

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

THIS CONTRACT, made and entered into this _____ day of _____, 2018;
between Arlington County School Board, operating as Arlington Public Schools through its Purchasing
Agent, Virginia (“APS” or "Owner") and _____
(the "Construction Manager at Risk" or “CMR”), whose address is _____

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

1. The Project

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

[Insert]

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):

Contract Between Owner and CMR
General Conditions
Supplemental General Conditions, if any
Construction Manager at Risk Standard Scope of Services, as Amended, Attachment “A” (included as
Attachment C of the RFP)
Drawings and Specifications, including Use Permit and all conditions
GMP Cost Study submitted by the CMR
Request for Qualifications and all Addenda
Response to Request for Qualifications
Request for Proposals and all Addenda
Proposal
Modifications issued after execution of this Agreement

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 CMR finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing, call it to the attention of Owner and the Owner’s Representative before proceeding with the Work affected thereby. The Owner and/or the Owner’s Representative shall promptly resolve the matter in writing. Work done by the CMR after it discovered, or reasonably should

have discovered, such conflicts, errors, ambiguities or discrepancies, prior to written resolution thereof by the Owner, shall be done at the CMR's expense and the CMR shall bear the risk of any delay arising therefrom or related thereto. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or 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 CMR shall be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner or to the Owner's Representative, and for making any submittal required for any purpose. The CMR acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

3. Definitions

All words and terms shall have the meanings assigned to them in Phase 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 _____ (the "Architect," "Engineer," or "A/E"). In addition to an on-site representative of the A/E, the Owner will have a regular presence on site in the form of the "Owner's Project Manager" or "Project Manager". The A/E, Construction Manager Advisor, and the Project Manager have been designated to act as the Owner's Representative, subject to such limitations as are set forth in the General Conditions. Unless otherwise expressly stated or directed by Owner, reference in any Contract Document to Owner's Representative shall mean either the A/E or the Project Manager.

5. Contract Period

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

[Insert, including Notice to Proceed where required or reference to predecessor activity Substantial Completion if that is the trigger.]

To be completed upon Contract award for Construction Phase Services.

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

6. Liquidated Damages

The Owner and the CMR recognize that time is of the essence in this Agreement and that Owner will suffer damages if Substantial Completion, and thereafter Final Completion, of the Work, or of any individual Phase of the Work for which a Substantial Completion, and if applicable, Final Completion, date with associated Liquidated Damages is established by the Contract Documents, is not complete within the time specified in Paragraph 5 above, plus any extensions thereof allowed in accordance with Part 10 of the General Conditions. The Owner and the CMR agree that the actual damages to be incurred by the Owner in the event of late completion are not readily ascertainable or capable of estimation at the time of contracting. It is understood and agreed that the Liquidated Damages amount shall not be affected by the Owner's use or occupancy of, or by the achievement of Substantial Completion or Final Completion of, less than the entirety of the Work to which the Liquidated Damages amount may be applicable. The CMR hereby waives without condition or limitation any objection that the amount of Liquidated Damages set forth below is void as a penalty or is not reasonably related to actual damages. Without limitation of the foregoing, CMR also agrees

that any deduction of Liquidated Damages from amounts otherwise payable to CMR shall not constitute improper or wrongful nonpayment of CMR and CMR without limitation or condition conclusively waives any claim or cause of action premised in whole or in part on any such deduction of Liquidated Damages. In the event 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, CMR acknowledges and agrees that its sole remedy shall be payment by the Owner of the principal amount of Liquidated Damages so determined to be payable to the CMR plus interest as provided in the Contract Documents. Accordingly, instead of requiring any such proof, the Owner and the CMR agree that as Liquidated Damages for delay in achieving timely completion as required by the Contract (but not as a penalty), the CMR shall:

a. Pay Owner, to be determined at the time of contracting, for each day that expires after the time specified in Paragraph 5 for the **Project Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved; and Pay Owner, to be determined at the time of contracting, for each day that expires after the time specified in Paragraph 5 for the **Project Final Completion Date**, plus any approved time extensions, until Final Completion is achieved.

b. There will be additional liquidated damages provisions for interim phases as the design is more fully developed.

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

7. Contract Sum

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

7.1. The Cost of the Construction Work as defined in the General Conditions
_____ Dollars (\$_____)

7.2. The General Conditions Fee in the amount of:
_____ Dollars (\$_____)

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

_____ Dollars (\$_____)/ day

7.3. The Insurance and Taxes Fee in the amount of _____ percent (____%) of the Cost of the Construction Work.
_____ Dollars (\$_____)

7.4. The CMR's Fee in the amount of:

_____ Dollars (\$_____)

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

_____ Dollars (\$_____).

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

8. Payment Procedures

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

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

9. Interest

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

10. No Assignments

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

11. Authorization to Transact Business

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

12. Debarment and Enjoinment.

By signing this Contract, the undersigned certifies that neither this CMR nor any officer, director, partner or owner thereof is currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, by any other public body or agency within the Commonwealth, or by any public body or agency

of another state, nor by any agency of the federal government, nor is this CMR a subsidiary or affiliate of any firm/entity that is currently so barred from bidding on public contracts.

13. Governing Law

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

14. Binding Agreement

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

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

<p>CONSTRUCTION MANAGER AT RISK</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="padding-left: 100px;">David J. Webb, C.P.M.</p> <p>Title: Purchasing Agent</p> <p>_____</p> <p style="text-align: center;">Dated</p>

Attachments:

1. Attachment "A" Construction Manager at Risk Standard Scope of Services (included as Attachment C of the RFP)

END OF SECTION

MANAGER AT RISK

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PART 1

DEFINITIONS

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

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

Use of the CMR Contingency may only be made with the written approval of the Owner. The Owner shall specify the procedure for the CMR to request the use of any portion of the CMR Contingency. The CMR shall periodically report to the Owner as is reasonably determined by Owner to be necessary but no less than monthly specifying: the amount of the CMR Contingency used, the reasons for the requirement to use the CMR Contingency, and the justifications for the use of the CMR Contingency. Unless otherwise specified in the Contract, all CMR Contingency

remaining at Project conclusion shall be retained by the Owner. The Owner may, through Supplemental General Conditions, define subcategories of the CMR Contingency and prescribe the uses of funding within the subcategories.

- 1.7. **CONSTRUCTION MANAGER AT RISK'S FEE:** The sum included in the GMP for home office expenses, overhead, profit, and general management of the Contract during the construction phase of the Contract, subject to modification by Change Order.
- 1.8. **CONSTRUCTION MANAGER AT RISK (CMR):**
The person, firm or other legal entity with whom or with which the Owner has entered into a contractual agreement to provide all construction Work and services for the Project for a Guaranteed Maximum Price (GMP) and to be "At Risk" for providing the Work within the GMP amount stated in the Contract. The Construction Manager at Risk may also be called the Contractor in the Contract Documents.
- 1.9. **CONTRACT:** The signed Agreement between Owner and CMR is the Contract.
- 1.10. **CONTRACT DOCUMENTS:**
 - A. The Contract Documents are as defined in the Contract.
 - B. In case of a conflict between the Contract Documents, the following shall be the order of precedence, with any Addendum or Modification having precedence over preceding provisions:
 1. The Contract
 2. The General Conditions
 3. Supplemental General Conditions, if any
 4. The Specifications
 5. The Drawings, including Use Permit and all conditions. Within the Drawings, stated dimensions shall take precedence over scaled dimensions.
 6. Scope of Construction Phase Services
 7. GMP Cost Study submitted by the CMR
 8. The Notice to Proceed
 9. The Request for Proposal Documents
 10. The Proposal
 11. The Request for Qualifications
 12. Response to the Request for Qualifications
 13. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or

quantity shall prevail.

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

- 1.11. **CONTRACT PERIOD or CONTRACT TIME:** The period allotted in the Contract Documents for Substantial Completion, and thereafter Final Completion, of the Work, together with any extension of time granted in accordance with the provisions of the Contract Documents.
- 1.12. **CONTRACT SUM:** The total amount payable to the CMR for performance of the Work. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions of the Contract Documents. The Contract Sum also is referred to in the Contract Documents as the GMP or Guaranteed Maximum Price, as defined below.
- 1.13. **CONTRACTOR:** See Construction Manager at Risk. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.
- 1.14. **COST OF THE CONSTRUCTION WORK:** Cost of the Construction Work as used in the Contract Documents means the direct costs of labor, materials, equipment, and associated costs of the trades/subcontracts which are incorporated into the completion of the Project.
- 1.15. **DATE OF FINAL COMPLETION or FINAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, is completely finished pursuant to the requirements of the Contract Documents, which date shall occur within thirty (30) calendar days after the Date of Substantial Completion of all Work, or a Phase of the Work, unless otherwise specified in the Contract Documents.
- 1.16. **DATE OF SUBSTANTIAL COMPLETION:** or **SUBSTANTIAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, has been completed pursuant to the requirements of the Contract Documents.
- 1.17. **DAY:** The term "day" or "Day" shall mean "calendar day" unless otherwise noted. When any provision in the Contract Documents establishes a time within which an action must be taken or a right must be exercised, if the last Day falls on a Saturday, Sunday, or Holiday, the deadline thereby established shall be extended to the first Arlington Public Schools Normal Working Day thereafter.
- 1.18. **FINAL COMPLETION:** "Final Completion" or the state of being "Finally Complete" shall mean total completion of all Work required by or reasonably contemplated by the Contract Documents. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Final Completion is established. More specific requirements for Final Completion as to the Work or a defined portion thereof may be set forth in the Specifications.
- 1.19. **GENDER AND PLURAL:** Whenever the Contract so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.
- 1.20. **GENERAL CONDITIONS FEE:**
 - A. The "General Conditions Fee" is the total compensation amount payable to the CMR for its on-site supervision, project-specific management personnel such as project managers and office engineers, inspections, labor, etc. including markups as required by the General Conditions during the construction phase of the Contract. This General Conditions Fee is

included as a separate line item in the Guaranteed Maximum Price (GMP) and is subject to modification by Change Order.

- B. The CMR General Conditions Fee is a fixed amount for the entire Project Scope of Work as defined by the Contract Documents. The CMR General Conditions Fee includes both project site and home office costs required to execute the entirety of the Work. The CMR's General Conditions Fee Proposal attached to the Contract shall include a unit rate that would be used as a basis for any increase in the Fixed General Conditions amount should a major change in the Project Scope of Work take place.
- 1.21. **GUARANTEED MAXIMUM PRICE (GMP):** The Guaranteed Maximum Price, also referred to as the "GMP," is the sum total of the "Cost of Construction Work," the "CMR Contingency," the "General Conditions Fee," the "Insurance and Taxes Fee," and the "Construction Manager at Risk's Fee" which the CMR agrees is the total compensation payable to the CMR for performing the Work. The GMP may be modified only by Change Order for work directed by the Owner which was not previously in the Project Scope of Work or not reasonably foreseeable as required to complete the Work.
- 1.22. **HOLIDAY:** Holidays recognized by the Owner which shall not be considered Normal Working Hours are as follows: New Year's Eve Day, New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the following Friday, Christmas Eve Day, and Christmas Day. Actual dates should be based on the most current Arlington Public Schools calendar.
- 1.23. **INSURANCE AND TAXES FEE:** The Taxes and Insurance Fee is the total of all insurance costs such as but not limited to general liability insurance, builder's risk insurance, payment bond and performance bonds, and any other insurance costs that are required by the Contract Documents, and any taxes such as but not limited to local business license or other taxes that are required for the completion of the Work expressed as a percentage. The Insurance and Taxes Fee includes all items not included in the "Cost of Construction Work," the "CMR Contingency," the "General Conditions Fee," or the "Construction Manager at Risk's Fee" necessary to complete the Work.
- 1.24. **NORMAL WORKING DAY:** See "Working Day."
- 1.25. **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.
- 1.26. **NOTICE:** Notice shall mean written notice. Written Notice shall be deemed to have been duly served if:
- A. Delivered by mail, courier, e-mail, or facsimile transmission to the CMR'S office at the Project Site or to the business address of the CMR as stated in its Proposal; or if delivered in person to the CMR's foreman or superintendent for the Project, or to any officer or director of the CMR.
 - B. Delivered by mail, express mail, or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207; or, when expressly so stated in the Contract Documents, delivered by mail, express mail, email or hand delivery to the Owner's Representative.
 - C. Any requirement in the Contract Documents that an action be taken in writing shall require transmission of the writing to the other party in the form required of a Notice, unless otherwise expressly stated.

- 1.27. **NOTICE TO PROCEED:** A written Notice from the Owner to the CMR, which gives consent for commencement of the Work. For projects with phased work, a Notice to Proceed will be issued prior to the commencement of each Phase, if a Notice to Proceed is required by the Contract Documents. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Project Schedules shall be based upon that date.
- 1.28. **OWNER:** Arlington Public Schools (APS) and employees authorized to represent APS.
- 1.29. **OWNER'S PROJECT MANAGER:** APS' employee authorized to act on behalf of the Owner regarding matters related to the Contract, Contract Documents, and on-site construction. The Project Manager may designate additional on-site construction personnel as Owner's Representative to act on the Owner's behalf.
- 1.30. **OWNER'S REPRESENTATIVES:** Owner's Representatives include the Architect, Construction Manager Advisor, and Project Manager and such additional construction personnel who have been designated by the Project Manager to act on behalf of the Owner. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the project Architect or the Project Manager. CMR will be given written direction regarding the individuals employed by either the Architect or the Project Manager with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's Representative are set forth in Part 3 of these General Conditions. Notwithstanding any other provision in the Contract Documents to the contrary, any Modification of the Contract Sum or of the Contract Period may be made only by writing signed by the Arlington Public Schools Purchasing Agent or the designee thereof as identified to the CMR by writing issued by and signed by the Arlington Public Schools Purchasing Agent.
- 1.31. **PROJECT:** The construction services as performed by the CMR, in accordance with the Contract Documents; collectively all of the improvements contemplated by the Contract; synonymous with the term "Work" as the context may require.
- 1.32. **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.
- 1.33. **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."
- 1.34. **PROPOSED MODIFICATION:** A request by the Owner or the Owner's Representative for the CMR's estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and processed as set forth in Specification Section 01 2600.
- 1.35. **PURCHASING AGENT:** The employee of the Owner with authority to execute contracts, Amendments, and Modifications on behalf of the Owner, and with such other authority as may be set forth in the Contract Documents. See General Conditions Part 16.
- 1.36. **SPECIFICATIONS:** Those portions of the Contract Documents which consist of written technical descriptions of materials, equipment, constructions systems, standards and workmanship to be applied to the Work and certain administrative details, procedures and requirements applicable thereto.

- 1.37 **SUBCONTRACT:** Any contract between the CMR and a Subcontractor, or involving the performance of any Sub-Subcontractor.
- 1.38 **SUBCONTRACTOR:** Any individual, firm or organization other than an employee of the CMR, who contracts with the CMR to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the CMR in connection with the Work.
- 1.39. **SUB-SUBCONTRACTOR:** Any individual, firm or organization, other than an employee of the CMR or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.
- 1.409. **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.
- 1.41. **SURETY:** Any person, firm or corporation that has executed as Surety the CMR's performance or payment bonds securing performance of this Contract or providing for protection of claimants who have and fulfill contracts to supply labor or materials to the CMR or to a Subcontractor in connection with the Work. The Surety shall be authorized to do business in the Commonwealth of Virginia and shall be listed on the United States Treasury Department’s latest Circular 570.
- 1.42. **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.
- 1.43. **WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.
- 1.44. **WORK ORDER:** A written directive to the CMR issued on or after the Effective Date of the Agreement which directs changes in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Period, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the CMR shall promptly proceed with the change in the Work involved and advise the Owner’s Representative of the CMR’s agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. Even if the CMR disagrees with the terms of the Work Order, the CMR must proceed with the changes as directed.
- 1.45 **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 CMR for Construction Phase Services shall be signed by both the Owner and the CMR. CMR shall not commence any Work prior to submission to the Owner of fully executed payment bond and performance bond in the form provided by the Owner in the amount of the GMP. The Performance Bond and the Payment Bond shall be in effect as of the date the successful Offeror signs the Contract, and shall remain in effect through the later of the expiration of all applicable Warranty Periods or final conclusion of all third party claims against the Offeror, including all appeals. If executed prior to the date the successful Offeror signs the Contract shall include written certification from the surety that the bond is effective as of the date of the Contract.
- 2.2. **EXECUTION OF AGREEMENT:** Execution of the Contract by the CMR is a certification that the CMR has examined the 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, Drawings, and Specifications, as required by the Contract.
- 2.3. **INTENT OF THE CONTRACT DOCUMENTS:** The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use of the term “include” or “including” shall be deemed to mean “include without limitation,” “including but not limited to,” and similar expansive intent.
- 2.4. **DRAWINGS AND SPECIFICATIONS:**
 - A. The subdivision of the Drawings and Specifications into divisions, Sections and articles is for the purpose of ease of reference only and shall not control the CMR in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The CMR shall be responsible for segregating the Work among the various trades.
 - B. The Specifications shall serve to amplify the requirements of materials and assemblies. The mention in any Section of the Specifications of any article or operation requires that the CMR shall provide all such items indicated on, or reasonably inferred from, the Drawings, furnishing for such purpose all labor, materials and equipment required in connection therewith. Omission of any article, operation, or detail does not relieve the CMR of the responsibility for completion of the work reasonably intended by the Drawings and Specifications to be included in the Contract.
 - C. In the case of conflict or inconsistency between the Drawings and Specifications or within Drawings, or Specifications not clarified by Addendum, the CMR shall: (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement either or both in accordance with the Owner’s Representative’s interpretation. The CMR shall notify the Owner’s Representative of discrepancies found before materials are fabricated or Work performed.
 - D. The CMR shall adhere to dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner’s Representative. Actual field dimensions where applicable are to be verified by the CMR in the field prior to proceeding.

- E. If the CMR also was the CMR for the Pre-Construction Phase Services, CMR shall be entitled to no increase in the Contract Sum and to no extension of the Contract Time arising from or related to any inconsistency, conflict, error or omission in the Drawings or Specifications which the CMR in the exercise of reasonable care reasonably should have discovered during the Pre-Construction Phase Services.

2.5. CONTRACT INTERPRETATIONS:

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

2.6. COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:

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

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

PART 3 OWNER'S REPRESENTATIVE

- 3.1. **ADMINISTRATION OF CONTRACT:** The Owner's Representative shall provide administration of the Contract in accordance with the Contract Documents between the Owner and the Owner's Representative.
- 3.2. **OWNER'S REPRESENTATIVE:** The Architect and the Project Manager, shall serve as the Owner's representative during construction, until final payment is due, and with the Owner's concurrence, from time to time during the Warranty Period. The Owner's Representative shall advise and cooperate with the Owner and shall act on the Owner's behalf in accordance with the Contract Documents. The Owner shall issue instructions to the CMR or, at the Owner's option, elect to have the Owner's Representative issue instructions to the CMR.
- 3.3. **SITE VISITS:** The Owner's Representative shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. Based upon its on-site evaluations, the Owner's Representative will advise the Owner of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work. The Owner's Representative shall not have control over or charge of and shall not be responsible for construction methods, techniques, procedures, sequences or safety measures employed in connection with the Work. The Owner's Representative shall not be responsible for the failure of the CMR, subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.
- 3.4. **CERTIFICATION OF PAYMENTS:** Based upon the Owner's Representative's observations and evaluations of the CMR's Application for Payment, the Owner's Representative shall review and certify the amounts due the CMR from the Owner.
- 3.5. **INTERPRETATION OF CONTRACT:** The Owner's Representative shall interpret the Contract requirements in accordance with General Conditions Paragraph 2.5, and shall serve as an advisor to the Owner concerning the performance of the Work. The presence of any onsite Owner's Representative shall in no way constitute an approval of means, methods or materials which do not conform to the requirements of the Contract Documents.
- 3.6. **REJECTION OF WORK:** The Owner's Representative and/or the Owner shall have the authority to reject Work that does not conform to the requirements of the Contract Documents. In the event rejected Work requires additional testing or additional inspections, CMR shall pay the Owner all amounts paid by the Owner to the Owner's Representative and other third party consultants for any such additional testing or inspections. The Owner's Representative and/or the Owner shall have the authority to order special inspections or tests, regardless of whether or not the Work has been fabricated, installed or completed. Such special inspections or tests shall be performed at the CMR's sole expense and no increase to the Contract Sum. No responsibility or duty of the Owner's Representative and/or the Owner to the CMR, Subcontractors, or Sub-subcontractors shall be created by this authority or by good faith decisions rendered in the exercise of this authority. At all times the CMR is fully responsible for the quality of the Work and full and complete performance of the terms and specifications of the Contract. The Owner then has the right to issue a Unilateral Change Order deducting the cost of correcting the deficiencies, including any charges for special inspections or tests as well as charges by the Architect, plus a markup of ten percent (10%) to cover administrative costs, from the balance due to the CMR. If the balance due to the CMR is not sufficient to cover the deduction established by the Unilateral Change Order, then the CMR shall pay to the Owner the difference.
- 3.7. **ADMINISTRATION OF CONTRACT:** The Owner's Representative shall prepare Change Orders, shall observe the Work to determine the Dates of Substantial and Final Completion, shall review all required documents submitted by the CMR, and shall issue Certificates of Substantial Completion and Final Completion in accordance with the provisions of General Conditions Paragraphs 11.6 and 11.7.

PART 4 OWNER

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

The CMR shall confirm locations of existing utilities by performing test pits, or using other means and methods as outlined by the Commonwealth of Virginia Miss Utility laws, at the CMR's sole expense and no increase to the Contract Sum. Any discrepancies found with locations of existing utilities will be brought to the attention of the Owner and coordinated around the new Work in its design intent at the CMR's sole expense and no increase to the Contract Sum. All discrepancies will be noted on the As-Builts and documented at the CMR's sole expense and no increase to the Contract Sum.

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

PART 5 CONSTRUCTION MANAGER AT RISK

5.1. GENERAL REVIEW OF CONTRACT DOCUMENTS:

- A. The CMR shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. The CMR shall be responsible for the entire Work until Final Completion of all Work has been achieved.
- B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.
- C. Supervisor and Construction Procedures: The CMR shall supervise and direct the Work and coordinate the Work with that of separate Contractors using CMR's best skill and attention, with at least the use of an onsite full-time superintendent, onsite full-time project

engineer and full-time project manager. Unless otherwise noted herein, the CMR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Unless otherwise expressly provided, the means and methods of construction shall be such as the CMR may choose; provided, however, that the CMR shall employ adequate and safe procedures, methods, structures and equipment. Neither the Owner's Representative's approval nor its failure to exercise its right of approval shall relieve the CMR of its obligation to accomplish the result intended by the Contract, nor shall the Owner's Representative's approval or failure to approve create a cause of action for damages against the Owner's Representative or the Owner, or provide a defense by the CMR in any cause of action by the Owner against the CMR.

- D. The CMR shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The CMR shall be responsible for advising the Owner's Representative and the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered by it.
- E. The CMR shall be responsible for all costs or delays resulting from the CMR's or a Subcontractor's failure to obtain and review Contract Documents provided by the Owner.

5.2. **CHARACTER AND COMPETENCY:**

- A. The CMR and its Subcontractors represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction services required hereunder. The CMR agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. The CMR represents that it and its Subcontractors are capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide construction services of high quality. The CMR agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.
- B. The Owner, upon written notice to the CMR, and in the Owner's sole discretion, shall have the right to direct the CMR and its Subcontractors to remove an employee permanently from the Project Site for any reason. Any individual who is removed from the Project Site pursuant to this Section may not return without specific permission of the Owner.
- C. The CMR will ensure that no Work shall be performed in occupied areas during school hours unless express written approval has been granted by the Owner and proper safety precautions have been exercised to isolate the area of the Work.
- D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site and will constitute grounds for immediate removal of any employee of the CMR or of any Subcontractor from the Project Site. Sexual harassment, profanity, and inappropriate behavior are not permitted on the Project Site and will constitute grounds for immediate removal of any employee of the CMR or of any of its Subcontractors.
- E. No Smoking Policy on Arlington Public Schools' property: The CMR, all Subcontractors and all Sub-subcontractors, including their employees or agents, performing work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.

- F. Drug-Free Workplace. For the purposes of this Contract drug-free workplace means a site for performance of Work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract. During the performance of this Contract, the CMR agrees to:
1. Provide a drug-free workplace for the CMR's employees;
 2. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the CMR's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 3. State in all solicitations or advertisements for employees place by or on behalf of the CMR that the CMR maintains a drug-free work place; and
 4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor.

G. CMR Certification Regarding Criminal Convictions

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

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

- A. The CMR shall comply with all local, state and federal laws, rules or ordinances applicable to this Contract and the Work to be performed hereunder. The CMR shall also obtain, at its expense, all permits, inspections, licenses, fees and other authorizations necessary for the prosecution of the Work, except that the Owner shall obtain, at its expense, the building permit or easement agreement necessary and indispensable to the completion of the Project.
- B. The CMR shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations and directives of any public authority bearing on the performance of the Work. Should the CMR determine that the Contract Documents, or any of them, do not conform with such laws, ordinances, rules, regulations and directives in any respect, it shall promptly inform the Owner's Representative of such fact in writing. Any required changes shall be made by suitable approved Modification. If the CMR performs any Work when it knew or in the exercise of reasonable care should have known it to be in conflict with such laws, ordinances, rules and regulations without notifications to the Owner's Representative, the CMR shall accept all responsibility and bear all cost relating thereto.
- C. The CMR shall comply with all conditions in the approved Use Permit for the Project and shall comply with all requirements for Permits and Occupancy. The CMR shall meet all the requirements n of the Use Permit to achieve the Permits and various Certificates of Occupancy for the Project, Interim, Partial or Final. Should the CMR not meet the stipulated contractual dates for Permits, Inspections and Occupancy, the Owner may issue a deduct Change Order to cover any and all costs, overtime fees and other related costs to the delay in obtaining the required Permits, Inspections or Occupancy.

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

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

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

5.7. **SHOP DRAWINGS:**

- A. The CMR shall prepare, review, approve and submit to the Owner's Representative Shop Drawings and similar submittals required by the Contract Documents with promptness and

in accordance with the Submittal Schedule so as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the CMR which are not required by the Contract Documents may be returned without action. Shop Drawing submittals are to be prepared and submitted as set forth in Submittals, Section 01 3300 of the Specifications to allow for review and approval by the Owner and not affect the procurement and installation of the submitted items. CMR shall not be entitled to any Modification of the Contract Sum or of the Contract Period for any consequence of failure of the CMR to comply strictly with any submittal requirement.

- B. The CMR shall perform no portion of the Work requiring submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be performed in accordance with the approved submittals.
 - C. By approving and submitting Shop Drawings and similar submittals, the CMR represents that the CMR has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
 - D. The CMR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings or similar submittals unless the CMR has specifically informed the Owner's Representative in writing of such deviation at the time of submittal and the Owner's Representative has given written approval to the specific deviation. The CMR shall not be relieved of responsibility for errors or omissions in Shop Drawings or similar submittals by the Owner's Representative's approval thereof.
 - E. The CMR shall direct specific attention, in writing or on resubmitted Shop Drawings or similar submittals, to revisions other than those requested by the Owner's Representative on previous submittals.
 - F. Informational submittals upon which the Owner's Representative is not required to take responsive action may be so identified in the Contract Documents.
 - G. Additional requirements are contained in Submittals, Section 01 3300 of the Specifications.
- 5.8. **INSPECTION OF WORK:** The CMR shall be responsible for inspection of portions of Work or Phases of Work already performed hereunder to determine that such portions are in proper condition to receive subsequent Work. In calling for inspections, the CMR certifies that the Work being called for inspection meets the Contract and all code requirements for completeness and quality. Irrespective of any third party inspections, the CMR remains responsible for any after discovered defects in Work and is fully responsible for any delays and costs associated with such defective, insufficient or non-compliant Work.
- 5.9. **TESTS AND INSPECTIONS:** Unless otherwise provided in the Contract Documents, the CMR shall be responsible for scheduling, compliance and costs associated with all tests or inspections required by local authorities having jurisdiction over the Project. The CMR shall give the Owner and the Owner's Representative 48 hour notice of the date and time of all required tests and inspections, including third party inspections under the purview of the Owner. CMR shall assist and coordinate with third party inspections as required. CMR shall notify the Owner and Owner's representatives of the cancellation of any inspections either by the local authorities or third party inspections at least 24 hours prior to the scheduled inspection. The CMR shall be responsible for

any associated added costs incurred due to cancellation of inspections, including but not limited to, any added cost required by local authorities or third party inspectors due to a failure of inspection from deficient work or re-work resulting in the need for additional inspections.

5.10. USE OF SITE:

- A. The CMR shall confine the Work to areas of the Project Site permitted by the Contract Documents and shall comply with all applicable laws, ordinances, permits related to the Project Site.
- B. The CMR shall establish and maintain security procedures controlling access to the Project Site. These procedures shall include the maintenance of a centrally located sign-in/sign-out log and the issuance of temporary security badges to short term visitors to the Site. The Owner's Representative (Project Manager) will provide project specific hardhat stickers to all CMR and Subcontractor employees assigned to work on the Project. Request for such stickers will not be valid unless accompanied with a completed "Construction Manager at Risk Certification Regarding Criminal Convictions" form.
- C. CMR workers shall not be present in any building and/or property owned or controlled by Owner without an Owner employee present nor without a CMR issued APS hard hat sticker. In the event the CMR desires to perform Work on weekends, outside normal working hours or a Holiday in any building and/or property owned or controlled by Owner, CMR shall notify the Owner in writing at least two working days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while CMR workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the CMR to the Owner at a rate of \$40 per hour per person. The cost of custodial support for Sunday or holiday work shall be paid by the CMR to the Owner at a rate of \$70 per hour per person. The Owner shall submit employee time sheets to the CMR for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday work shall be paid by the CMR at a rate of \$150 per hour.
- D. The CMR shall maintain the building interior and exterior grounds of the Project Site in a clean and orderly state. The CMR shall conduct periodic cleaning of the building interior, grounds, parking lots, driveways and sidewalks to assure that construction debris and unnecessary material and equipment do not accumulate. The CMR shall also conduct periodic landscape maintenance of vegetated areas of the Site.
- E. If in the Owner's sole discretion, the Project Site requires cleaning, landscape maintenance, or excess material removal, in total or in part, the Owner shall request the CMR conduct the necessary cleaning and removal. Should the CMR fail to accomplish the requested cleaning within three (3) Working Days, the Owner reserves to right to use outside sources to conduct the cleaning or maintenance and to charge the CMR for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.
- F. The CMR shall be responsible for the protection and security of the Project Site and shall have in place procedures to maintain positive control over vehicular and pedestrian traffic entering the Site and maintain a security perimeter around the construction Site by employing the following measures:
 - 1. Completely enclose the Project Site at the outer limits of the construction area with

a chain link fence with a minimum of six feet height. The fence shall be firmly anchored in the ground or into concrete bases to prevent movement, lifting, or passage beneath the fence. The fence shall be continuous and securely fastened at seams to prevent gaps greater the 3 inches in width at any point.

2. The perimeter fence may be penetrated to provide vehicular and pedestrian access. These entrance penetrations must be capable of being closed and locked and shall be constructed of chain link to a minimum of height of six feet when closed.

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

5.12. **CONFLICT OF INTEREST:**

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

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

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

upon each Subcontractor or vendor.

- E. Arlington Public Schools does not discriminate against faith-based organizations.
- 5.14. **ASBESTOS ABATEMENT:** If the Work involves any aspect of asbestos abatement, the CMR, if not licensed as an asbestos abatement contractor in accordance with Va. Code Ann. §54.1-514, shall have all asbestos-related Work performed by Subcontractors who are duly licensed as asbestos contractors for the Work required.
- 5.1.5. **LEAD BASED PAINT ACTIVITIES:** If the Work involves lead based paint present on existing materials, components, or surfaces, the CMR shall comply with all applicable federal and Commonwealth statutes and regulations in dealing with lead based paint.
- 5.16. **LAND DISTURBING ACTIVITIES:** If the Work includes any land disturbing activities, the CMR shall have on-site an individual certified by the Virginia Department of Environmental Quality as a Responsible Land Disturber in accordance with Va. Code Ann. §10.1-563. The Responsible Land Disturber shall, on behalf of the CMR, be the person responsible for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. It also shall be the responsibility of the CMR to prevent soil erosion from the Site, the runoff of silt, and the washing or blowing of debris from the Site.

PART 6 SUBCONTRACTORS

- 6.1. **ABSENCE OF CONTRACTUAL RELATIONSHIP:** Nothing contained in the Contract Documents shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner or the Owner's Representative and any Subcontractor.
- 6.2. **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:**
- A. The CMR may only self-perform 10% of the work, and, for the remaining 90% of the work, the CMR must procure it by publically advertised, competitive sealed bidding to the maximum extent practicable. No award shall be made to a Subcontractor if that entity would be deemed not responsible in a solicitation by Owner or any other public body.
 - B. Upon request, the CMR promptly shall file with the Owner a copy of any one or more of its subcontracts. The CMR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CMR in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CMR the same power to terminate any subcontract that the Owner may exercise to terminate the CMR under the provisions of these Contract Documents. The CMR shall bear all additional expenses due to its exercising of its rights under this paragraph.
 - C. The Owner's review or acceptance of Subcontractors as described herein shall not relieve the CMR of any of its responsibilities, duties and liabilities under the Contract Documents. The CMR shall be responsible to the Owner for the acts, defaults, or omissions of the CMR's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.
- 6.3. **SUBCONTRACTOR AND SUB-SUBCONTRACTOR AGREEMENTS:** Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a

Subcontractor and the CMR, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement shall be submitted by the CMR to the Owner's Representative within ten (10) days of the Subcontractor award and shall:

- A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;
- B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;
- C. Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the CMR may in turn promptly process such applications or claims in conformance with the Contract Documents;
- D. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in General Condition 13. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
- E. Make specific reference to the conditions of this General Conditions Paragraph 6.3 as a mutually binding provision; and
- F. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work which shall be submitted by the CMR 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 CMR shall:
 - 1. Pay each Subcontractor an amount equal to the percentage of the work attributable to such Subcontractor, less an amount equal to the percentage of payments to be retained by the Owner from the CMR as retainage; or
 - 2. Notify the Owner and the Subcontractor in writing of the intention to withhold all or part of the amount due a Subcontractor and state the reason for such withholding.
- B. In the event the CMR fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the CMR, the Subcontractor shall have the right to be paid by the CMR upon demand of the amounts due.
- C. The CMR shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the CMR's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld pursuant to Paragraph 6.4.A.2 shall not accrue interest.
- D. Insurance proceeds received by the CMR under the insurance policies described in Paragraph 13.1 shall be equitably distributed to the Subcontractors affected by the insured loss.
- E. Information concerning percentages of completion of work performed by a Subcontractor as shown in Application for Payment may be made available to that Subcontractor upon

determination of the Owner.

- F. The CMR shall include in each subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of this Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.
- G. The CMR's obligations with respect to payments to its Subcontractors as outlined in this Paragraph 6.4 above shall not operate to create any obligation or contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.
- H. The CMR's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A Contract Modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.
- I. The CMR shall include in each subcontract the same requirements as appear in this General Conditions Paragraph 6.4 and shall require the completion of the Construction Manager at Risk Certification Regarding Criminal Convictions set forth in General Conditions Paragraph 5.2.

PART 7 SEPARATE CONTRACTS

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS:

- A. The Owner reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate contract for construction.
- C. At no additional cost to the Owner, the CMR shall coordinate the Work with the activities of each separate Contractor. When directed to do so by the Owner, the CMR shall participate with separate Contractors and the Owner in reviewing their separate construction schedules and shall make any revisions to incorporate that activity into the Project Schedule necessitated thereby.
- D. The CMR shall afford the Owner and any separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the CMR's construction and operations with theirs as required by the Contract Documents.
- E. If part of the CMR's Work depends for proper execution or results upon construction or operations by a separate Contractor, the CMR shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the CMR to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the separate Contractors' completed or partially completed construction is fit and proper to receive the

CMR's Work, except as to defects not then reasonably discoverable.

PART 8 MISCELLANEOUS PROVISIONS

- 8.1. **GOVERNING LAW:** The Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the CMR shall comply with applicable federal, state, and local laws, ordinances and regulations.
- 8.2. **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who was an unsuccessful Offeror, who was deemed not to be qualified, or who was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.
- 8.3. **ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.
- 8.4. **ROYALTIES AND PATENTS:** The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the CMR is required or desires to use any design, device, material or process covered by letters of patent or copyright, the CMR shall indemnify and save harmless the Owner and Owner's Representative, their officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner and the Owner's Representative, their officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.
- 8.5. **CLAIMS FOR DAMAGES:** If the CMR wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the CMR, the CMR shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the CMR's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.
 - A. The CMR must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based deliver to the Owner's Representative, to the Purchasing Agent, and to the Owner's Project Manager a written statement identifying itself as a Notice of claim, stating the circumstances of the occurrence, specifying the additional work contemplated as being required, state why such work is not already included within the scope of the Contract Documents, and to the extent

reasonably foreseeable estimate the anticipated amount of the claim.

- B. If the Owner within five (5) Working Days following receipt of such Notice of claim does not direct the CMR otherwise, the CMR shall proceed with the work which is the subject of the claim and within ten (10) calendar days after completion of the work for which additional compensation is claimed shall submit in writing to the Owner's Representative, to the Owner's Project Manager, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.
- C. The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Subparagraph B above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90th) day. A final decision by the Owner shall be a condition precedent to institution by the CMR of any judicial claim for relief on the claim. The CMR's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the CMR in support of any claim shall extend this six month limitation.
- D. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
- E. No claim whatsoever shall be made by the CMR against any officer, authorized representative or employee of the Owner or Owner's Representative for, or on account of, anything done or omitted to be done in connection with this Contract.
- F. Failure of the Owner at any time to require compliance with any term or condition of the Contract Documents or of any claims submissions requirements shall not be deemed a waiver of such term, condition, or requirement, or a waiver of the subsequent enforcement thereof.
- G. In the event the CMR makes a claim for additional compensation other than for damages related to delay which results in litigation, if the Owner substantially prevails in such litigation the CMR shall indemnify and hold the Owner harmless from any and all reasonable attorneys' fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such claim and litigation. Any claim for delay damages shall be subject to the provisions of Va. Code. Ann. § 2.2-4335.
- H. If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the CMR shall not be entitled to recover any interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the legal rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.
- I. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be

applicable.

- 8.6. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The CMR certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
- 8.7. **ASSURANCES OF COMPLIANCE:** The CMR shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.
- 8.8. **CONFLICT WITH PROVISIONS OF THE CODE OF VIRGINIA:** In the event that there is a conflict between the language of this Agreement and any mandatory provisions or requirements of the Code of Virginia, and specifically Chapter 43, Title 2.2, ("Virginia Public Procurement Act"), the Code of Virginia shall control.
- 8.9. **VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT:**
- A. During the performance of this Contract the CMR agrees as follows:
 - 1. The CMR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CMR. The CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - 2. The CMR, in all solicitations or advertisements for employees placed by or on behalf of the CMR, will state that such CMR is an equal opportunity employer.
 - 3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this action.
 - 4. The CMR will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order over \$10,000.00, in order that the provisions above will be binding upon each Subcontractor.
 - B. Nothing contained in this provision shall be deemed to require CMR to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by CMR in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the state.
 - C. Arlington Public Schools does not discriminate against faith-based organizations.
- 8.10. **SMALL, MINORITY, WOMEN OWNED AND SERVICE DISABLED VETERANS BUSINESS ENTERPRISES:**

The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, and relevant Federal and State Laws, orders and regulations, require Arlington Public Schools to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small and Minority Business Enterprises.

- A. In seeking subcontractors, suppliers and vendors necessary to perform the Work, the CMR shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses and service disabled veteran-owned businesses. At a minimum, for any portion of the Work the CMR is not going to perform with its own forces, the CMR shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The CMR shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged.
- B. As used in this section:
1. “Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
 - a. “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
 - b. “Asian American” means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
 - c. “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
 - d. “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
 2. “Minority-owned business” means a business that is at least 51 percent owned by one or more minority individuals who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.
 3. “Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

4. “Service disabled veteran-owned business” means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.
5. “Small business” means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of \$10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.
6. “Women-owned business” means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

8.11. LABOR UNIONS AND RIGHT TO WORK:

- A. The CMR is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against Subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations.
- B. Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Articles 1, 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The CMR and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.

PART 9 CHANGES IN THE WORK

9.1. MINOR CHANGES:

- A. The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall substantially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the CMR deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner’s written direction for such addition, deletion or change shall be deemed to be the occurrence.
- B. Construction conditions may require minor changes in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder. The

CMR, when ordered by the Owner's Representative, shall make such adjustments and changes in the locations and Work as may be necessary without additional cost to the Owner, provided such adjustments and changes do not substantially alter the character and quantity of the Work as a whole, and provided further that Drawings and Specifications showing such adjustments and changes are given to the CMR by the Owner within fourteen (14) days. The Owner's Representative shall act as an advisor to the Owner in what constitutes a minor change for which no additional compensation shall be allowed. If the CMR deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's Representative's written direction for such minor change shall be deemed to be the occurrence.

- C. The CMR may be entitled to an extension of time for such minor changes only for the number of days which the Owner's Representative may determine to be necessary to complete such changes and only to the extent that such changes actually affect the critical path and delay the completion of the Project, and then only if the CMR shall have strictly complied with all the claims submittal requirements of the Contract Documents.

9.2. **EXTRA WORK:**

- A. The Owner may, in its sole and absolute discretion, at any time by a Work Order or Change Order, and without notice to the Sureties, require the performance of such Extra work as it deems necessary or desirable. Procedures and authorization for extra work shall be subject to the provisions set forth in Section 01 2600 of the Specifications.
- B. The CMR shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in General Conditions 10.3, for any extra work performed by the CMR without a valid Work Order or Change Order, and the Owner may order the removal or alteration at the CMR's expense of any extra work performed without a validly issued Work Order or Change Order.
- C. A Change Order covering extra work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to initiation of such Work. When signed by the CMR, CMR acknowledges and accepts the terms and conditions of the Change Order as full and final agreement as to all claims for compensation or time for the Work described therein.
- D. A Work Order shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to the initiation of the work described therein. A Work Order directs changes in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the CMR shall promptly proceed with the change in the Work involved and advise the Owner's Representative of the CMR's agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. Even if the CMR disagrees with the terms of the Work Order, the CMR must proceed with the changes as directed.
- E. The amount of compensation to be paid to the CMR for any extra work so ordered shall be determined in accordance with Section 01 2600 of the Specifications.
- F. Regardless of the manner in which the adjustment to the Contract Sum on account of extra

work is determined, such adjustment shall be deemed to include all known amounts, as outlined in Section 01 2600 of the Specifications. The adjustment in the Contract Sum, if any, shall constitute full and mutual accord and satisfaction for all costs related to such change.

- G. Records of extra work performed hereunder, if any, shall be submitted to the Owner's Representative, within 24 hours of the work being complete. Advanced notification must be provided to the Owner and/or Owner's Representative prior to the initiation of the work described therein. Strict compliance with these requirements shall be a condition precedent to compensation for such work but compliance of itself shall not establish entitlement. Duplicate copies of accepted records shall be made and signed by both CMR or its representative and the Owner's Representative, and one copy retained by each.
- H. Any right of the CMR to an extension of time for extra work duly authorized by the Owner or Owner's Representative shall be determined under the provisions of General Conditions Part 10.3 below and Specifications Section 01 2600.

9.3. OMITTED OR DELETED WORK:

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

9.4. AUDIT:

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

9.5. DISPUTED WORK:

- A. If the CMR is of the opinion that any work required, necessitated, or ordered by the Owner's Representative or the Owner, or any action required or ordered by the Owner's

Representative or the Owner to be taken or not taken is not Work included within the Contract Sum, any claim for additional compensation or an extension of the Contract Period arising therefrom shall be subject to the claims procedures and submission requirements set forth in the Contract Documents.

- B. No payment shall be made to CMR for any disputed work for which Owner's final determination is that CMR is not entitled to receive any increase in the Contract Sum for such Work. Payment for Work not in dispute shall continue to be made to the CMR in accordance with the Contract Documents.

PART 10 TIME

10.1. TIME OF START AND COMPLETION:

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

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

- A. Submission of an acceptable detailed Schedule of Values immediately after Notice to Proceed and prior to the submission of the first request for payment, as required by Part 11.2 of these General Conditions;
- B. Submission of an acceptable Startup Construction Schedule within seven (7) days of Notice to Proceed as required by Section 01 3200 of the Specifications.
- C. 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;
- D. Submission of an acceptable CMR Quality Control Plan within ten (10) days of Notice to Proceed as required by Section 01 4000 of the Specifications;
- E. Submission of an acceptable Project Schedule as required by Section 01 3200 of the Specifications;

- F. Submission of an acceptable Submittal Schedule as required by Submittals, Section 01 3300 of the Specifications;
- G. Submission of an acceptable Erosion and Sedimentation Control Plan as required by Section 01 5000 of the Specifications;
- H. Completed installation of required Phase 1 Erosion & Sediment Controls, perimeter construction fence and CMR and Owner's Representative's onsite construction trailers, as required by the Contract Documents;
- I. Submission of an acceptable Waste Management Plan as required by Section 01 7419 of the Specifications.

10.3. EXTENSION OF TIME:

- A. The parties agree that no extension beyond any required date of completion, whether Substantial Completion or Final Completion, fixed by the terms of the Contract shall be effective unless granted in writing, and signed by the Owner's Purchasing Agent or his designee. All time requirements set forth herein shall be of the essence. It shall be a condition precedent to any claim for extension of time that the CMR comply strictly with the following requirements:
 - 1. Give Notice of delay in writing to the Owner's Representative, to the Owner's Project Manager, and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with, 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 CMR has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. 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 CMR shall submit to the Owner's Representative, to the Project Manager, and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this article and by any applicable Contract Specifications, within twenty-one (21) days after the delay has ceased.
 - 3. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

4. The CMR shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.
 5. Strict compliance with all applicable submittal requirements shall be a condition precedent to entitlement to any extension of time, but such compliance shall not of itself establish entitlement. Failure to comply with the foregoing submittal requirements shall be deemed a conclusive waiver, without limitation, of any claim for extension of time arising from or related to the alleged occurrence.
- B. The CMR shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the CMR. The CMR shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner's Representative may determine to be due solely to such causes and only to the extent that such occurrences actually delay achieving the applicable completion date, and then only if the CMR shall have strictly complied with all applicable claims submission requirements of this Contract, including, without limitation, Paragraph 10.1. To the extent any delay for which the CMR seeks an extension of time is due concurrently to causes for which CMR may be entitled to a delay and to causes within the reasonable control or foreseeability of the CMR, the CMR shall not be entitled to any extension of time.
- C. The CMR is to assume 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 CMR shall include this Owner Float in the Contract Period, in the Contract Sum, and shall incorporate the Owner Float in the Project Schedule. The CMR 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 CMR's final submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to issue a written decision shall be deemed a final decision to deny the claim as of the ninetieth (90) Day. A final decision by the Owner shall be a condition precedent to institution by the CMR of any judicial proceeding for relief on the claim. The CMR's right to seek a judicial appeal of denial of a claim for extension of time is barred if no suit is filed within six (6) months following the Owner's final decision on the claim. No consideration by the Owner of any additional submissions by the CMR in support of any claim shall extend this six month period.
- E. Delays caused by the failure of the CMR's Subcontractors, suppliers and dealers to furnish approved working drawings, shop drawings, submittals, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors or Sub-Subcontractors to perform their work in conformity with the Project Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.
- F. If the CMR makes a claim against the Owner for costs or damages due to unreasonable

delays caused by the Owner, and its agents or employees, it shall be liable to the Owner for a percentage of all the costs the Owner incurs in investigating, analyzing, negotiating, and litigating the claim, which percentage shall be equal to the percentage of the CMR's total delay claim which is determined through litigation to be incorrect or to have no basis in law.

- G. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.
- H. The CMR shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

10.4. **RECOVERY SCHEDULE:**

- A. Should the approved Construction Schedule show at any time during CMR's performance, in the sole opinion of the Owner, that the CMR is 14 days or more behind schedule for any specific critical path milestone date, or should the CMR be required to undertake actions under Paragraph 10.7 of this section, the CMR shall submit a Recovery Schedule to the Owner within five (5) days after receiving a written request from the Owner to do so. The Recovery Schedule shall explain and display how the CMR intends to reschedule its Work at no additional cost to the Owner, in order to regain compliance with the Project Schedule during the immediate subsequent pay period.
- B. If the CMR believes that all of the time can be recovered during the subsequent pay period, the CMR will be permitted to prepare a Recovery Schedule as set forth below. However, if the CMR believes it will take more than thirty (30) days to recover all of the lost time, it shall prepare and submit a request for revision of the Construction Schedule and comply with all of the requirements for a Schedule Revision.
 - 1. The CMR shall prepare and submit to the Owner a one-month maximum duration Recovery Schedule, incorporating best available information from Subcontractors and others which will permit return to the approved Project Schedule at the earliest possible time. The CMR 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) Working Days after submission of Recovery Schedule to the Owner, the CMR shall participate in a conference with the Owner to review and evaluate the Recovery Schedule. Within two (2) Working Days of the conference, the CMR shall submit the revisions necessitated by the review for the Owner's review and approval. The CMR shall use the approved Recovery Schedule as its plan for returning to the Construction Schedule.
 - 3. CMR shall confer continuously with the Owner to assess the effectiveness of the Recovery Schedule. As a result of these conferences, the Owner will direct the CMR as follows: (i) If the Owner determines the CMR is still behind schedule, the Owner will direct the CMR to prepare a revised Recovery Schedule and comply

with all of the requirements of a Schedule Revision as stated herein and the other requirements of the Contract Documents; provided, however, that nothing herein shall limit in any way the rights and remedies of the Owner as provided elsewhere in the Contract Documents. (ii) If the Owner determines the CMR has successfully complied with provisions of the Recovery Schedule, the Owner will direct the CMR to return to the use of the approved 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 schedule and not delay or hinder the Owner's occupancy of the completed Project. The Substantial Completion and Final Completion Dates are set forth in the Contract. These dates shall be binding upon the CMR, subject to the provision of the Contract Documents allowing for agreed upon extensions of the Contract Period. The CMR shall include each of these dates on its Project Schedule in accordance with scheduling standards set forth in Specification Section 01 3200.
- 10.6. **CMR DELAYS:** The CMR agrees that wherever it becomes apparent from review of the current monthly 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 CMR shall take some or all of the following actions at no additional cost to the Owner:
- A. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
 - B. Increase the number of working hours per shift; shifts per working day, or days per week; the amount of construction equipment; the forms for concrete work or other trade specific materials or equipment; or any combination of the foregoing to substantially eliminate the backlog of Work;
 - C. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and comply with those revisions;
 - D. The CMR shall submit to the Owner's Representative for review, a written statement of the steps the CMR intends to take to remove or arrest the delay to the Project Schedule. If the CMR shall fail to submit a written statement of the steps it intends to take or should fail to take such steps as required by the Contract, the Owner or the Owner's Representative may direct the level-of-effort in manpower (trades), equipment, and work schedule (overtime, weekend and Holiday work, etc.) to be employed by the CMR in order to remove or arrest the delay to the critical path in the accepted Project Schedule, and the CMR shall promptly provide such level-of-effort at no additional cost to the Owner. In addition, should schedule delays persist, the CMR's Surety will be asked to attend meetings to update the 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 CMR 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 CMR's complete performance of the Work, the Owner agrees to pay, and the CMR agrees to accept, subject to the terms and conditions hereof, the Contract Sum, plus reimbursable expenses, plus the amount required to be paid for Extra Work approved under Paragraph 9.2 hereof, less credit for any work omitted pursuant to Paragraph 9.3 hereof, and any other credits or offsets, including reimbursements or liquidated damages to which the Owner is entitled.
- B. The amount awarded as a unit price for any unit price Contract item shall represent payment in full, including overhead and profit, for all material, equipment and labor necessary to complete, in conformity with the Contract Documents, each unit or item of work shown, specified, or required under the said unit price Contract item.
- C. No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract item or a unit price Contract item, unless specific provision is made therefore in the Contract Documents.

11.2. SUBMISSION OF SCHEDULE OF VALUES: CMR shall organize and provide detail on the Schedule of Values in a manner acceptable to the Owner and as set forth in Section 01 2900 of the

Specifications. The Schedule of Values, once accepted by the Owner's Representative, may be used for verifying the CMR's applications for partial payments hereunder but shall not be binding upon the Owner for any purpose whatsoever.

11.3. APPLICATION FOR PAYMENT:

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

11.4. PARTIAL PAYMENTS:

- A. On or about the first of each month, the CMR shall make and certify an estimate of the amount and fair value of the Work performed and may apply for partial payment therefore. The Owner's Representative shall revise the estimate to show the value of Work completed in accordance with the Owner's Representative's observation of the Work and knowledge, information and belief. The CMR agrees to be bound by the Owner's Representative's revisions to the applications for partial payment.
- B. Whenever the monthly estimate, after approval by the Owner's Representative, shows that the value of the work completed during the previous month exceeds \$1,000.00, the Owner's Representative will certify the CMR's Application and Certificate for Payment for such Work. Such Application and Certificate for Payment as approved by the Owner's Representative will authorize payment by the Owner in an amount equal to the value of the Work completed less any sums retained or deducted by the Owner under the terms of the Contract Documents, and less retainage of five (5) percent of payments approved.
- C. An Application and Certificate for Payment shall not be considered received by the Owner unless accompanied by the following:
 - 1. An affidavit that payrolls, bills for materials and equipment, Subcontractors invoices, and all other indebtedness in connection with amounts paid by the Owner to the CMR under previous Application and Certificates for Payment have been paid and otherwise satisfied; and
 - 2. All construction photos as required by Contract Specification 01 3233;
 - 3. A revised 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 CMR in accordance with the applicable Certificate and the Contract Documents.

- E. Unless otherwise provided herein, no payment will be made for any materials or equipment supplied hereunder before they are:
 - 1. Incorporated in the work in a permanent manner required by the Contract Documents,
 - 2. Properly stored at the site of the Project, or
 - 3. Properly insured and stored in a bonded warehouse to the satisfaction of the Owner.

- F. The cost of equipment and non-perishables delivered and stored only at the Project Site and tested for adequacy may be included in the CMR's Application and Certificate for Payment; provided, however, that the CMR shall furnish written evidence satisfactory to the Owner that the CMR has clear title to such materials or equipment at the time of payment therefore by the Owner and that such equipment is being stored and maintained in accordance with the Contract Documents and the Drawing's recommendations. The amount to be paid by the Owner for such equipment and non-perishables will be 100 percent (100%) of the invoice cost to the CMR as supported by receipted bills, less the specified retainage. Such payment shall not relieve the CMR of full responsibility for completion of the Work and for protection of materials and equipment until incorporated in the Work in a permanent manner as required by the Contract Documents.

- G. Before any payment will be made under this Contract, the CMR and every Subcontractor, if required, shall deliver to the Owner's Representative a written, verified statement, in satisfactory form, showing in detail all amounts then due and unpaid by the CMR to all laborers, workers, and mechanics, employed under the Contract for the performance of the Work at the Project Site, for daily or weekly wages, or to other persons for materials, equipment, or for supplies delivered at the Project Site during the period covered by the payment request.

11.5. DELAYED PAYMENTS:

- A. Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner in consultation with the Owner's Representatives to protect the Owner due to loss because of:
 - 1. Defective work not remedied,
 - 2. Third party claims filed or reasonable evidence indicating probable filing of such claims,
 - 3. Failure of the CMR to make payments properly to Subcontractors or for labor, materials or equipment,
 - 4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
 - 5. Damage to the Owner or another Contractor,
 - 6. Reasonable evidence that the Work will not be completed within the time required for completion,

7. Persistent failure to carry out the Work in accordance with the Contract Documents, or
 8. Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors of others, caused by the act or neglect of the CMR of any of its Subcontractors.
- B. The Owner shall have the right, as an authorized representative for the CMR and without the Surety's consent, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. The application of these amounts shall be deemed payments for the account of the CMR and shall reduce the Owner's obligation to the CMR accordingly. The CMR may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If CMR does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the CMR shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

11.6. SUBSTANTIAL COMPLETION

- A. **WRITTEN NOTIFICATION:** When the CMR considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the CMR shall provide the Owner and the Owner's Representatives written notification of such fact accompanied by a complete list of Contract Work items remaining to be completed (CMR's Punch List) and as set forth in Specifications Section 01 7700.
- B. **PUNCH LISTS:**
1. Within fourteen (14) days following receipt of the CMR's written notification of Substantial Completion (including a CMR's Punch List, as set forth in Paragraph 11.6.A), the Owner's Representative shall conduct an inspection of the Work and compile a comprehensive list of deficiencies and incomplete Work (i.e. Architect's Punch List). The Owner's Representative shall then issue a Consolidated Punch List incorporating the CMR's and the Architect's Punch Lists into a single list in a uniform format ("Consolidated Punch List").
 2. Following issuance of the Consolidated Punch List, the CMR shall have thirty (30) days to complete the Work contained thereon and to achieve Final Completion, unless otherwise specified in the Contract Documents. If the Work for which Final Completion is requested is not Finally Complete within the required period, it is understood and agreed by all parties that the CMR shall become liable to the Owner for Liquidated Damages as established by the Contract, which shall continue in effect until the applicable Final Completion has been achieved.
 3. If the Owner has taken beneficial occupancy or has commenced 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 achieving Substantial Completion, 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 Owner's use thereof. Should the Contractor access to such spaces or facilities to perform 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 Owner 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 reason 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 shall perform no more than two Substantial Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Substantial Completion inspections be required, the CMR shall pay the Owner any amounts paid by the Owner to the Owner's Representative and other third party consultants for any additional inspections.
5. Should the CMR fail to complete or correct any item on the Consolidated Punch List within the required period, the Owner may, at any time thereafter, complete one or more items on the list with its own forces or with such other Contractors as it deems advisable and recover from the CMR the cost for performing such work plus a markup of ten percent (10%) to cover administrative costs. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents. All such completed Work shall be subject to the Warranty provisions of the Contract Documents.

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

1. Submit a progress payment request coincident with or following the Substantial Completion date claimed, showing one hundred (100 %) percent completion for the portion of the Work claimed as Substantially Complete.
2. Submit all outstanding changes to the Contract Sum which are not barred by the claims submission procedures of the Contract Documents.
3. Advise Owner of pending insurance changeover requirements.
4. Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, and similar documents.

5. Obtain and submit final releases of liens, which may reserve rights for Work performed after the date of the release, (include with Certificate of Substantial Completion) from all Subcontractors, construction materials suppliers, and services and utilities, enabling the Owner's full and unrestricted use of the Work and access to services and utilities, and including (where required) Occupancy Permits, facility operating certificates, and similar releases from authorities having jurisdiction.
6. Submit two (2) electronic copies and three (3) paper copies (8- 1/2" x 11" page format in 3-ring notebook binders, with a table of contents) of Project record documents, maintenance manuals, final Project photographs, damage or settlement survey, property survey, and similar final Project record information.
7. Submit certifications of compliance for each test and inspection required by all Sections of the Project Manual. The certifications shall be signed by the CMR and by the parties conducting the test.
8. Deliver tools, spare parts, extra stocks of materials, and similar physical items to Owner.
9. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.
10. Complete start-up testing of systems, water and air balancing, adjust and calibrate temperature control system, fire alarm system, generator (as required, if included in the design). Clean all HVAC units, ducts if necessary. Remove temporary filters and install new filters in all air-handling units and in all unit ventilators.
11. Complete all commissioning and acceptance tests.
12. Complete instruction for Owner's operating/maintenance personnel for all equipment and machinery installed under the Contract Work as specified by the Owner.
13. Discontinue (or change over) and remove from Project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
14. Complete Final Cleaning and Repair of the Work as specified in Specifications Division 1 Section, "Closeout Procedures".
15. Touch up and otherwise repair and restore marred exposed finishes.
16. Warranties shall become effective once Owner and Owner's Representative determine that the CMR has achieved Substantial Completion and execute the Certificate of Substantial Completion.
17. If the Owner partially occupies the Project Site, this shall not indicate acceptance of Substantial Completion or activation of warranties.
18. The CMR shall provide extended warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.

- D. Upon receipt of CMR's request, the Owner and Owner's Representative will either proceed with inspection or advise the CMR of pre-requisites not fulfilled. Following inspection, the Owner and Owner's Representative will either prepare the Certificate of Substantial Completion, or advise the CMR of Work, or additional Work, which must be performed prior to issuance of the Certificate of Substantial Completion. Should the Owner and/or Owner's Representative determine that the Work is not Substantially Complete, notification in writing will be given to the CMR stating the reasons therefore. CMR shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative a second written notice of Substantial Completion. The Owner and Owner's Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the provisions of General Condition 11.6.B.3 shall be applicable until the Certificate of Substantial Completion is issued.
- E. When the Owner and Owner's Representative concur that the Work is Substantially Complete, the Owner's Representative shall:
1. Prepare a Certificate of Substantial Completion on AIA Form G704 accompanied by CMR's list of items to be completed or corrected to achieve Final Completion, as verified and amended by the Owner's Representative.
 2. Submit the Certificate of Substantial Completion to the Owner and the CMR for their written acceptance of the responsibilities assigned to them in the Certificate.
 3. Notify the CMR to submit Final As-Built Mylar drawings and one digital copy, which are to be labeled "FINAL AS-BUILTS" and submitted to the Owner's Representative for approval. Approval and acceptance by Owner of Final As-Builts shall be a condition precedent to CMR requesting Final Completion approval.

11.7. **FINAL COMPLETION**

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

inspections necessary to achieve Final Completion.

- C. The Owner shall, within thirty (30) days after receipt of the approved Final Application and Certificate for Payment, pay the CMR the amount stated therein.

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

- A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the CMR shall, within three (3) Days after written notice from the Owner, commence removal of all defective and deteriorated Work and materials and replace it at the CMR's expense with Work and materials in accordance with the requirements of the Contract Documents and shall complete all incomplete Work in accordance with the Contract Documents within a reasonable time period.
- B. In the event the CMR fails to commence the removal, replacement, completion or correction of such Work within three days (3) after the date of written notice from the Owner and to complete such Work within a reasonable time period thereafter, the Owner will cause such Work to be performed by other Contractors and the CMR and its Surety under the Performance Bond will be obligated to pay the Owner all costs incurred in the performance of such Work plus an administrative fee of ten percent (10%) within thirty (30) days following submission by Owner to CMR of such demand for payment.
- C. The CMR's Warranty obligations shall remain in full force and effect regardless of whether the Warranty Work was performed by the CMR or by the Owner.
- D. Defects or nonconformities which are remedied as a result of Warranty obligations shall subject the remedied portion of the Work to an extended Warranty Period of one (1) year from the date upon which such defect or nonconformity was fully remedied or from the date of Final Completion of the Project as a whole, whichever is later, whether such Warranty Work was performed by the CMR or by the Owner. Any repetitive defect, failure or malfunction identified within the Warranty Period shall remain under Warranty until it has been fully corrected and has performed without defect, failure or malfunction for a period of one (1) year.

- 11.9. EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE COVERAGE:** Neither final payment nor any retainage shall become due until the CMR submits to the Owner's Representative (i) an affidavit that payrolls, bills for materials and equipment, and all other indebtedness in connection with the Work for which any third party claim against the Owner might be asserted have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force following final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days' prior written notice has been provided to the Owner; (iii) a written statement that the CMR knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of the Surety to final payment; and (v) all fully executed and effectual warranties and guaranties associated with the Work, (vi) if required by the Owner, other data establishing the payment or satisfaction of obligations (such receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract) and such guaranties and indemnities all in such form and detail as may be required by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner, in its sole and absolute discretion, sufficient to indemnify the Owner against any claim or lien. If any such claim or lien remains unsatisfied after payments are made, the CMR shall

refund to the Owner all money that the Owner may be compelled to pay in discharging such claim or lien, including all costs associated therewith, including reasonable attorneys' fees. Provided, however, that nothing herein shall be deemed a waiver by the Owner of its sovereign immunity from mechanic's liens.

- 11.10. **CMR'S ACCEPTANCE OF FINAL PAYMENT:** The CMR's acceptance of final payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment submitted in strict compliance with the claims submission requirements of the Contract Documents and not finally resolved. If at the time CMR requests Final Payment there are claims pending which were submitted in strict compliance with the claims submission requirements of the Contract Documents, the Owner may pay undisputed portions of the Final Application and Certificate for Payment as if it were an Application and Certificate for Partial Payment. No payment, final or otherwise, shall operate to release the CMR, or its Surety, from any obligations under the Contract.
- 11.11. **RELEASE AND REQUEST FOR FINAL PAYMENT:** Upon completion of the Work and before final payment, the CMR will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment in the form provided by the Owner (see RFP attachment).

PART 12 CMR'S RESPONSIBILITY FOR SAFETY PROCEDURES:

- 12.1. **SUPERVISION:** The CMR shall select one or more on-site personnel who shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of school or jurisdictional authorities in order to prevent injury, damage or loss to:
- A. All persons involved in performance of the Work.
 - B. All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work.
 - C. The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site.
 - D. Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.
- 12.2. **SAFETY BARRIERS AND HAZARD WARNINGS:** The CMR shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. The CMR shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.
- 12.3. **USE OF EXPLOSIVES:** The CMR's use of explosives on the Owner's property shall be limited to that necessary for the performance of the Work, and will be permitted only after submission of a written request by the CMR to the Owner, and receipt of written approval from the Owner. The Owner may in its sole discretion deny such request if the use of explosives is not called for by the Specifications. The Owner may in its sole discretion as a condition of granting any approval for the use of explosives set specific times when the explosives may be used, including outside normal working hours and the CMR shall comply with such time restrictions without additional cost to the

Owner. The use of all explosives by the CMR shall be carried out by qualified personnel in accordance with applicable safety laws and regulations.

- 12.4. **PROTECTION OF PROPERTY AND PROPERTY DAMAGE:** During performance of the Work and until Final Completion thereof, the CMR shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The CMR shall take proper precautions to protect the finished Work from loss or damage, pending completion and Final Completion of all Work included in the Contract. Such precautions shall not relieve the CMR from all liability and responsibility for loss or damage to the Work occurring before Final Completion by the Owner. Such loss or damage shall be at the risk of and borne by the CMR, whether arising from acts or omissions of the CMR or others and whether or not covered by the CMR's builder's risk insurance. In the event of any such loss or damage, the CMR shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise specified in the Contract Documents. The CMR shall take special precautions throughout all its operations to guard against fire and shall limit the amount of inflammable materials stored at the Project Site to the minimum amount necessary to perform the Work and consistent with the proper handling and storing of such materials.
- 12.5. **ACCIDENT PREVENTION SUPERVISOR:** The CMR shall select one or more on-site personnel whose duty shall be site safety and accident prevention. One such person shall be the CMR's Superintendent, or another key personnel member of its on-site project management team unless otherwise designated by the CMR in writing to the Owner and the Owner's Representative.
- 12.6. **OVERLOADING OF STRUCTURES:** The CMR shall not load or permit any part of the Project Site, whether or not a part of the Work, to be loaded so as to endanger its safety or structural integrity.

PART 13 INSURANCE

13.1. CMR'S INSURANCE:

- A. During the term of this Contract, the CMR shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:
1. Commercial General Liability insurance shall be in the amount of \$2 million per occurrence/\$5 million aggregate. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the CMR or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The CMR shall provide a certificate of insurance that names Arlington Public Schools/Arlington School Board, including elected and appointed officials, agents and employees as an additional insured. Coverage afforded under this policy shall 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 CMR shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance

in amounts satisfactory to the CMR, naming the Owner as an additional named insured.

3. Worker's Compensation and Employer's Liability Insurance for the CMR's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The CMR shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the CMR shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the CMR and each of 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 CMR of its obligations under this Contract and, upon such performance, shall be released to the CMR. Such policy shall be in an amount equal to the Contract Sum.
 6. Proof, to the satisfaction of the Owner, of insurance for each type of coverage listed herein shall be provided within ten (10) days of the CMR's receipt of the Notice to Proceed, and no Work shall proceed unless all such insurance is in effect. The CMR shall not allow any Subcontractor to commence work on its subcontract until all such insurance of the Subcontractor has been so obtained and approved by the CMR and found to be in accordance with the requirements set forth herein. The CMR certifies by commencement of the Work that its insurance and that of all Subcontractors is in effect and meets the requirements set forth herein. Copies of Subcontractor insurances shall be kept on file and made available to the Owner upon request.
- B. All of the aforesaid insurance policies must be endorsed to provide that the insurance company shall give forty-five (45) days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the CMR shall provide the Owner with a copy of each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.

13.2. **PROPERTY INSURANCE:**

- A. The CMR shall purchase Builder's Risk insurance upon the entire Work at the Project Site to the full insurance value of the new improvements thereof (anticipated to be \$36 million). This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:
1. Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).

2. Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).
 3. Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).
 4. Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.
 5. Coverage of CMR's labor, overhead and profit.
 6. Coverage of materials stored or installed on the Project Site, until said materials are accepted by the Owner per Substantial Completion and Acceptance requirements. Payment by Owner for materials stored or installed on the Project Site does not eliminate CMR's responsibility or liability with regards to theft and vandalism or other damage.
- B. At the Owner's sole discretion, Builder's Risk insurance may be purchased by the Owner as specified above. In this event, cost for such coverage shall be deducted from the Contract Sum.

PART 14 CONTRACT SECURITY

- 14.1. The CMR shall execute and deliver to the Owner Performance and Labor and Material Payment Bonds on the forms provided in the Contract Documents, each in an amount equal to the Contract Sum. The Performance and Labor and Material Payment Bonds shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. These bonds shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance and Labor and Material Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract consistent with the requirements of the Virginia Public Procurement Act. The premiums on the Performance and Labor and Material Payment Bonds shall be paid by the CMR and shall be included in the Contract Sum.
- 14.2. If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such bonds shall cease to be adequate security for the CMR, the CMR shall within ten (10) days after notification of such fact, substitute acceptable bonds in such form and sum and signed by such other Sureties as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the CMR and shall be included in the Contract Sum. No further partial payments shall be deemed due nor shall be made until the new Bonds are in effect and provided to and approved by Owner.
- 14.3. Alternative Forms of Security: Any 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 CMR shall, at its own expense and upon the written request of the Owner's Representative, uncover and replace such Work without an adjustment to the Contract Period or Contract Sum.
- B. If a portion of the Work has been covered which the Owner's Representative and/or Arlington County Inspector has not specifically requested to observe prior to its being covered and is, under the Contract Documents, allowed to be covered without observation of the Owner's Representative or Owner or applicable law or regulation, the Owner's Representative and/or Arlington County Inspector may request to see such Work and it shall be uncovered by the CMR. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order process as outlined in Specification Section 01 2600, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the CMR shall pay the costs of uncovering and replacing such Work.

15.2. CORRECTION OF WORK:

- A. The CMR shall promptly correct any Work which fails to conform to the requirements of the Contract Documents (the "Rejected Work"), whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The CMR shall bear all costs associated with the correction of any Rejected Work, including additional testing and inspections and compensation for the Owner's Representative's services and expenses made necessary thereby.
- B. Nothing contained herein shall affect the Owner's right to correct non-conforming Work pursuant to the provisions of the Contract Documents.

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

PART 16 POWERS OF THE PURCHASING AGENT

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

- A. To decide any and all questions, claims and disputes in relation to this Contract and its performance, except as herein otherwise specifically provided, and his decisions upon such

questions, claims and disputes shall be final and conclusive upon the parties hereto.

- B. To modify or change this Contract in accordance with Part 9 of these General Conditions so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he deems it in the interest of the Owner to do so.
- C. To suspend the whole or any part of the Work whenever, in his judgment, such suspension is required: (1) in interest of the Owner generally, or (2) to expedite the completion of the Project, or (3) due to a delay caused by the Owner or its authorized representatives.
- D. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before Substantial Completion or Final Completion thereof, the Purchasing Agent or his designee, the Owner's Project Manager, shall deem it necessary.
- E. The Purchasing Agent may delegate his authority/power to his designee, the Owner's Project Manager, for those matters at Part 16.1.A through 16.1D., but only to the extent the CMR has been given written notice by the Purchasing Agent of such delegation.

PART 17 CMR'S DEFAULT AND TERMINATION

17.1. OWNER'S RIGHT AND NOTICE:

- A. The parties agree that:
 - 1. If the CMR fails to begin the Work when required to do so; or
 - 2. If, at any time during the progress of the Work, the Owner determines that the CMR is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or
 - 3. If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or
 - 4. If the CMR fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or
 - 5. If the CMR fails in any manner of substance to observe the provisions of this Contract; or
 - 6. If any of the Work, machinery, or equipment is defective and is not replaced as herein provided; then the Owner's Representative shall certify such fact or condition to the Owner without prejudice to any other rights or remedies Owner may have hereunder, and the Owner shall have the right to declare the CMR in default in whole or in part. In the event the Owner elects to declare the CMR in default, the Owner shall notify the CMR and its Sureties by written notice describing the nature of the default and providing the CMR a right to cure such default within three (3) calendar days after the date of the notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in Paragraph 17.3 hereof.

B. The parties further agree that:

1. If legal proceedings have been instituted by others than the Owner in such manner as to interfere with the progress of the Work and to potentially subject the Owner to the peril of litigation or outside claims; or
2. If the CMR is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
3. If in any proceeding instituted by or against the CMR, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or
4. If a receiver or trustee is appointed for the CMR or the CMR's property; or
5. If the Contract or any part hereof is sublet without the prior written consent of the Owner; or
6. If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the CMR, otherwise than as herein specified; or
7. If the Work to be done under this Contract is abandoned; then such fact or condition shall be certified by the Owner's Representative to the Owner and thereupon, without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written notice to the CMR or, in the Owner's sole discretion, exercise any other rights available to it.

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

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

- A. If the CMR defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the CMR's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:
1. Have the defaulted Work performed by others;
 2. Supplement the CMR's work force;
 3. Withhold payments due the CMR and use such payments to satisfy any claims for moneys owed by the CMR in connection with the Project, in accordance with any

provisions of the Contract Documents;

4. Replace or repair any defective Work;
5. Notify the Surety of such default and make demand upon the Surety as may be applicable under the circumstances of the default, but Owner shall be under no obligation to notify the Surety;
6. Terminate the CMR's performance of the Contract.

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

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

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

17.6. **OWNER'S RIGHT TO TERMINATE:** Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the CMR. In such event, the CMR shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%; or (2) the pro rata percentage of completion based upon the approved Schedule of Values, Section 01291 of the Specifications, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the CMR and the Owner. The CMR shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the CMR to be due under this Paragraph. The Owner shall have the right of audit (and CMR shall have the obligations) stated in Paragraph 9.4, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the CMR's remedies shall be limited as provided in this Paragraph 17.6.

PART 18 MISCELLANEOUS SPECIAL CONDITIONS

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

END OF SECTION