per occurrence/\$2 Million aggregate. 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 primary to all other insurance with respect to Arlington Public Schools including its elected and appointed officials, agents and employees. If the insurance policy represented by certificate requires endorsement in order to add Arlington Public Schools, et al., as an additional insureds, 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 named 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 its Subcontractors shall be not less than \$1 million.
  4. Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than \$5 million per occurrence.
  5. Proof, to the satisfaction of the Owner, of Professional Liability Insurance in the amount of \$5 Million per occurrence. A Certificate of Insurance naming Arlington Public Schools as the Certificate Holder shall be provided prior to the commencement of work.
  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 proceed unless 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.
- B. All of the aforesaid insurance policies must be endorsed to provide that the insurance company shall give thirty (30) 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 -**