



INVITATION TO BID FOR PRE-QUALIFIED GENERAL CONTRACTORS

**Arlington Public Schools
Purchasing Office**

BID TITLE: THE ABINGDON ELEMENTARY SCHOOL ADDITIONS AND RENOVATIONS CONSTRUCTION PROJECT AT THE EXISTING ABINGDON ELEMENTARY SCHOOL SITE, LOCATED AT 3035 S. ABINGDON STREET, ARLINGTON, VIRGINIA 22206.

BID #: 61FY16

BID ISSUE DATE: MARCH 24, 2016

BID CLOSING DATE
AND TIME: **APRIL 25, 2016, AT 2:00 P. M. (Local Prevailing Time)**

This is Arlington Public Schools (APS) Invitation to Bid (ITB) #61FY16 for the Abingdon Elementary School Additions and Renovations Construction Project, at the existing Abingdon Elementary School Site, located at 3035 S. Abingdon Street, Arlington, VA 22206, (the "Project"), issued to General Contractors who have been pre-qualified under RFQ #59FY16. Sealed Bids will be received in hand by the APS Purchasing Office prior to the date and time stated above ("Bid Closing"). The time a Bid is received in hand shall be determined by the time stamped on the bid receipt by the time clock in the APS Purchasing Office. The APS Purchasing Office is located on the fourth floor of the Arlington Public Schools Education Center, 1426 N. Quincy Street, Arlington, VA 22207. Delivery to, or receipt by, any office other than the APS Purchasing Office shall not be deemed receipt by the APS Purchasing Office until actually received in the APS Purchasing Office. The Bidder assumes all risk of delivery to the correct office. . In the event this time clock is not functioning, the time shall be determined by time displayed on the wall clock above Room 405. The time on the wall clock will be written on the bid receipt, by hand, by the APS Purchasing Office personnel. **Bids received at, or after, 2:00 p.m. (Local Prevailing Time) on April 25, 2016, shall not be considered**, and will be returned unopened. If the APS Education Center is closed for any reason on the date of the Bid Closing, the scheduled Bid Closing will be extended to the next business day the APS Education Center is open, with the opening and reading of Bids ("Bid Opening") to follow promptly thereafter.

All Bids must be submitted on the enclosed **Bid Form** or a copy thereof. For purposes of this requirement a “copy” is an exact duplicate of the Bid Form included in these Bid Documents as Part 00 4100 reproduced in any manner with no modifications, additions or deletions. The Bidder must complete all blanks. A person authorized to bind the Bidder in contractual matters must sign the Bid Form. Failure to comply with these requirements or with any other requirements stated as mandatory either in this ITB or in the Instructions to Bidders shall result in rejection of the Bid as not responsive.

except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality or time. Any Bid received at or after Bid Closing, whether by mail or otherwise, will not be considered and will be returned, unopened.

AVAILABILITY OF BID DOCUMENTS:

The Contract Documents are as defined in the Contract to be awarded if an award is made as a result of this ITB. Submission of a Bid is acceptance by the Bidder of all requirements of the Contract Documents if the Bidder is awarded the Contract. Terms used in this ITB shall have the same meaning as provided in the Contract Documents. The Bid Documents shall consist of the Invitation to Bid, the Instructions to Bidders, the Bid Form, the Bid Bond Form, the Drawings, the Specifications, and all Addenda. The Contract Documents state the requirements of the Project with detail. Drawings and Specifications for this project will be available electronically as PDF file format on the Owner's Representative (Architect's), Hord Coplan Macht, FTP site. Login and password information for the FTP site will be emailed to all the pre-qualified General Contractors on March 24, 2016. Drawings and Specifications will also be available for printing and delivery at Bidders' expense at ARC Imaging, 300 North Henry Street, Alexandria, VA 22314, (703) 518-8890, www.e-arc.com. Please contact Owner's Representative (Architect), Maureen Wiechert, mwiechert@HCM2.com.

PRE-BID CONFERENCE:

A pre-Bid conference will be held for this procurement on **Wednesday April 6, 2016 at 1:30 PM at Facilities and Operations Conference Room, 2770 S. Taylor Street, Arlington, VA 22206**. Attendance at the pre-Bid conference is not mandatory, but is highly recommended. Bidders must report to the Main Office to sign in and will be directed to the room wherein the conference will be held. Those Bidders planning to attend shall contact Ms. Amy Jones (703) 228-6613 in advance. Immediately following the pre-Bid conference, Bidders will be given an opportunity to visit the existing building and site which is in close proximity to the pre-Bid conference location.

CLARIFICATIONS, ADDENDA, AND BIDDER'S QUESTIONS:

All questions and /requests for information posed shall be submitted in writing to the Owner's Representative (Architect), addressed to Maureen Wiechert, AIA by email to: mwiechert@HCM2.com prior to 4:00 P.M., (Local Prevailing Time) on April 11, 2016, with copies by email to Aji Robinson, APS Project Manager, at: Ajibola.robinson@apsva.us; to the APS Purchasing Office, Ellen Wills, Assistant Purchasing Director, at Ellen.wills@apsva.us and to Sandra Hagan, Construction Manager, at shagan@heery.com. Any responses to questions or requests for information will be issued in writing by the Owner and the question and response will be posted in the same manner as an Addendum as set forth below. The Owner's Representative (Architect) will record minutes of the pre-Bid conference consisting of questions raised and responses provided at the pre-Bid conference. After reviewing questions and requests for information timely submitted or submitted at the pre-Bid conference, the Owner may respond to any questions or requests for information it deems necessary and will be issued in the form of an Addendum. Changes to the Bid Documents or to the Contract Documents prior to Bid Closing shall be made only by written Addendum issued by the Owner. Changes to the Contract Documents after Bid Closing shall be made only by way of a written Modification issued by the Owner. Any Addendum will be issued in a reasonable time prior to Bid Closing to be considered by Bidders in preparation of Bids. All Addenda will be posted on the Owner's Representative (Architect's) FTP

site, and notice of each Addendum will be posted on eVA, Virginia's online electronic procurement system and on the APS Website (www.apsva.us).

All questions must be received on or before Monday April 11, 2016 at 4:00 P.M. (Local Prevailing Time).

Note: All Addenda shall become a part of the Bid Documents and Contract Documents, as applicable, for the preparation of a Bid, shall be covered in the Bid, and will be made a part of the Contract.

RECEIPT OF BIDS:

Bids must be received in hand by the APS Purchasing Office by mail, express mail or hand delivered, and time stamped or signed in prior to scheduled bid closing date and time.

Arlington Public Schools
Education Center
Purchasing Office, 4th Floor
1426 N. Quincy Street
Arlington, Virginia 22207

BID CLOSING:

The Bid Closing is April 25, 2016, at 2:00 P.M. (Local Prevailing Time). The Bid Opening will be held promptly following Bid Closing at the APS Education Center, 1426 N. Quincy Street, Arlington, Virginia 22207, in Conference Room 401A. Note: The Bid Closing and Bid Opening are in the same building but in different rooms.

PROJECT DESCRIPTION AND BACKGROUND:

The Work is defined by the Contract Documents and consists of the following scope of renovation and expansion of the existing Abingdon Elementary School:

1. Provision of temporary portable classrooms on the open field of the school to provide a total of sixteen classrooms. These will be removed prior to the last phase of construction on the site. To be Owner installed and removed before, during if needed and at the end of the project.
2. Demolition of a small addition located near to the existing Gymnasium.
3. Interior renovations to existing classrooms, including new electrical and mechanical systems, finishes and casework.
4. Major interior renovation to the existing Media Center, Cafeteria, Gymnasium, 1970 "saw tooth" wing and Administration Areas.
5. Construction of a new Gymnasium to replace the existing Gymnasium.

6. Construction of a new a three-story addition to the north-east, housing a new stairwell, elevator lobby, classrooms and support spaces. The addition will be steel-framed with metal stud exterior wall framing and clad with brick or cementitious siding.
7. Expansion of the existing Cafeteria Area, including a larger Reception Area and new entry vestibule.
8. Additional work includes removal of all the existing roofing and repairs and replacement with new a roofing system with roofing drainage. .
9. New roof top mechanical equipment and the rehabilitation of existing mechanical equipment with the installation of acoustic screening panels at specific locations.
10. Improvements to the site include expanded parking, play areas, retaining walls, sidewalks, and improved storm water management.
11. Site utility work includes new electric service entrance, transformer and emergency generator.
12. Construction is designed to meet LEED Silver certification standards but will not be submitted for LEED Certification.

PHASED OCCUPIED CONSTRUCTION

The Work shall be conducted in Nine Phases, with each Phase having a separate Substantial Completion date and resulting Liquidated Damages, as follows:

05/06/16 – Anticipated Notice to Proceed (NTP) for the Project as a whole.

1. Phase 1:
Pre-mobilization by the Contractor, work to be completed by APS.
2. Phase 2A:
Work to commence on July 1, 2016. Substantially Complete by August 22, 2016 and Final Completion by September 23, 2016.
3. Phase 2B:
Work to commence on July 1, 2016. Substantially Complete by December 22, 2016 and Final Completion by January 23, 2017.
4. Phase 2C:
Work to commence on July 1, 2016. Substantially Complete by April 28, 2017 and Final Completion by May 29, 2017.
5. Phase 2D:
Work to commence on July 1, 2016. Substantially Complete by August 3, 2017 and Final Completion by September 4, 2017.
6. Phase 3:

Work to commence on January 3, 2017. Substantially Complete by August 3, 2017 and Final Completion by September 4, 2017.

7. Phase 4:

Work to commence on May 2, 2017. Substantially Complete by August 25, 2017 and Final Completion by September 26, 2017.

8. Phase 5:

Work to commence on July 3, 2017. Substantially Complete by November 17, 2017 and Final Completion by December 18, 2017.

9. Phase 6:

Work to commence on or before, July 3, 2017. Substantially Complete by November 17, 2017 and Final Completion by December 18, 2017.

10. See **Summary, Section 00 10 00** for additional specific details on phasing scope of work.

NEGOTIATION PROCEDURES IN THE EVENT THE APPARENT LOW BID EXCEEDS AVAILABLE FUNDS:

The Apparent Low Bid and the Apparent Low Bidder shall be the lowest responsive Bid from a responsible Bidder based upon the aggregate of the Total Base Bid and all Bid Alternates as set forth in the Bid Form. If the Apparent Low Bid is within available funds, the Contract, if awarded, will be awarded to the Apparent Low Bidder for the entirety of the Work identified in the Contract Documents for the Total Base Bid and all Bid Alternates, subject to such Modifications or which may arise subsequent to Bid Opening.

1. If the Apparent Low Bid is not within available funds, the first basis for award is the responsible Bidder submitting a responsive Bid with the most Bid Alternates, in order of the Preference Listing set forth in the Bid Form, 00 4100 which, when added to the Total Base Bid, results in a total which does not exceed available funds.

2. The second basis for award is the responsible Bidder submitting the lowest responsive Bid in which the Total Base Bid does not exceed available funds.

3. The funds available for this Project will be announced immediately after Bid Closing.

4. If neither the first basis for award nor the second basis for award is satisfied, APS may negotiate with the Bidder submitting the lowest Total Base Bid ("Lowest Total Base Bid Bidder"). These negotiations may include consideration of value engineering, substitution of materials or equipment, and such other modifications of the proposed scope of Work, Contract Period, or other Project requirements which are consistent with the Project as initially procured and with the public needs Arlington Public Schools has a duty to satisfy. APS also may attempt to obtain additional funding to increase available funds. APS and the Lowest Total Base Bid Bidder will discuss all such proposed means for achieving a Contract Sum within available funds for a period not to exceed forty-five (45) Days from Bid Opening.

5. If APS and the Lowest Total Base Bid Bidder are unable to reach agreement within

such forty-five (45) Day period, APS may elect at any time either to reject all Bids and cancel this solicitation, or to terminate discussions with the Lowest Total Base Bid Bidder and initiate discussions with the responsible Bidder submitting a responsive Bid with the second lowest Total Base Bid ("Second Lowest Total Base Bid Bidder"). These discussions shall be on the same terms and conditions as set forth for the negotiations with the Lowest Total Base Bid Bidder. If APS elects to negotiate with the Second Lowest Total Base Bid Bidder and is unable to reach agreement within such forty-five (45) Day period, then at any time APS may determine that all Bids shall be rejected and this solicitation shall be cancelled.

PRE-QUALIFIED BIDDERS:

APS has determined pursuant to the Request for Qualifications (RFQ) #59FY16 that the following General Contractors are the only Bidders pre-qualified to submit Bids in response to this ITB:

1. Mr. Phillip D Keller Jr.
President
Keller Brothers, Inc.
1012 Rising Ridge Road
Mt. Airy, MD 21771
Office # (301) 607-9300
2. Mr. Andrew D. Hess
President
HESS Construction & Engineering Services, Inc.
804 West Diamond Avenue, Suite 300,
Gaithersburg, Maryland, 20878
Office # (301) 670-9009
3. Eric Todd Cummings
President
Dustin Construction
2510 Urbana Pike, Suite 201
Ijamsville, MD 21754
Office # (301) 810-4320

ISSUED BY:

Ellen Wills
Assistant Director of Purchasing
Phone: (703) 228-7649
Email: ellen.wills@apsva.us

END SECTION

SECTION 002113

INSTRUCTIONS TO BIDDERS

PRELIMINARY EXPLANATION OF OWNER: The owner soliciting these Bids is Arlington Public Schools, which may also be referred to throughout these Instructions as "APS" or "Owner."

1. **CONTRACTOR REGISTRATION:**

No person, as defined in Va. Code Ann. Section 54.1-1100 shall engage in, or offer to engage in, contracting work or operate as an owner-developer in the Commonwealth of Virginia unless it has been licensed or certified under the provisions of Title 54.1, Chapter 11 of the Code of Virginia, as amended. See Va. Code, Section 54.1-1103(A).

Bidders are prohibited from contracting for, or bidding upon, the construction, removal, repair or improvements to or upon real property owned, controlled or leased by Arlington Public Schools without the appropriate Virginia contractor's license or certificate.

By submitting a Bid, the Bidder certifies that the firm submitting the Bid and registered under that name, has the appropriate license and/or certification, as determined by the Commonwealth of Virginia, Department of Professional and Occupational Regulation, Virginia Board for Contractors to perform all Work included in the Bid Documents.

Each Bidder shall indicate its Virginia contractor's license or certificate number and date of expiration on the face of the Bid envelope and in the Bid Form in the space provided therein. The Bid Form shall also contain the Bidders classifications of licensure or certification. Failure to comply with any of these requirements shall make the Bid nonresponsive.

Each Bidder shall indicate its Federal Employer Identification Number on the Bid Form in the space provided therein.

BIDDER'S QUESTIONS:

All questions and /requests for information posed shall be submitted in writing to the Owner's Representative (Architect), addressed to Maureen Wiechert, AIA by email to: mwiechert@HCM2.com prior to 4:00 P.M., (Local Prevailing Time) on April 11, 2016, with copies by email to Aji Robinson, APS Project Manager, at: Ajibola.robinson@apsva.us; to the APS Purchasing Office, Ellen Wills, Assistant Purchasing Director, at Ellen.wills@apsva.us and to Sandra Hagan, Construction Manager, at shagan@heery.com . Any responses to questions or requests for information will be issued in writing by the Owner and the question and response will be posted in the same manner as an Addendum as set forth below. The Owner's Representative (Architect) will record minutes of the pre-Bid conference consisting of questions raised and responses provided at the pre-Bid conference. After reviewing questions and requests for information timely submitted or submitted at the pre-Bid conference, the Owner may respond to any questions or requests for information it deems necessary and will be issued in the form of an Addendum. Changes to the Bid Documents or to the Contract Documents prior to Bid Closing shall be made only by

written Addendum issued by the Owner. Changes to the Contract Documents after Bid Closing shall be made only by way of a written Modification issued by the Owner. Any Addendum will be issued in a reasonable time prior to Bid Closing to be considered by Bidders in preparation of Bids. All Addenda will be posted on the Owner's Representative (Architect's) FTP site, and notice of each Addendum will be posted on eVA, Virginia's online electronic procurement system and on the APS Website (www.apsva.us).

All questions must be received on or before Monday April 11, 2016 at 4:00 P.M. (Local Prevailing Time).

3. **ADDENDA:**

All addenda issued by the Owner shall become a part of the Bid Documents and Contract Documents for the preparation of a Bid, shall be covered in the Bid, and will be made a part of the Contract.

4. **BID SECURITY:**

Bids shall be accompanied by a certified check, cashier's check, cash escrow or a bid bond in an amount not less than five percent (5%) of the amount of the Bid as a guarantee that if the Contract is awarded to the Bidder within the later of one hundred twenty (120) days following Bid Opening, it will enter into the Contract for the Work mentioned in the Bid at the amount of the Bid and provide any required performance and payment bonds. The obligee or payee shall be Arlington Public Schools.

If the bid security is provided in the form of a bid bond, the surety company shall be licensed to conduct business in Virginia and be listed on the United States Treasury Department's latest Circular 570. The Bid Bond shall be prepared on the Bid Bond Form included in the Bidding Documents. The attorney-in-fact who executes such bond on behalf of the surety must attach a notarized copy of its power-of-attorney as evidence of its authority to bind the surety on the date of execution of the bid bond.

If the bid security is in the form of cash, certified check, or cashier's check, the Bidder shall submit a bid security agreement conforming substantially in form and effect to the Bid Bond Form. The Owner shall be authorized to deposit such check or cash and to apply the funds in accordance with the security requirements set forth herein.

The bid bond or bid security agreement must clearly make reference to the solicitation number and bid title set forth in the Invitation to Bid.

Bid security in the form of certified checks, cashier's checks or cash will be returned to all unsuccessful Bidders who submitted a certified check or cash within thirty (30) days after the earlier of rejection of all Bids or entering into a contract with a successful Bidder, but in no event later than one hundred twenty (120) days after the formal opening of the Bids.

If approved by the Arlington Public Schools' Attorney, a Bidder may furnish 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 bid bond. 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.

5. **GUARANTY BONDS:**

- A. The successful Bidder, at the time of the execution of the Contract, shall furnish a Performance Bond and a Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract Price and the Contract shall not be deemed to have been fully executed until such Bonds are provided. Bonds shall be on the forms herein provided (Sections 00611 and 00612) and shall be issued by a surety company licensed to conduct business in the state of Virginia and listed on the United States Treasury Department's latest Circular 570, and otherwise acceptable to Arlington Public Schools. The Performance Bond and the Payment Bond shall be in effect as of the date the successful Bidder signs the Contract, and if executed prior to the date the successful Bidder signs the Contract shall include written certification from the surety that the bond is effective as of the date of the Contract. If the successful Bidder is a partnership or joint venture all partners or venturers shall execute the Bond as principal in a personal and not representative capacity, in addition to execution of the Bond by the Contractor as principal. Cost of said Bonds shall be included in the Contract Price.
- B. Arlington Public Schools reserves the right to request documentation from the surety company as to its financial capabilities, past experience, and other evidence of security's reliability. In the event that the Contractor's surety company becomes insolvent, bankrupt or in any way is incapable of providing the services, the Contractor shall, within ten (10) days notice from Arlington Public Schools, furnish new payment and performance bonds to Arlington Public Schools from a surety licensed to conduct business in Virginia, listed on the United States Treasury Department's latest Circular 570, and otherwise approved by Arlington Public Schools Purchasing Agent. Any cost in securing new bonding will be the responsibility of the Contractor.

6. **BID PROCEDURES:**

- A. Bids, to be entitled to consideration, shall be made in accordance with the following instructions.
 - 1. Before submitting a Bid, Bidders are encouraged to visit the site of the Work, fully inform themselves as to all existing conditions and limitations, and shall include in the Bid a sum to cover the cost of all items included in the Contract. Bidders shall be fully responsible for having informed themselves as to all existing conditions for the Work. Any condition or circumstance arising after entering into the Contract which upon reasonable inspection reasonably should have been discovered prior to submitting the Bid shall not be the basis of any claim for adjustment of the Contract Sum or the Contract Time.
 - 2. If the Owner is aware of any particular invention, design, process product or device specified in the Contract Documents for use in performance of the Work which is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, it is set forth in the Contract Documents. If a Bidder discovers a requirement for any such

fee or royalty, the Bidder shall make this requirement known to the Owner in order that an appropriate Addendum may be issued to all Bidders.

3. The Contractor shall, with its own forces, perform work having a value at least equal to the following percentage of the Bid price: **10%**
4. Bids shall be made in duplicate, each containing original signatures, upon the Bid Form bound herein or a copy thereof. For purposes of this requirement a "copy" is an exact duplicate of the Bid Form included in these Bid Documents as Part 00 41 00 reproduced in any manner with no modifications, additions or deletions. Bids shall be completed, including each and every item; bid amounts shall be stated both in writing and in figures, and all entries either shall be typed or in ink or other permanent marker, not pencil. The signatures of all persons shall be in longhand, and shall indicate such person's authority to bind any corporation or other entity that is a Bidder. **Should there be a discrepancy between the amount stated in writing and in figures; the amount stated in writing shall take precedence.**
5. Bids shall not contain any recapitulation of the work to be done, and alternate bids will not be considered unless called for in the Bid Form. No oral, telegraphic or telephonic Bids, or modifications, either to the Bid Form or the Bid envelope, shall be considered.
6. **Bids shall be received by Arlington Public Schools, Purchasing Office, 4th Floor, 1426 N. Quincy Street, Arlington, VA 22207, prior to the Bid Closing, enclosed in an opaque sealed envelope and bearing the title of the work, name of Bidder, the number of the Invitation for Bids, and all Virginia contractor's license numbers required by these Instructions.**

7. **WITHDRAWAL OF BIDS:**

A. Withdrawal of Bids Prior to Bid Opening:

Bids may be withdrawn by Bidders **prior to**, but not at or later than the time fixed for Bid Closing.

B. Withdrawal of Bid after Bid Closing:

A Bidder may withdraw its Bid from consideration if the price was substantially lower than the other Bids due solely to a mistake therein, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

If a Bid contains both clerical and judgment mistakes, a bidder may withdraw its Bid from consideration if the price Bid would have been substantially lower than the other Bids due solely to the clerical mistake, that was an unintentional error or an

unintentional omission of a quantity of work, labor or material made directly in the compilation of the Bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

A Bidder seeking to withdraw its Bid must give notice in writing of its claim of right to withdraw its Bid within two (2) business days after the conclusion of the Bid Opening procedure and submit its original work papers with such notice. Any claim of a Bidder for withdrawal of its Bid shall be governed by Section 2.2-4330 of Virginia Public Procurement Act.

8. **REJECTION OF BIDS:**

Arlington Public Schools reserves the right to cancel this Invitation to Bid and to reject any and all Bids, and to waive any informality in any Bid received.

9. **AWARD OF CONTRACT:**

- A. The Apparent Low Bid and the Apparent Low Bidder shall be the lowest responsive Bid from a responsible Bidder based upon the aggregate of the Total Base Bid and all Bid Alternates as set forth in the Bid Form. If the Apparent Low Bid is within available funds, the Contract, if awarded, will be awarded to the Apparent Low Bidder for the entirety of the Work identified in the Contract Documents for the Total Base Bid and all Bid Alternates, subject to such Modifications which may arise subsequent to Bid Opening.

If the Apparent Low Bid is not within available funds, the procedure set forth as the Negotiation Procedures in the Event the Apparent Low Bid Exceeds Available Funds in the Invitation to Bid shall be implemented and followed.

- B. Arlington Public Schools reserves the right to defer award or notice of intent to award of contract for a period of One Hundred Twenty (120) Days after Bid Opening.
- C. In the case of a tie Bid, preference shall be given to goods, services and construction provided by a Bidder domiciled in Arlington County, if such a choice is available. Like preference shall be given to Bidders domiciled in Virginia when tied with Bidders not domiciled in Virginia.
- D. Whenever the lowest responsible Bidder submitting a responsive Bid is a resident of or domiciled in any other state and such state under its laws allows a resident contractor of that state a preference of any kind, a like preference shall be allowed to the lowest responsible Bidder, submitting a responsive Bid, who is a resident of or domiciled in Virginia. If the lowest responsible Bidder submitting a responsive Bid is a resident of or domiciled in a state with an absolute preference, the Bid shall not be considered.
- E. Notwithstanding the provisions of subsections C and D, in the event that none of the foregoing provisions of this section resolve the tie, the tie shall be decided by lot.

- F. A “responsive Bidder” shall mean a Bidder who has submitted a Bid which conforms, in all material respects, to the requirements of the Bidding Documents.
- G. A “responsible Bidder” shall mean a Bidder who has the capability, in all respects, to perform fully the Contract requirements, and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified if applicable to this solicitation

10. **SUBSTITUTIONS:**

- A. The name of a certain brand, make, manufacturer, or definite specification is to denote the quality standard of article desired, but does not restrict Bidders to the specific brands, make, manufacturer, or specification named provided that the Bidder has obtained approval of the substitute as required below. It is to set forth and convey to prospective Bidders the general style, type, character and quality of article desired. Whenever in Contract Documents a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded as a standard. Any other brand, make of materials, device, or equipment which, in the opinion of the Owner, is recognized as the equal of that specified, and is considered equal in quality, workmanship, design and economy of operation, and is suitable for the purpose intended, will be accepted and may be used in the work if approved as a substitute, except as stated otherwise in Section 01 6000, Product Requirements.
- B. Substitute materials proposed as equals to materials specified must be submitted in writing to the Owner, in care of the Purchasing Agent with full substantiating data for evaluation no later than twenty (20) Days prior to Bid Closing in accordance with Section 01 6000, Product Requirements.

11. **FORM OF CONTRACT:**

- A. The Contract shall be written on the following form: Specification Section 00 5200, “Agreement Between Owner and Contractor”.

12. **EXAMINATION OF SITE:**

Bidders are highly encouraged to visit the Site, compare the Drawings and Specifications with any work in place, and inform themselves of all conditions, including other work, if any, being performed. Failure to visit the Site in no way relieves the successful Bidder from the necessity of furnishing any materials or performing any Work that may be required to complete the Work in accordance with the Drawings and Specifications without additional cost to the Owner.

Site visits of the existing building are to be done with the coordination of Arlington Public Schools Project Manager, Aji Robinson via email (Ajibola.robinson@apsva.us). A walk-through for potential Bidders to explore the proposed building Site and existing conditions associated with the Abingdon Elementary School is scheduled for April 6, 2016 immediately following the pre-Bid conference.

END OF SECTION

SECTION 00 41 00

BID FORM

THE ABINGDON ELEMENTARY SCHOOL ADDITIONS AND RENOVATIONS CONSTRUCTION PROJECT AT THE EXISTING ABINGDON ELEMENTARY SCHOOL SITE, LOCATED AT 3035 S. ABINGDON STREET, ARLINGTON, VIRGINIA 22206.

BID #: 61FY16

BID ISSUE DATE: MARCH 24, 2016

BID CLOSING DATE AND TIME: APRIL 25, 2016, AT 2:00 P. M. (Local Prevailing Time)

NAME OF BIDDER: _____

SUBMIT BID: BY MAIL, HAND DELIVERY OR EXPRESS CARRIER TO:

Arlington Public Schools
Education Center
Purchasing Office, 4th Floor
1426 N. Quincy Street,
Arlington, VA 22207

Gentleman:

1. The undersigned Bidder declares that it has informed itself fully of all conditions pertaining to the Work and to the location where the Work is to be performed; that it has examined the Bid Documents and Contract Documents, including the Agreement between Owner and Contractor, Conditions of the Contract (General and other conditions), Instructions to Bidders, the Drawings, the Specifications, all Addenda, and all conditions relative to the Work to be performed.
2. The Bidder proposes and agrees, if this Bid is accepted within the number of days provided for in the Instruction to Bidders, to enter into a Contract with the Owner in the form of contract specified, for the Contract Sum, and within the Contract Period indicated in the Bid Documents to furnish all necessary material, equipment, machinery, apparatus, transportation and labor as required to complete the project indicated on this Bid Form.
3. The Bidder certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated this Bid for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with Arlington Public Schools.
4. Arlington Public Schools requires that a minimum of thirty (30) days after receipt of an approved Application for Payment (invoice) be allowed for payment.
5. The Bidder certifies that it will comply with all provisions of the Virginia Public Procurement Act and with the regulations of Arlington Public Schools.

6. By submitting a Bid, the Bidder represents that the Bidder understands the Insurance Requirements of the Contract Documents and will comply in full if awarded the contract.
7. In submitting this Bid, Bidder represents, as more fully set forth elsewhere in the Bid and Contract Documents:
 - a. Owner has recommended the Bidder examine the site and locality where the Work is to be, the legal requirements (federal, state, and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress of performance of the Work and has made such independent investigations as Bidder deems necessary.
 - b. Bidder acknowledges that Owner and Owner's Representative (Architect) do not assume responsibility for the accuracy of dimensions or completeness of information and data shown or indicated in the Bid Documents with respect to existing facilities.
 - c. Bidder acknowledges that it is obligated to provide to Owner's Representative (Architect) written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered or in the exercise of due diligence and reasonable care as a reasonably competent contractor for the Work to which this Bid is applicable should have discovered in the Bid and Contract Documents and the written resolution thereof by the Owner's Representative (Architect) is acceptable to Bidder, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
 - d. By bidding in response to this Invitation to Bid represents that in the preparation and submission of this Bid, said Bidder did not, either directly or indirectly, enter into any combination or arrangement with any person, firm, or corporation or enter into any agreement, participate in any, collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
 - e. Bidder hereby certifies that, if awarded the Contract for construction of the Project, it will take all possible actions to minimize costs to Owner that are related to any disruptions in any part of the Work resulting from unforeseeable conditions which may be encountered and Work changes or additions which may be made.
 - f. Bidder understands that the award of the Contract, if any, will be made on the Total Base Bid plus Bid Alternates selected by the Owner, unless specifically stated otherwise in the Instructions to Bidders or in this pre-printed Bid Form. Bidder understands that upon award of Contract, all items specified in the Bid Documents shall be furnished unless an "Or-Equal" or "Substitute Item" is accepted by Owner in accordance with Section 01 6000, Product Requirements and Section 01 2500, Substitution Procedures, respectively.
 - g. The Bidder agrees to bear full cost of maintaining the Work until final acceptance of the Work is approved as provided by the Contract.
 - h. This Bid will remain subject to acceptance for one hundred and twenty (120) days after the day of the Bid Opening.
 - i. Owner may cancel this Invitation to Bid, and may reject any and all Bids received.

8. Bidder agrees to the required times for Substantial Completion, Final Completion, and to resulting Liquidated Damages as follows:
- The Work will commence in accordance with the Contract Documents and will have Substantial Completion and Final Completion dates as provided in the Contract Documents. These completion dates are subject to adjustments of the Contract Period as provided in the Contract Documents.
 - The Contractor agrees to Liquidated Damages for delay in achieving Substantial Completion or Final Completion, or both, as set forth in the Contract Documents.
9. The following documents are attached to and made part of this Bid:
- Required Bid Security in the form of either a certified check, cashier's check, cash escrow or Bid Bond in the amount of five percent (5 %) of the Bid amount.
 - List of Subcontractors for major divisions and/or features of work; see Item 16 of this Section.
10. By submitting this Bid, Bidder certifies that the firm submitting this Bid and registered under that name has the appropriate license and/or certification, as determined by the Commonwealth of Virginia, Department of Professional and Occupational Regulation, Virginia Board for Contractors to perform the scope of work included in this Bid. Include license number below. **Note: See Instructions to Bidders for the requirement to include the contractor's license or certificate number on the face of the Bid envelope in addition to completing the information below.**

Registered as a Contractor under Title 54.1, Chapter 11 of the Code of Virginia:

Licensed Class _____ Virginia Contractor No. _____ Valid until _____
_____ (Date).

Classifications _____

11. Bidder has examined copies of all the Contract Documents and of the following Addenda, and receipt of all is hereby acknowledged:

Addendum No. ____ Dated: _____ Addendum No. ____ Dated: _____

Addendum No. ____ Dated: _____ Addendum No. ____ Dated: _____

Addendum No. ____ Dated: _____ Addendum No. ____ Dated: _____

12. **ANY NOTATION ON THE EXTERIOR OF THE ENVELOPE PURPORTING TO ALTER, AMEND, MODIFY OR REVISE THE BID CONTAINED WITHIN THE ENVELOPE SHALL BE OF NO EFFECT AND SHALL BE DISREGARDED.**

13. **BID SCHEDULE**

My Bid to provide all labor, materials and equipment necessary to complete the Work described in the Invitation to Bid is provided in the Bid Schedule.

BID ITEM 1. TOTAL BASE BID:

_____ In Writing \$ _____
In Figures

BID ITEM 2. PRICING BREAKDOWN FOR TOTAL BASE BID ABOVE:

Provide Lump Sum prices per Division as listed in the Specifications Table of Contents. (This information is mandatory. Provided, however, Bidder may elect not to include the information in its Bid as submitted for Bid Closing. If not included in the Bid submitted for Bid Closing, this information and this form must be received by Owner no later than 4:00 PM the next business day following the Bid Opening):

A.	Division 1:	_____ Dollars (\$_____)
B.	Division 2:	_____ Dollars (\$_____)
C.	Division 3:	_____ Dollars (\$_____)
D.	Division 4:	_____ Dollars (\$_____)
E.	Division 5:	_____ Dollars (\$_____)
F.	Division 6:	_____ Dollars (\$_____)
G.	Division 7:	_____ Dollars (\$_____)
H.	Division 8:	_____ Dollars (\$_____)
I.	Division 9:	_____ Dollars (\$_____)
J.	Division 10:	_____ Dollars (\$_____)
K.	Division 11:	_____ Dollars (\$_____)
L.	Division 12:	_____ Dollars (\$_____)
M.	Division 13:	_____ Dollars (\$_____)
M.	Division 14:	_____ Dollars (\$_____)
N.	Division 21:	_____ Dollars (\$_____)
O.	Division 22:	_____ Dollars (\$_____)
P.	Division 23:	_____ Dollars (\$_____)
Q.	Division 25:	_____ Dollars (\$_____)
R.	Division 26:	_____ Dollars (\$_____)
S.	Division 27:	_____ Dollars (\$_____)

T.	Division 28:	_____	Dollars (\$_____)
U.	Division 31:	_____	Dollars (\$_____)
V.	Division 32:	_____	Dollars (\$_____)
W.	Division 33:	_____	Dollars (\$_____)
X.	Allowance #1: Unsuitable Soils Allowance:	<u>one hundred thousand</u>	Dollars (\$ <u>100,000.00</u>)
Y.	Allowance #2: Hazmat Allowance:	<u>fifty thousand</u>	Dollars (\$ <u>50,000</u>)
Z.	Allowance #3: Owner's Allowance:	<u>twenty-five thousand</u>	Dollars (\$ <u>25,000</u>)

BID ITEM 3. BID ALTERNATES:

Submit a Bid on each of the Bid Alternates as identified in the Bid Documents and listed below. Do not enter "No Bid" for any Bid Alternate. If the Bid Alternate does not affect your Total Base Bid, enter "\$0.00 (zero dollars)." FAILURE TO COMPLETE ALL BID ALTERNATES AS INSTRUCTED SHALL MAKE THE BID NONRESPONSIVE AND IT WILL NOT BE CONSIDERED FURTHER.

All Bid Alternates are listed as potential Additions to the Total Base Bid. The Bid Alternates priorities for inclusion in any Contract which is awarded are established by the Preference Listing appearing below. If the lowest responsive Total Base Bid and all Bid Alternates from a responsible and Qualified Bidder is within available funds, the Contract, if awarded, will be awarded for the entirety of the Work identified in the Contract Documents for the Total Base Bid plus all Bid Alternates, subject to such Modifications which may arise subsequent to Bid Opening. If no Bid is received in which the Total Base Bid plus all Bid Alternates is within available funds, **the first basis for award is the responsible Bidder submitting a responsive Bid with the most Bid Alternates (in order of Preference Listing) which, when added to the Total Base Bid, does not exceed the funds available. The second basis for award is the responsible Bidder submitting the lowest responsive Bid in which the Total Base Bid does not exceed the funding available.** The funds available for this Project will be announced immediately after expiration of the deadline for submission of Bids and prior to Bid Opening.

If Arlington Public Schools is unable to achieve a Contract Sum within available funds for the Total Base Bid, Arlington Public Schools may negotiate with the apparent low Bidder and the apparent second low Bidder to achieve a Contract Sum within available funds in the manner provided in the Invitation to Bid.

Refer to Section 01 23 00 for additional details and descriptions of all Bid Alternates.

Preference Listing.

Preference 1: Lowest Aggregate Amount of the Base Bid plus all Bid Alternates.

Preference 2: Lowest Aggregate Amount of the Base Bid, Bid Alternate No. 1, Bid Alternate No. 2, Bid Alternate No. 3, Bid Alternate No. 4, and Bid Alternate No. 5.

Preference 3: Lowest Aggregate Amount of the Base Bid, Bid Alternate No. 1, Bid Alternate No. 2, Bid Alternate No. 3, and Bid Alternate No. 4.

Preference 4: Lowest Aggregate Amount of the Base Bid, Bid Alternate No. 1, Bid Alternate No. 2, and Bid Alternate No. 3.

Preference 5: Lowest Aggregate Amount of the Base Bid, Bid Alternate No. 1, and Bid Alternate No. 2.

Preference 6: Lowest Aggregate Amount of the Base Bid and Bid Alternate No. 1.

Preference 7: Lowest Total Amount of the Base Bid.

Bid Alternates.

BID ALTERNATE NO. 1 – FLOORING – LIBRARY 186 **ADD**
_____ Dollars (\$)_____ .00)

BID ALTERNATE NO. 2 – FOLDING ACOUSTICAL PANEL PARTITION **ADD**
_____ Dollars (\$)_____ .00)

**BID ALTERNATE NO. 3 - LED FIXTURES IN GYMNASIUM 124, CAFETERIA 182,
AND LIBRARY 186** **ADD**
_____ Dollars (\$)_____ .00)

BID ALTERNATE NO. 4 – SINKS ADDED TO CLASSROOMS **ADD**
_____ Dollars (\$)_____ .00)

BID ALTERNATE NO. 5 – LED FIXTURES IN CLASSROOM ADDITION **ADD**
_____ Dollars (\$)_____ .00)

BID ALTERNATE NO. 6 – WINDOW REPLACEMENT **ADD**
_____ Dollars (\$)_____ .00)

BID ITEM 4. UNIT PRICES:

- A. A Unit Price is an amount proposed by the Bidder and submitted with the Bid Form as a price per unit of measurement for materials or services that will be added to or deducted from the Contract Sum by Change Order in the event the Scope of Work required by the Contract Documents is increased or decreased.
- B. Unit Prices include all necessary labor, material, overhead, profit and applicable taxes.

- C. Refer to individual Specification Sections for construction activities requiring the establishment of Unit Prices. Methods of measurement and payment for Unit Prices are specified in those Sections.
- D. **UNIT PRICE SCHEDULE:** Submit a Bid on each of the items identified on the Unit Price Schedule below. A Bid is required for both an addition and deletion to the Contract. Unit abbreviations are: cubic yard (CY), each (EA), linear foot (LF), and square foot (SF).

UNIT PRICE SCHEDULE			
Item	Unit	Addition	Deletion
Fire pump - horizontally mounted, 40 HP, electric fire pump and service-entrance rated control panel within the fire pump room. Provide a dedicated utility company electrical service for the fire pump. Provide a jockey pump and all required controls / accessories.	EA	\$	N/A
Acoustical Ceiling Panel: ACT-1 no grid	SF	\$	\$
Acoustical Ceiling Panel: ACT-2 no grid	SF	\$	\$
Acoustical Ceiling Panel: ACT-3 no grid	SF	\$	\$
Acoustical Ceiling Grid	SF	\$	\$
Gypsum Drywall finished and painted	SF	\$	\$
Light Fixture: Type F1.2 installed complete	EA	\$	\$
Light Fixture: Type F4.2 installed complete	EA	\$	\$
Light Fixture: Type F6.2 installed complete	EA	\$	\$
Light Fixture: Type F8.4 installed complete	EA	\$	\$
Light Fixture: Type P1.2 installed complete	EA	\$	\$
Light Fixture: Type P2.2 installed complete	EA	\$	\$
Light Fixture: Type W4 installed complete	EA	\$	\$
Light Fixture: Type X1 installed complete	EA	\$	\$
Light Fixture: Type X2 installed complete	EA	\$	\$
Fire Alarm: Strobe Installed Complete	EA	\$	\$
Fire Alarm: Horn/Strobe Installed Complete	EA	\$	\$
Fire Alarm: Wiring Installed Complete	LF	\$	\$
Metal Ductwork: fabricated/installed complete	EA	\$	\$

UNIT PRICE SCHEDULE			
Item	Unit	Addition	Deletion
Flexible Ductwork: installed complete	LF	\$	\$
Electrical Outlet: duplex in new drywall	EA	\$	\$
Electrical Outlet: duplex in new masonry	EA	\$	\$
Electrical Outlet: duplex in existing masonry	EA	\$	\$
Electrical Outlet: duplex surface mounted conduit	EA	\$	\$
Electrical Outlet: quad in existing drywall	EA	\$	\$
Electrical Outlet: quad in existing masonry	EA	\$	\$
Electrical Outlet: quad surface mounted conduit	EA	\$	\$
Low Voltage: data outlet in new drywall	EA	\$	\$
Low Voltage: data outlet in new masonry	EA	\$	\$
Low Voltage: data outlet in existing masonry	EA	\$	\$
Low Voltage: cabling installed complete	LF	\$	\$
Painting: Primer and 2 finish coats complete	SF	\$	\$
Painting: On Drywall	SF	\$	\$
Painting: On Metal	SF	\$	\$
Painting: On Concrete and CMU	SF	\$	\$
Sprinkler System: Sprinkler Head	EA	\$	\$
Bio retention Materials: Filter media installed	CY	\$	\$
Bio retention Materials: Mulch layer installed	CY	\$	\$
Bio retention Materials: Geotextile/Liner installed	SF	\$	\$
Bio retention Materials: Choking layer installed	CY	\$	\$
Bio retention Materials: Stone jacket or underdrain and/or storage layer installed	CY	\$	\$
Bio retention Materials: Underdrain installed	LF	\$	\$
Bio retention Materials: Cleanout installed	EA	\$	\$

UNIT PRICE SCHEDULE			
Item	Unit	Addition	Deletion
Bio retention Materials: Observation well installed	EA	\$	\$
Bio retention Materials: Plant material installed	EA	\$	\$
Bio retention Materials: Gravel Diaphragm	CY	\$	\$

BID ITEM 5. ALLOWANCES:

- A. Allowances have been established in lieu of additional requirements and to defer selection of actual materials and equipment to a later date when direction will be provided to Contractor.
- B. See Section 01 2100 Allowances for further details. The three (3) allowances noted below shall be included in the Bidder's Total Base Bid as noted above in Bid Item 2.
1. Allowance No. 1: Contingency Allowance: Include a contingency allowance of one hundred thousand dollars (\$100,000.00) for unsuitable soils.
 2. Allowance No. 2: Contingency Allowance: Include a contingency allowance of fifty thousand dollars (\$50,000.00) for unforeseen hazardous materials abatement. This shall be in addition to the hazardous materials abatement identified in the Contract Documents.
 3. Allowance No. 3: Contingency Allowance: Include a contingency allowance of twenty-five thousand dollars (\$25,000) for use at the Owner's discretion.

14. **CONTACT FOR ADMINISTRATION:**

NAME:

ADDRESS: (Office) _____

TELEPHONE NUMBER: (Office) _____

FAX NUMBER: _____

FULL LEGAL NAME OF BIDDER _____

Remittance Address (If different):

ADDRESS: _____

PHONE: (____) _____

FAX: (____) _____

DATE: _____

TAX ID NUMBER (EIN/SSN): _____

EMAIL ADDRESS: _____

15. **STATE CORPORATION COMMISSION (SCC) IDENTIFICATION NUMBER:**

Bidder confirms that at the time of Bid Closing, the Bidder has met the requirements of the Virginia Public Procurement Act Section 2.2-4311.2.

Please complete the following by checking the appropriate line that applies and providing the requested information

1. (_____) Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC. The bidder's identification number issued by the SCC is _____.
(The SCC number is NOT your federal Tax Identification number).

2. (_____) Bidder is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such bidder's identification number issued to it by the SCC is _____

3. (_____) Bidder does not have an identification issued to it by the SCC and such bidder is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets if you need to explain in further detail why such bidder is not required to be authorized to transact business in Virginia.

***NOTE: IF BIDDER IS REQUIRED TO HAVE AN SCC#, THE SCC# SHALL BE ACTIVE AT THE DATE/TIME THAT THE BID IS OPENED. FAILURE OF BIDDER TO HAVE AN ACTIVE SCC# AT THE DATE/TIME THE BID IS OPENED WILL RESULT IN A DETERMINATION THAT BIDDER IS NON-RESPONSIVE; AND THE BID SHALL BE REJECTED AND WILL NOT BE CONSIDERED FOR CONTRACT AWARD.**

16. LIST OF SUBCONTRACTORS:

The Bidder shall submit the names of Subcontractors to be used in performing the below described divisions and/or features of Work contained in the Contract Documents. The Bidder shall have a maximum of twenty-one (21) days after Notice To Proceed to submit the **final** list of Subcontractors to APS for vetting and approval.

The Bidder certifies that all Subcontractors listed are eligible to perform the Work. Bidder's failure to submit the List of Subcontractors as directed herein shall result in Bidder's Bid being deemed as non-responsive

Subcontractor's Work

Subcontractor's Name

Concrete

Unit Masonry:

Structural Steel:

Architectural Case Work:

Roofing Systems:

Interior Doors, Frames and Hardware:

Aluminum-Framed Entrances and Storefronts:

Glazed Aluminum Curtain Walls:

Gypsum Board Assemblies and Acoustical Ceiling System: _____

Linoleum, VCT and Carpet Floor Finishes

Ceramic and Porcelain Tiling Finishes

Foodservice Equipment:

Hydraulic Elevator:

Fire Suppression:

Plumbing:	<hr/>
HVAC:	<hr/>
Ductwork & Air Distribution:	<hr/>
Electrical:	<hr/>
Communications:	<hr/>
Fire Alarm and Security:	<hr/>
Earthwork:	<hr/>
Site Improvements:	<hr/>
Utilities	<hr/>

17. **DEBARMENT STATUS:**

Bidder shall indicate, in the space provided below, whether or not it, or any of its principals, is/are currently debarred from submitting bids to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision, or federal government contracting agency or department, and whether or not it is an agent of any person or entity that is currently debarred from submitting bids to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision, or federal government contracting agency or department. An affirmative response may be considered grounds for rejection of the Bid. This statement shall also apply to any Subcontractor(s) Bidder intends to use in the performance of a resulting contract.

Please mark one:

() No, Bidder, or any Subcontractors it intends to use in the performance of a resulting contract, are not currently debarred from submitting bids to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision or any federal government contracting agency or department.

() Yes, Bidder, and/or _____ (name of Subcontractor(s) is/are currently debarred from submitting bids to Arlington Public Schools, the Commonwealth of Virginia, or any other state or political subdivision or federal government contracting agency or department.

My signature certifies that the Bidder has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to Arlington Public Schools, and that there are no principals, officers, agents, employees, or representatives of Bidder that have any business or personal relationships with any other companies or person that could be considered as a conflict of interest or a potential conflict of interest to Arlington Public Schools, pertaining to any and all work or services to be performed as a result of this Bid and any resulting Contract with Arlington Public Schools.

By: _____

Name: _____

Title: _____

Date: _____

END OF SECTION

**ARLINGTON PUBLIC SCHOOLS
STANDARD BID BOND**

BOND #: _____
AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That

(insert full name or legal title of Contractor and address)

as Principal, and

(insert full legal title of the Surety)

a corporation duly organized under the laws of the State of _____ and qualified to do
business in Virginia, having its principal place of business at

_____, as Surety, are
held and firmly bound unto the Arlington Public Schools as Obligee, in the amount of
_____ Dollars(\$_____), for the payment whereof
Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS,

Principal has submitted a Bid to Obligee dated _____, 20____, in
response to an Invitation to Bid issued by Principal titled for a project identified as **Abingdon Elementary
School Additions and Renovations Construction Project at the Existing Abingdon Elementary School
Site, located at 3035 S. Abingdon Street, Arlington, Virginia 22206**, Bid #61FY16.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such, unless permitted to be
withdrawn as provided by the Instructions to Bidders,

A. If the Bid shall remain open for a period of not less than one hundred twenty (120) days
following opening of the Bids and be rejected, or in the alternate

B. If the Bid shall remain open for a period of not less than one hundred twenty (120) days
following opening of the Bids and be accepted and the Principal shall execute and deliver a Contract in the
form of Contract identified in the Invitation to Bid and Instructions to Bidders, properly completed in
accordance with the Bid, and shall in compliance with the requirements of the Contract Documents furnish
a Performance Bond, Payment Bond, and all required insurance for its faithful performance of the Contract,
and for the payment of all persons performing labor or furnishing materials in connection therewith, and

shall in all other respects perform the agreement created by the acceptance by Principal of the Bid as set forth in the Bid Form,

THEN this Obligation shall be void; otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the amount of this Obligation as herein stated. Provided, however, that in addition to the amount of this Obligation as herein stated, the Surety shall be liable for all costs and attorneys' fees incurred by the Oblige in enforcing the obligations hereunder.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and its Bond shall in no way be impaired or affected by any extension of the Bid opening date or time or by any extension of the time within which the Owner may accept such Bid, and the Surety does hereby waive Notice of any such extensions and consents thereto.

The Surety hereby certifies that this Bid security shall be effective at the time of the subject Bid opening.

Signed and sealed this _____ day of _____, 20_____.

Principal

Witness

By: _____

Title _____

Surety

(SEAL)

Resident Virginia Agent

By: _____

Title _____

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, To-wit:

I, the undersigned notary public, do certify that _____
personally appeared before me in the jurisdiction aforesaid and made oath that he is attorney-in-fact of the
_____ (Name of Surety), that he is duly authorized thereby to execute
in its behalf a certain Bid bond in the sum of _____
_____ Dollars (\$_____), dated the _____ day of
_____, 20____, wherein Arlington Public Schools is the Oblige, _____
_____ is the Principal and _____ is Surety, by
virtue of a certain power of attorney made by said Surety, dated _____ and recorded in the Clerk's
Office of the Circuit Court of _____, Virginia, in Deed Book _____,
Page _____; or Instrument # _____; that the said power of attorney has not been revoked; that the

said Surety is legally qualified to do business in Virginia; and, that the said
_____ thereupon, in the name and on behalf of the said Surety,
acknowledged the aforesaid bond as its act and deed.

Given under my hand this _____ day of _____, 20_____

.

Notary Public

My Commission expires: _____

END OF SECTION

SECTION 00 5200 AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made and entered into this ____ day of _____, 2016;
between Arlington Public Schools, Virginia (the "Owner") and
_____ (the "Contractor"), whose address
is _____

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

1. The Project

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

**THE ABINGDON ELEMENTARY SCHOOL ADDITIONS AND RENOVATIONS
CONSTRUCTION PROJECT AT THE EXISTING ABINGDON ELEMENTARY SCHOOL SITE,
LOCATED AT 3035 S. ABINGDON ROAD, ARLINGTON, VIRGINIA 22206.**

2. The Contract Documents

The following, except for such portions thereof as may be specifically excluded, constitute the Contract Documents except for titles, subtitles, headings, running headlines, and tables of contents (all of which are used merely for convenience):

1. Agreement Between Owner and Contractor
2. General Conditions
3. Specifications
4. Drawings. Within the Drawings, stated dimensions shall take precedence over scaled dimensions
5. Bid Documents and Addenda
6. Notice to Proceed
7. Modifications issued after execution of this Agreement

In the event of a conflict between any Contract Documents, the order of precedence shall be in the order the Contract Documents are listed above, with the exception that any Addendum or Modification shall have precedence over the preceding version of the Contract Document modified thereby. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence in a manner consistent with the intent of the Contract Documents as a whole.

All provisions required by Law to be included in this Contract or otherwise applicable to this

Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

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

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

3. Definitions

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

4. Design And Management Team:

The Project has been designed by Hord Coplan Macht, 2000 Duke Street, Alexandria, VA ("Architect"). The on-site Construction Manager will be HEERY International ("Construction Manager"). The Architect and the Construction Manager have been designated to act as the Owner's Representative. Unless otherwise expressly stated or directed by Owner, reference in any Contract Document to Owner's Representative shall mean either the Architect or the Construction Manager.

5. Contract Period

The Work will be completed in accordance with the Contract Documents and will have the following start, Substantial Completion, and Final Completion dates:

05/06/16 – Anticipated Notice to Proceed (NTP) for the Project as a whole

Phase 1:

Pre-mobilization by the Contractor, work to be completed by APS.

Phase 2A:

Work to commence on July 1, 2016. Substantially Complete by August 22, 2016 and Final Completion by September 23, 2016.

Phase 2B:

Work to commence on July 1, 2016. Substantially Complete by December 22, 2016 and Final Completion by January 23, 2017.

Phase 2C:

Work to commence on July 1, 2016. Substantially Complete by April 28, 2017 and Final Completion by May 29, 2017.

Phase 2D:

Work to commence on July 1, 2016. Substantially Complete by August 3, 2017 and Final Completion by September 4, 2017.

Phase 3:

Work to commence on January 3, 2017. Substantially Complete by August 3, 2017 and Final Completion by September 4, 2017.

Phase 4:

Work to commence on May 2, 2017. Substantially Complete by August 25, 2017 and Final Completion by September 26, 2017.

Phase 5:

Work to commence on July 3, 2017. Substantially Complete by November 17, 2017 and Final Completion by December 18, 2017.

Phase 6:

Work to commence on or before, July 3, 2017. Substantially Complete by November 17, 2017 and Final Completion by December 18, 2017.

See Summary, Section 01 10 00 for additional specific details on phasing scope of work.

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

6. **Liquidated Damages**

The Owner and the Contractor recognize that time is of the essence in this Agreement and that Owner will suffer damages if Substantial Completion, and thereafter Final Completion, of the Work, or of any individual Phase of the Work for which a Substantial Completion, and if applicable, Final Completion, date with associated Liquidated Damages is established by the Contract Documents, is not complete within the time specified in Paragraph 5 above, plus any extensions thereof allowed in accordance with Part 10 of the General Conditions. The Owner and the Contractor agree that the actual damages to be incurred by the Owner in the event of late completion are not readily ascertainable or capable of estimation at the time of contracting. It is understood and agreed that the Liquidated Damages amount shall not be affected by the Owner's use or occupancy of, or by the achievement of Substantial Completion or Final Completion of, less than the entirety of the Work to which the Liquidated Damages amount may be applicable. The Contractor hereby waives without condition or limitation any objection that the amount of Liquidated Damages set forth below is void as a penalty or is not reasonably related to actual damages. Without limitation of the foregoing, Contractor also agrees that any deduction of Liquidated Damages from amounts otherwise payable to Contractor shall not constitute improper or wrongful nonpayment of Contractor and Contractor without limitation or condition conclusively waives any claim or cause of action premised in whole or in part on any such deduction of Liquidated Damages. In the event more than one ground for assessment of Liquidated Damages as set forth herein exists concurrently, such grounds shall be deemed to

be, and hereby are agreed to be, independent and all applicable Liquidated Damages shall be assessed and deducted cumulatively. In the event that, subsequent to any deduction of Liquidated Damages as authorized herein, a time extension is granted or any determination is made which affects in whole or in part the amount of Liquidated Damages deducted, Contractor acknowledges and agrees that its sole remedy shall be payment by the Owner of the principal amount of Liquidated Damages so determined to be payable to the Contractor plus interest as provided in the Contract Documents. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as Liquidated Damages for delay in achieving timely completion as required by the Contract (but not as a penalty), the Contractor shall:

- a. **Phase 1: Liquidated Damages are not applicable.**
- b. Pay Owner **Four Thousand Dollars (\$3,500.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2A Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 2A; and Pay Owner **Two Thousand Dollars (\$1,750.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2A Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 2A.
- c. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2B Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 2B; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2B Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 2B.
- d. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2C Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 2C; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2C Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 2C.
- e. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2D Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 2D; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 2D Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 2D.
- f. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 3 Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 3; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 3 Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 3.
- g. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 4 Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 4; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 4 Final Completion Date**, plus any approved time extensions, until

Final Completion is achieved for Phase 4.

h. Pay Owner **Two Thousand Dollars (\$2,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 5 Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 5; and Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 5 Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 5.

i. Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 6 Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved for Phase 2; and Pay Owner **Five Hundred Dollars (\$500.00)** for each day that expires after the time specified in Paragraph 5 for the **Phase 6 Final Completion Date**, plus any approved time extensions, until Final Completion is achieved for Phase 6.

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

7. Contract Sum

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

In Writing: _____ Dollars

In Figures: \$_____.00

Unit prices are as listed in Bid Form 00 4100 "UNIT PRICE SCHEDULE" and are incorporated in this Agreement.

8. Payment Procedures

a. Contractor shall submit Application for Payment in accordance with the General Conditions and Applications for Payment will be processed by the Owner's Representative and Owner as provided in the General Conditions.

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

9. Interest

All funds not paid when due as provided by Parts 8, 10 and 11 of the General Conditions shall bear interest at the rate of 0.5 percent per month.

10. No Assignments

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

11. Governing Law

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

12. Binding Agreement

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

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

<p>CONTRACTOR</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Dated</p>
<p>ARLINGTON PUBLIC SCHOOLS</p> <p>By: _____</p> <p style="text-align: center;">David J. Webb, C.P.M.</p> <p>Title: Director of Purchasing</p> <p>_____</p> <p style="text-align: center;">Dated</p>

END OF SECTION

**ARLINGTON PUBLIC SCHOOLS
STANDARD PERFORMANCE BOND**

BOND #: _____

AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That _____

(insert full name or legal title of Contractor and address)

as Principal, and _____,

(insert full legal title of the Surety)

a corporation duly organized under the laws of the State of _____ and qualified to do business in Virginia, having its principal place of business at _____

as Surety, are held and firmly bound unto the Arlington Public Schools and _____

(name of the Agency or Institution of the Commonwealth)

as Obligee, in the amount of _____ Dollars(\$ _____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____, 20_____, entered into a contract with Obligee for the **Abingdon Elementary School Additions and Renovations Construction Project at the Existing Abingdon Elementary School Site, located at 3035 S. Abingdon Street, Arlington, Virginia 22206**, which contract (the "Contract") is by reference expressly made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligee, or either of them of any extension of time for the performance of the Contract, or any other forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, to all of which this Obligation shall be fully applicable, notice to the Surety of any such alterations, extension, or forbearance being hereby waived.

No action shall be brought on this bond unless brought within one (1) year after: (a) completion of the Contract, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty or guarantee if the action be for such.

The Surety hereby certifies that this Performance Bond shall be effective as of the date the Contractor signs the Contract.

The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the

Commonwealth of Virginia.

Signed and sealed this _____ day of _____, 20_____.

Principal

Witness

By: _____

Title

(SEAL)

Surety

Resident Virginia Agent

By: _____

Title

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, To-wit:

I, the undersigned notary public, do certify that _____ personally appeared before me in the jurisdiction aforesaid and made oath that he is attorney-in-fact of the _____ (Name of Surety), that he is duly authorized thereby to execute in its behalf a certain (payment) (performance) bond in the sum of _____ Dollars (\$_____), dated the _____ day of _____, 20____, wherein Arlington Public Schools and

_____ are Obligees, _____ is the Principal and _____ is Surety, by virtue of a certain power of attorney made by said Surety, dated _____ and recorded in the Clerk's Office of the Circuit Court of _____, Virginia, in Deed Book _____, Page _____; or Instrument # _____; that the said power of attorney has not been revoked; that the said Surety is legally qualified to do business in Virginia; and, that the said _____ thereupon, in the name and on behalf of the said Surety, acknowledged the aforesaid bond as its act and deed.

Given under my hand this _____ day of _____, 20_____.

Notary Public

My Commission expires: _____

Contractor: _____

Name of Surety: _____

Address: _____

Suite: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

Agent Information:

Contact Person: _____

Firm Name: _____

Address: _____

Suite: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

END OF SECTION

**ARLINGTON PUBLIC SCHOOLS
STANDARD LABOR AND MATERIAL PAYMENT BOND**

THIS BOND IS ISSUED SIMULTANEOUSLY WITH STANDARD PERFORMANCE
BOND IN FAVOR OF THE OBLIGEE CONDITIONED ON THE
FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

BOND #: _____
AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That

(insert full name or legal title of Contractor and address)

as Principal, and _____

(insert full legal title of the Surety)

a corporation duly organized under the laws of the State of _____ and qualified to do business in
Virginia, having its principal place of business at

as Surety, are held and firmly bound unto the Arlington Public Schools and

(name of the Agency or Institution of the Commonwealth)

as Oblige, in the amount of _____ Dollars(\$_____), for the
payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____, 20____, entered into a
contract _____ with _____ Oblige _____ for
_____ the

**Abingdon Elementary School Additions and Renovations Construction Project at the Existing Abingdon
Elementary School Site, located at 3035 S. Abingdon Street, Arlington, Virginia, 22206**, which contract (the
"Contract") is by reference expressly made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall
promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the
prosecution of the work provided for in the Contract, then this obligation shall be void; otherwise it shall remain
in full force and effect, subject however, to the following conditions.

The Principal and Surety hereby jointly and severally agree as follows:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal but who has no contractual relationship, express or implied, with the Principal, for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, is one who has a direct contract with the Principal, express or implied. "Labor" and "material" shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract Documents in the prosecution of the work provided in the Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any damages, costs or expenses of any such suit.
3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph.
4. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.

Signed and sealed this _____ day of _____, 20_____.

Principal

Witness

By: _____
Title

Surety

(SEAL)

Resident Virginia Agent
By: _____
Title

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, To-wit:

I, the undersigned notary public, do certify that _____
personally appeared before me in the jurisdiction aforesaid and made oath that he is attorney-in-fact of the
_____ (Name of Surety), that he is duly authorized thereby to execute in its
behalf a certain (payment) (performance) bond in the sum of _____
_____ Dollars (\$_____), dated the _____ day of _____,
20____, wherein Arlington Public Schools and
_____ are Obligee,
_____ is the Principal and _____ is Surety, by virtue of
a certain power of attorney made by said Surety, dated _____ and recorded in the Clerk's Office of the
Circuit Court of _____, Virginia, in Deed Book _____, Page _____; or
Instrument # _____; that the said power of attorney has not been revoked; that the said Surety is legally
qualified to do business in Virginia; and, that the said _____ thereupon, in
the name and on behalf of the said Surety, acknowledged the aforesaid bond as its act and deed.

Given under my hand this _____ day of _____, 20_____.

Notary Public

My Commission expires: _____

END OF SECTION

SECTION 00 70 00
GENERAL CONDITIONS

PART 1 DEFINITIONS

- 1.1 **ACCEPTANCE OF BID:** Dollar amount of Bid is acceptable. Contractor should proceed with bond requirements.
- 1.2 **AMENDMENT:** Written authorization executed by the Purchasing Agent, acknowledging the Change Order(s) Modification, revised Contract Sum and current Contract Period.
- 1.3 **CHANGE ORDER:** A written order to the Contractor, 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 Contractor 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.
- 1.4 **CONTRACT:** The signed Agreement between Owner and Contractor is the Contract.
- 1.5 **CONTRACT DOCUMENTS:** The Contract Documents consist of the following documents:
- A. The signed Agreement between Owner and Contractor,
 - B. The General Conditions,
 - C. The Drawings and Specifications,
 - D. Bid Documents and Addenda,
 - E. The Notice of to Proceed issued by the Owner to the Contractor,
 - F. Modifications, issued after execution of the Contract, and
 - G. In case of a conflict between the Contract Documents, the order of precedence shall be as set forth in the Contract.
- 1.6 **CONTRACT PERIOD:** 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. Contract Period

may also be referred to as "Contract Time" in the Contract Documents. Both terms have the same meaning.

- 1.7 **CONTRACT SUM:** The total amount payable to the Contractor 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.
- 1.8 **CONTRACTOR:** The individual, firm or organization which contracts with the Owner to perform the Work. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.
- 1.9 **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.
- 1.10 **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.
- 1.11 **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 Normal Working Day thereafter.
- 1.12 **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.
- 1.13 **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.
- 1.14 **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.
- 1.15 **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.
- 1.16 **NORMAL WORKING DAY:** See "Working Day."

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

A. Delivered by mail, courier, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.

B. Delivered by mail, express mail or hand delivered to the office of the 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.

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.

1.18 **NOTICE TO PROCEED:** A written Notice from the Owner to the Contractor, 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 Project Schedules shall be based upon that date.

1.19 **OWNER:** Arlington Public Schools (APS) and employees authorized to represent APS.

1.20 **OWNER'S CONSTRUCTION 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 on-site construction managers as Owner's Representative (Construction Manager) to act on the Owner's behalf.

1.21 **OWNER'S REPRESENTATIVES:** Owner's Representatives include the project Architect and on-site Construction Manager who have been designated 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 Construction Manager. Contractor will be given written direction regarding the individuals employed by either the Architect or the Construction 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 of thereof as identified to the Contractor by writing issued by and signed by the Arlington Public Schools Purchasing Agent.

1.22 **PROJECT:** The construction services as performed by the Contractor, 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.

- 1.23 **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 Specifications Section 01 3200. The term "Project Schedule" does not include any Recovery Schedule which may be directed by Owner unless incorporated into the Project Schedule pursuant to the Project Schedule Revisions procedures set forth in Specifications Section 01 3200.
- 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 **PROPOSED MODIFICATION:** A request by the Owner or the Owner's Representative for the Contractor's estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and processed as set forth in Specification Section 01 2600.
- 1.26 **SUBCONTRACTOR:** Any individual, firm or organization other than an employee of the Contractor, who contracts with the Contractor to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the Contractor in connection with the Work.
- 1.27 **SUB-SUBCONTRACTOR:** Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.
- 1.28 **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.
- 1.29 **SURETY:** Any person, firm or corporation that has executed as Surety the Contractor'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 Contractor 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.
- 1.30 **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.

- 1.31 **WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.
- 1.32 **WORK ORDER:** A written directive to the Contractor 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 Contractor shall promptly proceed with the change in the Work involved 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 or Contract Time. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.
- 1.33 **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 Agreement Between the Owner and the Contractor shall be signed by both the Owner and the Contractor.
- 2.2 **EXECUTION OF AGREEMENT:** Execution of the Contract by the Contractor is a certification that the Contractor has examined the Project 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, 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 Contractor in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor shall be responsible for segregating the Work among the various trades.
 - 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 Contractor shall provide all such items indicated on, or reasonably inferred from, the Drawings, furnishing for such purpose all labor, materials and equipment required in connection therewith. Omission of any article, operation, or detail does not relieve the Contractor of the responsibility for completion of the work reasonably intended by the Drawings and Specifications to be included in the Contract.

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

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

2.5 CONTRACT INTERPRETATIONS:

A. The Owner and/or the Contractor 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 Contractor to allow the Owner's Representative to issue the interpretation so as not to delay the Work. Contractor 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 the approved Project Schedule.

B. The Contractor shall pay to Owner any amounts paid by the Owner's Representative for the Owner's Representative to evaluate and respond to the Contractor's request for interpretation, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

2.6 COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:

A. The Contractor **will not** be provided with hard copies of the Drawings, Project Manual and other Documents prepared by the Owner's Representative. The Contractor 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 Contractor 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 Contractor shall not be entitled to a change in the Contract Sum. .

B. Original Drawings and Specifications are the property of the Owner, and the Contractor 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 (Architect) will make available to the Contractor, 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 1.1. shall prevail in cases of an inconsistency with subsequent versions made through manipulative electronic means involving computers.

D. The Contractor 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 Bids are received, except as set forth in Division 1, Section 01 6000.

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 Construction 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 Contractor or, at the Owner's option, elect to have the Owner's Representative issue instructions to the Contractor.
- 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 Contractor, 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 Contractor's Application for Payment, the Owner's Representative shall review and certify the amounts due the Contractor from the Owner.

- 3.5 **INTERPRETATION OF CONTRACT:** The Owner's Representative shall interpret the Contract requirements in accordance with 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, Contractor 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 Contractor'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 Contractor, 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 Contractor 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 Contractor. If the balance due to the Contractor is not sufficient to cover the deduction established by the Unilateral Change Order, then the Contractor 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 Contractor, and shall issue Certificates of Substantial Completion and Final Completion in accordance with the provisions of Paragraphs 11.6 and 11.7.

PART 4 OWNER

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

The Contractor shall confirm locations of existing utilities by performing test pits, or using other means and methods as outlined by the Commonwealth of Virginia Miss Utility laws, at the Contractor'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 Contractor's sole expense and

no increase to the Contract Sum. All discrepancies will be noted on the As-Builts and documented at the Contractor'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 Paragraph 3.6 or of any other provision of the Contract Documents, without waiver of the Contractor'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 Contractor 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 Contractor to stop the Work until such time as the cause of the order has been corrected. Should the Contractor 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 Contractor 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 CONTRACTOR

5.1 GENERAL REVIEW OF CONTRACT DOCUMENTS:

- A. The Contractor 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 Contractor 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 Contractor shall supervise and direct the Work and coordinate the Work with that of separate Contractors using Contractor'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 Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor 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 Contractor 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 Contractor in any case of action by the Owner against the Contractor.

D. The Contractor shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The Contractor 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 Contractor shall be responsible for all costs or delays resulting from the Contractor's or a Subcontractor's failure to obtain and review Contract Documents provided by the Owner.

5.2 CHARACTER AND COMPETENCY:

A. The Contractor 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 Contractor agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. The Contractor represents that it and its Subcontractors are capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide construction services of high quality. The Contractor agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.

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

C. The Contractor 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 Contractor 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 Contractor or of any of its Subcontractor.

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

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 Contractor agrees to:

1. Provide a drug-free workplace for the Contractor'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 Contractor'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 Contractor that the Contractor 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. Contractor Certification Regarding Criminal Convictions

1. As a condition of awarding a contract for the provision of Work that require the Contractor 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 Contractor 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 Contractor certification covers its employees, its Subcontractors and the employees thereof.

2. The Contractor certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's certification.
3. The Contractor shall submit to the Owner a completed Contractor Certification Regarding Criminal Convictions on the form provided by the Owner

CONTRACTOR CERTIFICATION
REGARDING CRIMINAL CONVICTIONS

This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

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

As the official authorized to enter into this Contract on behalf of my organization, I certify that:

1. No employee of the organization who will be in the presence of students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Va. Code Ann. Section 18.2-370.4, no employee 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 will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Va. Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

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

Name of Firm

Signature

Name and Title (please type or print)

Address of Firm

Telephone

Date

5.3 PERMITS, FEES AND NOTICES:

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

C. The Contractor shall comply with all conditions in the approved Use Permit for the Project and shall comply with all requirements for Permits and Occupancy. The Contractor shall meet all the requirements n of the Use Permit to achieve the Permits and various Certificates of Occupancy for the Project, Interim, Partial or Final. Should the Contractor 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 Contractor 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 Contractor.

5.5 RESPONSIBILITY FOR THOSE PERFORMING THE WORK: The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors or other persons performing any of the Work under a contract with the Contractor or a contract with a Subcontractor. The Contractor shall be responsible for maintaining the cleanliness on the Project Site at all times and shall exercise dust control when required.

5.6 DRAWINGS AND SPECIFICATIONS AT THE SITE: The Contractor shall maintain one full size copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications at the Project Site. The Contractor 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 Contractor 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 Contractor 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 General Requirements. to allow for review and approval by the Owner and not affect the procurement and installation of the submitted items. Contractor shall not be entitled to any Modification of the Contract Sum or of the Contract Period for any consequence of failure of the Contractor to comply strictly with any submittal requirement. .

B. The Contractor 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 Contractor represents that the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 General Requirements.

- 5.8 **INSPECTION OF WORK:** The Contractor 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 Contractor 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 Contractor 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 Contractor shall be responsible for scheduling, compliance and costs associated with all tests or inspections required by local authorities having jurisdiction over the Project. The Contractor 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. Contractor shall assist and coordinate with third party inspections as required. Contractor to 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 Contractor 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 Contractor 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 Contractor 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 (Construction Manager) will provide project specific hardhat stickers to all Contractor and Subcontractor employees assigned to work on the Project. Request for such stickers will not be valid unless accompanied with a completed "Contractor Certification Regarding Criminal Convictions" form.
 - C. Contractor workers shall not be present in any building and/or property owned or controlled by Owner without an Owner employee present nor without a Contractor issued APS hard hat sticker. In the event the Contractor desires to perform Work outside the Normal Working Hours in any building and/or property owned or controlled by Owner, Contractor shall notify the Owner in writing at least two working days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the Contractor to the Owner at a rate of \$40 per hour per person. The cost of custodial support for Sunday or holiday work shall be paid by the Contractor to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the

Contractor for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday work shall be paid by the Contractor at rate of \$150 per hour.

D. The Contractor shall maintain the building interior and exterior grounds of the Project Site in a clean and orderly state. The Contractor 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 Contractor 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 Contractor conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the requested cleaning within three (3) Working Days, the Owner reserves the right to use outside sources to conduct the cleaning or maintenance and to charge the Contractor for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.

F. The Contractor 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 Contractor 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 Contractor's intentional, negligent, or grossly negligent acts or omissions in performance or nonperformance of its Work called for by the Contract Documents or otherwise occurring 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 CONTRACTOR PROHIBITED: During the performance of this Contract the Contractor agrees as follows:

A. The Contractor 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 Contractor. The Contractor 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 Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor 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 Contractor 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.

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, within twenty one (21) Days after the Notice to Proceed, the Contractor must submit a written statement to the Owner's Representative and the Owner setting forth the name and address, and telephone number of all proposed Subcontractors and the portion of the Work and materials for which each such Subcontractor is responsible. Should any proposed Subcontractor for a division and/or feature of work outlined in 004100 Bid Form, Section 16, differ from the Subcontractor actually performing the Work, the Contractor must provide justification for the change to the proposed Subcontractor prior to any Work commencing by the Subcontractor. The Contractor also must furnish any other 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 Contractor will be notified in writing within 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 Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within 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 Contractor..

C. The Contractor 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 Contractor promptly shall file with the Owner a copy of any one or more of its subcontracts. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses 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 Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

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 Contractor, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement 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 Contractor 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 Part 13 of this section. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
- E. Make specific reference to the conditions of Paragraph 6.3 of this section 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 shall be submitted by the Contractor to the Owner's Representative within ten (10) days of the Subcontractor award.

6.4 PAYMENTS OF SUBCONTRACTORS:

- A. Within seven (7) days after receipt of payment from the Owner, the Contractor 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 Contractor 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 Contractor fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the Contractor, the Subcontractor shall have the right to be paid by the Contractor upon demand of the amounts due.
- C. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the Contractor'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 Contractor 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 Contractor shall include in each subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.

G. The Contractor's obligations with respect to payments to its Subcontractors as outlined in 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 Contractor'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 Contractor shall include in each subcontract, the same requirements as Parts 5.2 G herein and require the completion of the Contractor Certification Regarding Criminal Activity and Employee Certification Regarding Criminal Activity on pages 10 and 11 herein.

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 Contractor shall coordinate the Work with the activities of each separate Contractor. When directed to do so by the Owner, the Contractor 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 Project Schedule necessitated thereby.

D. The Contractor 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 Contractor's Work depends for proper execution or results upon construction or operations by a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor'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 Contractor 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 bidder, 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 Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner 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 Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

A. The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based deliver to the Owner's Representative 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 Contractor otherwise, the Contractor shall proceed with the work which is the subject of the claim and within ten (10) calendar days after completion of the work for which additional compensation is claimed shall submit in writing to the Owner's Representative, 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 Contractor of any judicial claim for relief on the claim. The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six month limitation.

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

H. If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the Contractor shall not be entitled to recover any interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the legal rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.

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 Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

8.7 **ASSURANCES OF COMPLIANCE:** The Contractor 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 that 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 Contractor agrees as follows:

- 1) The Contractor 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 Contractor. The

Contractor 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 Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category 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.

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 Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.

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 Contractor, 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 Contractor 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 Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's Representative's written direction for such minor change shall be deemed to be the occurrence.

C. The Contractor 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 Contractor 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 Contractor shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in 10.3, for any extra work performed by the Contractor without a valid Work Order or Change Order, and the Owner may order the removal or alteration at the Contractor's expense of any extra work performed without a validly issued 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 Contractor, Contractor acknowledges and accepts the terms and conditions of the Change Order as full and final agreement as to all claims for compensation or time for the work described.

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 Contractor shall promptly proceed with the change in the Work involved 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 or Contract Time. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.

E. The amount of compensation to be paid to the Contractor for any extra work so ordered shall be determined in accordance with Sections 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 01 2600. 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 Owners 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. Duplicate copies of accepted records shall be made and signed by both Contractor or his representative and the Owner's Representative, and one copy retained by each.

H. The Contractor may be entitled to an extension of time for extra work duly authorized by the Owner or Owner's Representative as defined in Part 10.3 below and 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 then the Work so ordered must be omitted by the Contractor. The amount by which the Contract Sum shall be reduced shall be determined in accordance with Section 01 2600 of the Specifications.

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

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

9.5 DISPUTED WORK:

A. If the Contractor 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 Contractor for any disputed work for which Owner's final determination is that Contractor 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 Contractor in accordance with the Contract Documents.

PART 10 TIME

10.1 TIME OF START AND COMPLETION:

A. The Contractor 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 Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the work within the Contract Period. The Contractor shall provide a Project Schedule as prescribed in Section 01 3200 of these specifications. By submitting a Bid, the Contractor confirms that the Contract Period is a reasonable period for performing the Work. The Contractor shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.

B. The Owner and the Contractor hereby acknowledge and agree that time is of the essence with respect to this Contract and that in the event the Contractor fails to complete the Work within the Contract Period, the Owner and the Contractor agree to liquidated damages for late completion as set forth in Paragraphs 5.13. The Contractor 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 Contractor and its Surety shall promptly make payment to Owner of the amount due upon receipt of demand therefore.

10.2 CONSTRUCTION MOBILIZATION: The Contractor'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 this Section;
- 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. Submission of Contractor/Subcontractor Certification of Criminal Conviction forms, due within ten (10) days of Notice to Proceed;

- 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 Contractor 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 Project 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 Contractor and Owner's Representative's onsite construction trailers, as required by the Contract Documents; and
- 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 Contractor 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, and are subject to the limitations of, Part 10.7, Weather Delays, of these General Conditions. The Notice of claim for delay shall identify itself as a notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. Strict compliance with all of these submission requirements shall be a condition precedent to

consideration of any claim for delay related to weather, but compliance of itself shall not establish the validity of any claim.

2. The Contractor 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 Contractor 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 Contractor shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.
 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 Contractor shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the Contractor. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner'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 Contractor 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 Contractor seeks an extension of time is due concurrently to causes for which Contractor may be entitled to a delay and to causes within the reasonable control or foreseeability of the Contractor, the Contractor shall not be entitled to any extension of time.
- C. The Contractor is to assume twenty (20) Days delay from the date of Notice to Proceed to the date of Project Substantial Completion. These twenty (20) Days shall be known as "Owner Float," and may be applied to any delay from any cause, at the Owner's sole discretion, including but not limited to Owner caused delay. The Contractor shall include this Owner Float in the Contract Period, in the

Contract Sum, and shall incorporate the Owner Float in the Project Schedule. The Contractor will not be compensated, neither monetarily nor by time extension, for any delay to which the Owner elects to apply any portion of the Owner Float so long as the Owner Float has not been exhausted.

- 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 Contractor'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 Contractor of any judicial proceeding for relief on the claim. The Contractor's right to seek a judicial appeal of denial of a claim for extension of time is barred if no suit is filed within six (6) months following the Owner's final decision on the claim. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six month period.
- E. Delays caused by the failure of the Contractor's Subcontractors, suppliers and dealers to furnish approved working drawings, shop drawings, submittals, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors or Sub-Subcontractors to perform their work in conformity with the Project Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.
- F. The Contractor making a claim against the Owner for costs or damages due to unreasonable delays caused by the Owner, and its agents or employees, shall be liable to the Owner for a percentage of all the costs the Owner incurs in investigating, analyzing, negotiating, and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be 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.
- H. The Contractor 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.

10.4 RECOVERY SCHEDULE:

- A. Should the approved Project Schedule show at any time during Contractor's performance, in the sole opinion of the Owner, that the Contractor is 14 days or more behind schedule for any specific critical path milestone date, or should the Contractor be required to undertake actions under Paragraph 10.7 of this section, the Contractor shall submit a Recovery Schedule to the Owner within five (5) days after receiving a written request from the Owner. The Recovery Schedule shall explain and display how the Contractor intends to reschedule its Work at no

additional cost to the Owner, in order to regain compliance with the Project Schedule during the immediate subsequent pay period.

B. If the Contractor believes that all of the time can be recovered during the subsequent pay period, the Contractor will be permitted to prepare a Recovery Schedule as set forth below. However, if the Contractor 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 Project Schedule and comply with all of the requirements for a Schedule Revision.

1. The Contractor 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 Project Schedule at the earliest possible time. The Contractor shall prepare a Recovery Schedule to the same level of detail as the Project 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 Contractor shall participate in a conference with the Owner to review and evaluate the Recovery Schedule. Within two (2) days of that conference, the Contractor shall submit the revisions necessitated by the review for the Owner's review and approval. The Contractor shall use the approved Recovery Schedule as his plan for returning to the Project Schedule.
3. Contractor 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 Contractor as follows: (i) If the Owner determines the Contractor is still behind schedule, the Owner will direct the Contractor 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 Contractor has successfully complied with provisions of the Recovery Schedule, the Owner will direct the Contractor to return to the use of the approved Project 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 time and not delay or hinder the Owner's occupancy of the completed Project. The Substantial Completion and Final Completion Dates are set forth the Contract. These dates shall be binding upon the Contractor, subject to the provision of the Contract Documents allowing for agreed upon extensions of the Contract Period. The Contractor shall include each of these dates in its Project Schedule in accordance with scheduling standards set forth in Specification Section 01 3200.

10.6 **CONTRACTOR DELAYS:** The Contractor agrees that wherever it becomes apparent from review of the current monthly Project 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 Contractor 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 Contractor shall submit to the Owner's Representative for review, a written statement of the steps the Contractor intends to take to remove or arrest the delay to the Project Schedule. If the Contractor 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 Contractor in order to remove or arrest the delay to the critical path in the accepted Project Schedule, and the Contractor shall promptly provide such level-of-effort at no additional cost to the Owner. In addition, should schedule delays persist, the Contractor's Surety will be asked to attend meetings to update the Project 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 Contractor for all costs incurred by the Owner in the use of outside sources.

10.7 **WEATHER DELAYS:** Unusually severe weather conditions which prevent or inhibit the Contractor's performance of the Work are referred to in this Part 10.7 as "Inclement Weather" and are more specifically defined below. The Contract Period may be adjusted to account for Inclement Weather, but only if (i) there has been strict compliance by Contractor with all claims submission requirements and other requirements of the Contract Documents related to time extensions; (ii) the delay asserted is shown by the Contractor to be the sole cause of lengthening the longest critical path indicated on the Project Schedule in effect during the period of such alleged delay, and (iii) the following definition of "Inclement Weather" is satisfied:

- A. Inclement Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour period that prevents Work shown on the Construction Schedule as planned for performance at that time which is directly affected by such weather conditions or by impact on access to the Site:

1. Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure.
 2. Temperatures that do not rise above that required for the Day's planned Work, if such temperature requirement is specified or accepted as standard industry practice.
 3. Sustained wind in excess of twenty-five (25) m.p.h.
- B. Inclement Weather may include, if appropriate, "dry-out" or "mud" days:
1. Resulting from precipitation Days that occur beyond the Monthly Assumed Inclement Weather Days;
 2. Only if there is a hindrance to planned Work and the Contractor has taken all reasonable accommodations to avoid such hindrance; and,
 3. At a rate no greater than one (1) Day for each Day that has precipitation in the amount of 1.0 inch or more, liquid measure, but if there is precipitation on consecutive Days which totals 1.0 inch or more, liquid measure, only one (1) Day may be included for those consecutive Days.
- C. Monthly Assumed Inclement Weather Days also are herein referred to as the Standard Baseline. The Standard Baseline for purposes of factoring the Monthly Assumed Inclement Weather Days into the Project Schedule is four calendar days per month. Standard Baseline Inclement Weather is included in the Work, is to be included in the Project Schedule, and shall not form any basis for an extension of Contract Time. The Standard Baseline is not cumulative. Any portion of the Standard Baseline not applied to an Inclement Weather delay approved by APS in any month shall not be carried forward to any subsequent month.
- D. In accordance with Paragraph 10.3 above, as a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:
1. Notify the Owner's Representative, the Owner's Project Manager, and the Purchasing Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a notice of claim for Inclement Weather delay, shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the activities on the longest critical path on the Project Schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.
 2. Submit to the Owner's Representative a statement of the actual time extension requested in strict compliance with Paragraph 10.3.A(2) above.
 3. For purposes of any claim for delay based on Inclement Weather, each Inclement Weather Day claimed shall constitute a separate occurrence and

the Contractor shall comply with the foregoing claim submittal requirements for each Day of Inclement Weather claimed.

4. Compliance with the foregoing conditions precedent shall not of itself establish entitlement to a time extension for Inclement Weather but failure to comply shall be a bar to any such time extension.
- E. If the basis for an extension of time for Inclement Weather is established in accordance with all claim submittal requirements, an extension of time on the basis of Inclement Weather may be granted only for the number of Inclement Weather Delay Days in excess of the Standard Baseline for the month of the occurrence.
1. Any request for an extension of time on the basis of Inclement Weather MUST prove impact to activities on the longest critical path of the Project Schedule in effect at the time of the occurrence.
 2. Inclement Weather may support a time extension only if Inclement Weather prevents planned Work for fifty percent (50%) or more of the Contractor's scheduled work Day, longest critical path construction activities were included in the Day's schedule, and performance of that Work was directly impacted by the Inclement Weather.
 3. Should the Contractor be granted an extension of time on the basis of Inclement Weather, the Owner may or may not elect to use any of the Owner Float described in Paragraph 10.3 in lieu of granting a time extension.

PART 11 PAYMENTS AND COMPLETION

11.1 PRICES:

- A. For the Contractor's complete performance of the Work, the Owner agrees to pay, and the Contractor 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: Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 (Architect), shows that the value of the work completed during the previous month exceeds \$1,000.00, the Owner's Representative (Architect) will certify the Contractor'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 Contractor 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; and
 3. A revised Project 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 Contractor 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 Contractor's Application and Certificate for Payment; provided, however, that the Contractor shall furnish written evidence satisfactory to the Owner that the Contractor 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 Contractor as supported by receipted bills, less the specified retainage. Such payment shall not relieve the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor of any of its Subcontractors.
- B. The Owner shall have the right, as an authorized representative for the Contractor 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 Contractor and shall reduce the Owner's obligation to the Contractor accordingly. The Contractor may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If Contractor does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the Contractor 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 Contractor considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor 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 (Contractor's Punch List) and as set forth in Section 01 7700.
- B. **PUNCH LISTS:**
1. Within fourteen (14) days following receipt of the Contractor's written notification of Substantial Completion (including a Contractor's punch list, as set forth in Paragraph 11.6.A), the Owner's Representative (Architect) 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 (Architect) shall then issue a Consolidated Punch List incorporating the Contractor'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 Contractor 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 Contractor 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. If the Owner takes has taken beneficial occupancy or commences use of any aspect of the Work prior to the date required for Substantial Completion of that portion of the Work, the Contractor shall notify the Owner in a timely manner when access to such occupied or in use space or facilities is required, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof by the Owner. Until the date required for Substantial Completion of any portion of the Work occupied or used by Owner, any impact upon the Contract Period or the Contract Sum arising from such occupancy or use shall be governed by the claims submittal procedures and requirements of the Contract Documents. If the Owner takes or continues occupancy or commences or continues use of any aspect of the Work after the date required for Substantial Completion, and the Contractor requires access to the occupied or in use space or facility, prior to Final Completion, and is currently occupying and in use of any aspects of the Work, the Contractor shall notify the Owner in a timely manner, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof the spaces by the Owner. Should the Contractor access to such spaces or facilities to perform complete any portion of the Work, including but not limited to Punch List item repairs, require the temporary removal of furniture or other items and furnishings put in place by the Owner, the Contractor shall its own cost and effort, protect any and all furniture or other items that will not be moved and timely remove and reinstall all Owners furnishings and furniture or other items within the affected spaces to their original location and condition. Contractor shall be responsible for any damage done to the Work in place, to the furniture or to other items in such event. If for any reasons, the Owner moves the furniture or other items and reinstalls them as noted above, all associated costs for time, material and labor shall be charged to the Contractor plus an administrative fee of 10%.
4. Except with the consent of the Owner, the Owner's Representative (Architect and Construction Manager) 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 Contractor shall pay the Owner any amounts paid by the Owner's Representative (Architect and Construction Manager) and other third party consultants for any additional inspections.

5. Should the Contractor 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 Contractor 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 Contractor considers that the Work, or such portion or Phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor 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 Contractor 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 Contractor 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 Contractor shall provide extended warranties. Warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.
- D. Upon receipt of Contractor's request, the Owner and Owner's Representative will either proceed with inspection or advise the Contractor of pre-requisites not fulfilled. Following inspection, the Owner and Owner's Representative will either prepare the Certificate of Substantial Completion, or advise the Contractor 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 Contractor stating the reasons therefore. Contractor shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative (Architect) 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 Contractor'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 Contractor for their written acceptance of the responsibilities assigned to them in the Certificate.
 3. Notify the Contractor 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 Contractor requesting Final Completion approval.

11.7 FINAL COMPLETION:

- A. Upon written notification by the Contractor that the Work is Finally Complete, and upon the Contractor'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 Contractor. Contractor may request a second inspection when Contractor 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.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 Contractor 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 Contractor 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 Contractor shall, within three days after written notice from the Owner, commence to remove all defective and deteriorated Work and materials and replace it at the Contractor's expense with Work and materials in accordance with the requirements of the Contract Documents and to complete all incomplete Work in accordance with the Contract Documents within a reasonable time period.
- B. In the event the Contractor fails to commence the removal, replacement, completion or correction of such Work within three days 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 Contractor 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 Contractor of such demand for payment.
- C. The Contractor's Warranty obligations shall remain in full force and effect regardless of whether the Warranty Work was performed by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 **CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT:** The Contractor'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 Contractor 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 Contractor, 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 Contractor will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

PROJECT NAME: _____

CONTRACT NUMBER: _____

CONTRACTOR NAME: _____

FINAL PAYMENT AMOUNT: _____

TOTAL PAYMENT AMOUNT: _____

FINAL CONTRACT AMOUNT: _____

The Contractor hereby requests final payment in the amount indicated on the above referenced Contract. The Contractor agrees that its acceptance of final payment releases and forever discharges Arlington School Board and the Arlington Public Schools and its officers, employees, servants and agents from any and all actions, claims, demands and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with the above referenced Contract, with the exception of those claims previously submitted in strict compliance with the claims submission requirements of the Contract Documents and not finally resolved.

The Contractor certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been paid as required by the contract.

AUTHORIZED SIGNATURE

DATE

PART 12 PROTECTION OF PERSONS AND PROPERTY

- 12.1 CONTRACTOR'S RESPONSIBILITY FOR SAFETY PROCEDURES:** The Contractor shall select one or more on-site personnel whose duty 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 Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.
- 12.3 USE OF EXPLOSIVES:** The Contractor'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 Contractor 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 Contractor shall comply with such time restrictions without additional cost to the Owner. The use of all explosives by the Contractor 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 Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The Contractor 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 Contractor 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 Contractor, whether arising from acts or omissions of the Contractor or others and whether or not covered by the Contractor's builder's risk insurance. In the event of any such loss or damage, the Contractor 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 Contractor 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 Contractor shall select one or more on-site personnel whose duty shall be site safety and accident prevention. One such person shall be the Contractor's Superintendent, or another key personnel member of its on-site project management team unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.
- 12.6 **OVERLOADING OF STRUCTURES:** The Contractor shall not load or permit any part of the Project Site, whether or not a part of the Work, to be loaded so as to endanger its safety or structural integrity.

PART 13 INSURANCE

13.1 CONTRACTOR'S INSURANCE:

- A. During the term of this Contract, the Contractor 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 occurrence-based insurance shall be in the amount of \$5/\$10 Million (\$5 Million per occurrence / \$10 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 Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The Contractor shall provide a 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 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 Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance in amounts satisfactory to the Contractor, naming the Owner as an additional named insured.
 3. Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in work

under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of his 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. 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 Contractor of its obligations under this Contract and, upon such performance, shall be released to the Contractor. 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 Contractor's receipt of the Notice to Proceed, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on its subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. The Contractor certifies by commencement of the Work that its insurance and that of all Subcontractors is in effect and meets the requirements set forth herein. Copies of Subcontractor insurances shall be kept on file and made available to the Owner upon request.
- 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 Contractor 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 Contractor shall purchase Builder's Risk insurance upon the entire Work at the Project Site to the full insurance value of the new improvements thereof. 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 Contractor'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 Contractor'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 CONTRACT SECURITY:

- A. The Contractor 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 Contractor and shall be included in the Contract Sum.
- B. 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 Contractor, the Contractor 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 Contractor 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.

- C. Alternative Forms of Security: Any bid bond, 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 Contractor 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 Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order process as outlined in Section 01 2600, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering and replacing such Work.

15.2 CORRECTION OF WORK:

- A. The Contractor 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 Contractor 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

16.1 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 at Part 16.1.A through 16.1.D, but only to the extent the Contractor has been given written notice by the Purchasing Agent of such delegation.

PART 17 CONTRACTOR'S DEFAULT AND TERMINATION

17.1 OWNER'S RIGHT AND NOTICE:

- A. The parties agree that:
 - 1. If the Contractor 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 Contractor 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 Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or
5. If the Contractor 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 Contractor in default in whole or in part. In the event the Owner elects to declare the Contractor in default, the Owner shall notify the Contractor and its Sureties by written notice describing the nature of the default and providing the Contractor 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 Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
3. If in any proceeding instituted by or against the Contractor, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or
4. If a receiver or trustee is appointed for the Contractor or the Contractor'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 Contractor, 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 (Architect) 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 Contractor or, in the Owner's sole discretion, exercise any other rights available to it.

17.2 CONTRACTOR'S DUTY UPON DEFAULT: Immediately, but no later than three (3) days after receipt of notice that it is in default hereunder, the Contractor shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the 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 Contractor 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 Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:

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

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

17.4 PARTIAL DEFAULT: In the event the Owner declares the Contractor in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the Contractor shall discontinue such portion of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract and shall not hinder or interfere with any other contractor or persons whom the

Owner may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and its Sureties as provided in the Contract Documents.

- 17.5 **DEATH OR INCOMPETENCE OF CONTRACTOR:** In the event of the death, dissolution or legal incompetence of a Contractor 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 Contractor and his sureties, if any, shall remain liable hereunder to the same extent as though the Contractor remained living. 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 Contractor. In such event, the Contractor 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 Contractor and the Owner. The Contractor 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 Contractor to be due under this Paragraph. The Owner shall have the right of audit (and Contractor 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 Contractor's remedies shall be limited as provided in this Paragraph 17.6.

PART 18 MISCELLANEOUS SPECIAL CONDITIONS

18.1 **LAYING OUT WORK:** The Contractor 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 Contractor, the Contractor shall be responsible at its cost to re-establish such bench marks or general reference points. The Contractor 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 Contractor shall establish permanent benchmarks referenced to finish floor lines. Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor of its obligation to maintain the insurance coverage described in Paragraph 13.1 hereof.

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 Commonwealth 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 Contractor 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 00 7000