# Invitation

**Arlington Public Schools**
**Procurement Office**

# Invitation to Bid 41FY20

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| **Invitation to Bid Title:** | **Washington Liberty Roof Coating Restoration** |
| **Invitation to Bid Number:** | **41FY20** |
| **Invitation to Bid Issue Date:** | **December 13, 2019** |
| **Pre-Bid Conference:** | **N/A (Refer to Invitation Title Page 2)** |
| **Bid Closing Date/Time:** | **January 7, 2020, Prior to 10:00 A.M. (Local Prevailing Time)** |
| **Bid Opening Date/Time:** | **Promptly Following Bid Closing** |
| **Procurement Office Representative:** | **Dyanna McMullen, CPPB, VCO, Senior Procurement Specialist (703) 228-7649, dyanna.mcmullen@apsva.us** |

This is Arlington County School Board, operating as Arlington Public Schools ("APS" or "Owner") Invitation to Bid (ITB) #41FY20 for Washington Roof Coating Restoration, located at 1301 N. Stafford Street, Arlington, VA, 22201, (the "Project"). Sealed Bids must be received in hand and time stamped, or signed in, by a member of the APS Procurement Office (Procurement Office) prior to the date and time stated above (collectively the "Bid Closing") and will be opened and publicly announced promptly following expiration of the Bid Closing ("Bid Opening"). If the Bid Opening is to take place at a time and location other than where the Bids are to be received, that time and location will be announced upon expiration of the Bid Closing. Bidders are responsible for ensuring that the Procurement Office receives its Bid submission prior to the Bid Closing. The Procurement Office is located on the 4th Floor of the Syphax Education Center, 2110 Washington Blvd., Arlington, Virginia 22204 ("Syphax"). Bidders may be asked to sign in at the 4th Floor Reception Desk before being allowed to proceed to the Procurement Office. Bidders must allow sufficient time to clear the sign in process to complete the Bid submission process prior to Bid Closing. Visitor parking is available on Levels B1 and B2 of the parking garage.

Delivery to, or receipt by, any office other than the Procurement Office shall not be deemed receipt by the Procurement Office until actually received in hand by a member of the Procurement Office. Bidders assume

all risk of delivery to the correct office. The 4th Floor reception desk serves more than one APS department and receipt by the 4th Floor reception desk shall not be deemed receipt by the Procurement Office.

The time a Bid is received in the Procurement Office shall be determined by the time stamped on the Bid receipt by the time clock in the Procurement Technician's work station. In the event this time clock is not functioning; the time shall be determined by the time displayed on the atomic clock located in the Procurement Technician's work station. The time on the atomic clock will be written on the Bid receipt by hand by Procurement Office personnel**. Bids received after the Bid Closing shall not be considered.** If Syphax is closed for any reason at the scheduled time of the Bid Closing, the Bid Closing and the Bid Opening shall automatically be extended to the same time as originally stated on the next business day Syphax is open.

All Bids must be submitted on the enclosed pages bearing the caption Bid Form (collectively "Bid Form") or a copy thereof. For purposes of this requirement a "copy" is an exact duplicate of the Bid Form included in these Bid Documents reproduced in any manner with no modifications, additions, or deletions. All pages of the Bid Form must be submitted and all blanks in the Bid Form must be completed or noted as not applicable. A notation of "not applicable" or "N/A" shall be used only if the information requested is not a required or mandatory element of the Bid. A person authorized to bind the Bidder in contractual matters must sign the Bid Form. Mandatory provisions of this ITB are indicated by the inclusion of the words "shall" or "must" to identify the Bidder's obligations. Failure to comply with any requirement stated as mandatory either in this Invitation or in the Instructions to Bidders shall result in rejection of the Bid as non-responsive, except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality or time.

**Bid Documents:**
Submission of a Bid is acceptance by the Bidder of all requirements of the Contract Documents if the Bidder is awarded the Contract. Terms used in this ITB shall have the same meaning as provided in the Contract Documents. The Contract Documents state the requirements of the Project with detail.

The Bid Documents for this solicitation consist of this Invitation, the Instructions to Bidders, the Scope of Services, all Addenda issued prior to the Bid Closing, and the Bid Form. The Contract Documents are as defined in the form Agreement included with this solicitation. All provisions of the Bid Documents and of the Contract Documents shall apply to this solicitation, and submission of a Bid shall be the Bidder's confirmation of the acceptance thereof and agreement to comply therewith.

**Pre-Bid Conference:**
A pre-Bid conference (Conference) will not be held for this procurement.

**Bidder's Questions:**
All questions regarding this solicitation, must be submitted in writing via email, addressed to Dyanna McMullen, Procurement Office, Senior Procurement Specialist, at dyanna.mcmullen@apsva.us, with copies to Cathy Lin, Energy Manager and Stormwater, Program Administrator, at cathy.lin@aspva.us and David Stash, Roofing Supervisor, at david.stash@apsva.us. Questions must be received by 5:00 P.M. local time, December 17, 2019.

The Procurement Office will issue written answers to all questions timely submitted. If a Conference is conducted, the Procurement Office will issue written answers to all questions raised at the Conference as an Information Item. Information Items shall be posted on the APS website (www.apsva.us) and shall be posted on Virginia's online electronic procurement system ( eVA). It is the responsibility of each Bidder to access this information.

Modification of the Bid Documents shall be accomplished only by a written Addendum issued by APS. If the answer to a question modifies the Bid Documents, it will be incorporated in and published as an Addendum.

No answer to a question as an Information Item shall be deemed to be an Addendum.

**Addenda:**
The Bid Documents shall be modified only by written Addendum issued by APS.

All Addenda shall be deemed to be a part of the Bid Documents.

All Addenda shall be posted on the APS website (www.apsva.us) and shall be posted on eVA. It is the responsibility of each Bidder to access this information.

The Bidder shall identify on the Bid Form in the space provided all Addenda received by the Bidder and which are included in the Bid, or the Bidder can include a copy of all Addenda with its Bid. It shall be the responsibility of each Bidder to confirm prior to submission of a Bid that it has received all Addenda. Failure of a Bidder to in fact have done so shall not relieve the Bidder from the requirements of the Bid, including all Addenda issued. Failure to comply with this requirement does not automatically make a Bid non-responsive. By submitting a Bid, the Bidder agrees that it is bound by its Bid and that it will accept any Contract awarded even if it did not obtain all Addenda before submitting a Bid.

**Information Items:**
All questions received timely, including those at the Conference, shall be addressed by written Information Item.

The Bid Documents shall not be modified by an Information Item.

All Information Items shall be posted on the APS website (www.apsva.us) and shall be posted on eVA, It is the responsibility of each Bidder to access this information.

**Submission of Bids:**
Bids must be received and time stamped or signed in at the Procurement Office prior to the Bid Closing stated in the Invitation. The Procurement Office is located at:

Arlington Public Schools
Syphax Education Center
Procurement Office, 4th Floor
2110 Washington Blvd.
Arlington, Virginia 22204

Submission of Bids electronically or by facsimile will not be accepted.

**The Bid Form, and all required additional documents referenced therein shall be submitted in a sealed, opaque envelope containing the following information on the outside of the envelope.**

Bid in Response to Arlington Public Schools Invitation to Bid No. 41FY20
Bid Closing Date and Time
Bidder's Name as appearing on the Bid Form
Commonwealth of Virginia Class A Contractor's License Number
Contractor's License Expiration date

**It is recommended that the mailing label, as found at Appendix A, is completed and attached to the outside of the envelope. IF THIS INFORMATION IS NOT CONTAINED ON THE OUTSIDE OF THE ENVELOPE THE BID WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FOR CONTRACT AWARD**

**Bid Closing and Opening**
The Bid Closing is January 7, 2020, at 10:00 A.M. (Local Prevailing Time). The Bid Opening will be held promptly following Bid Closing at Syphax. Note: The Bid Closing and Bid Opening are in the same building but in different rooms.

**Project Description and Background:**

APS, is currently seeking Bids for the Project. The Contractor will be responsible for furnishing all tools, equipment, labor, materials, and miscellaneous items needed for a complete turnkey Project.

The Contractor's responsibilities are described in the Construction Documents and shall generally include but is not limited to the following: See Scope of Work found on page 18.

**Negotiation Procedures in the Event the Apparent Low Bid Exceeds Available Funds:**
The Apparent Low Bid and the Apparent Low Bidder shall be the lowest responsive Bid from a responsible and qualified Bidder based upon the Total Bid as set forth in the Bid Form. If the Apparent Low Bid is within available funds, the Contract, if awarded, will be awarded to the Apparent Low Bidder for the entirety of the Work identified in the Contract Documents for the Total Bid, subject to such Modifications which may arise subsequent to Bid Closing.

If the Apparent Low Bid is not within available funds APS may negotiate with the responsible and qualified Bidder submitting the lowest responsive Total Bid ("Lowest Total Bid Bidder"). These negotiations may include consideration of value engineering, substitution of materials or equipment, and such other modifications of the proposed scope of Work, Contract Period, or other Project requirements which are consistent with the Project as initially procured and with the public needs Arlington Public Schools has a duty to satisfy. APS also may attempt to obtain additional funding to increase available funds. APS and the Lowest Total Bid Bidder will discuss all such proposed means for achieving a Contract Sum within available funds for a period not to exceed forty-five (45) Days from Bid Opening.

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

**Issued By:**

Dyanna McMullen, CPPB, VCO
Senior Procurement Specialist
Phone: (703) 228-7649
Email: dyanna.mcmullen@apsva.us

**End of Invitation**

# Instructions to Bidders

**1. Meaning of Terms**:

All terms used in the Invitation, these Instructions to Bidders, the Bid Form, or any Addenda shall have the meanings established by the Contract Documents.

**2. Failure to Comply with Mandatory Requirements:**

**Mandatory provisions of this ITB are indicated by the inclusion of the words "shall" or "must" to identify the Bidder's obligations. Failure to comply with these requirements or with any other requirements stated as mandatory either in the Invitation, these Instructions to Bidders, the Bid Form, or any Addenda shall result in rejection of the Bid as non-responsive, except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality or time, or if the requirement is designated in the Bid Documents as a Class 2 Mandatory Requirement for which supplementation after Bid Opening may be permitted.**

**3. Bidder Registration, Licensing and Certification:**

3.1. To be eligible to Bid and to perform any Contract which may be awarded, a Bidder is required to be qualified to do business in Virginia in the name in which the Bid is being submitted, including but not limited to any required filings of applicable fictitious name authorizations.

3.2. To be eligible to Bid and to perform any Contract which may be awarded, a Bidder is required to have in effect all business licenses, Contractor licenses and trade certifications required by federal or state law or regulation, or by Arlington County, Virginia ordinance or regulation to perform the services which are the subject of this solicitation.

3.3. The Bidder shall include on the outside of the Bid Envelope its Virginia Class A Contractor's License Number and expiration date. All other registrations, licenses or certifications information and documentation shall be provided in compliance with the fillable fields provided in the Bid Form. Each such license, registration or certification shall show on its face that it is current and valid.

3.4. See "Submission of Bids" below for additional requirements regarding Bidder's registration licensing and certification.

3.5. The Bid Form provides for identification of the Bidder's State Corporation Commission Identification Number and for explanation of any reason the Bidder is not required to be authorized to transact business in the Commonwealth of Virginia.

3.6. These registration, licensing and certification requirements are mandatory provisions in the Bid Form and failure to complete these sections properly shall make the Bid non-responsive.

**4. Examination of Bid Documents:**

4.1. Each Bidder shall thoroughly examine the Bid Documents. The Bidder's failure or omission to examine any Bid Document shall not relieve the Bidder from any obligations with respect to its Bid or to any Contract which may result therefrom. Each Bidder shall be responsible for the discovery and resolution by inquiry of any ambiguity, discrepancy, error, omission or conflict in the Bid Documents and Contract Documents which in the

exercise of reasonable care a reasonably competent Contractor in the field of work involved reasonably should have discovered, all of which shall be included in the Bidder's Total Bid

**5. <u>Submission of Bids</u>:**

5.1. Before submitting a Bid, Bidders are encouraged to visit the site of the Work, fully inform themselves as to all existing conditions and limitations, and shall include in the Bid a sum to cover the cost of all items included in the Contract. Bidders shall be fully responsible for having informed themselves as to all existing conditions for the Work. Any condition or circumstance arising after entering into the Contract which upon reasonable inspection reasonably should have been discovered prior to submitting the Bid shall not be the basis of any claim for adjustment of the Contract Sum or the Contract Time.

5.2. If the Owner is aware of any particular invention, design, process, product or device specified in the Contract Documents for use in performance of the Work which is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, it is set forth in the Contract Documents. If a Bidder discovers a requirement for any such fee or royalty, the Bidder shall make this requirement known to the Owner in order that an appropriate Addendum may be issued to all Bidders.

5.3. The Contractor shall, with its own forces, perform work having a value at least equal to the following percentage of the Bid price: **10%**

5.4. Bids must be received and time stamped or signed in at the Procurement Office by a member of the Procurement Office prior to the Bid Closing stated in the Invitation. The Procurement Office is located at:

Arlington Public Schools
Syphax Education Center
Procurement Office, 4th Floor
2110 Washington Blvd.
Arlington, Virginia 22204

Submission of Bids electronically or by facsimile will not be accepted.

5.5. **The Bid Form, and all required additional documents referenced therein shall be submitted in a sealed, opaque envelope containing the following information on the outside of the envelope.**

Bid in Response to Arlington Public Schools Invitation to Bid No. 41FY20
Bid Closing Date and Time
Bidder's Name as appearing on the Bid Form
Commonwealth of Virginia Contractor's License Number
Contractor's License Expiration date

**<u>It is preferred that the mailing label, as found at Appendix A is completed and attached to the outside of the envelope</u>. <u>IF THIS INFORMATION IS NOT CONTAINED ON THE OUTSIDE OF THE ENVELOPE THE BID WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE CONSIDERED</u>**

5.6. Bidders are responsible for ensuring that the Procurement Office receives its Bid submission prior to the Bid Closing. Delivery to, or receipt by, any office other than the Procurement Office shall not be deemed receipt by the Procurement Office until actually received in the Procurement Office. The 4th Floor reception desk also serves APS offices other than the Procurement Office. Receipt of the Bid submission by the 4th Floor reception desk therefore shall not be deemed receipt by the Procurement Office.

5.7. The time a Bid is received shall be determined by the time stamped on the Bid receipt by the time clock in the Procurement Technician's work station. In the event this time clock is not functioning; the time shall be determined by the time displayed on the atomic clock located in the Procurement Technician's work station. The time on the atomic clock will be written on the Bid receipt by hand by Procurement Office personnel.

5.8 The Procurement Office is located on the 4th Floor of the Syphax Education Center, 2110 Washington Blvd., Arlington, Virginia 22204 ("Syphax"). Bidders may be asked to sign in at the 4th Floor Reception Desk before being allowed to proceed to the Procurement Office. Bidders must allow sufficient time to clear the sign-in process to complete the Bid submission process prior to Bid Closing. Visitor parking is available on Levels B1 and B2 of the parking garage. The 4th Floor reception desk serves more than one APS department and receipt by the 4th Floor reception desk shall not be deemed receipt by the Procurement Office.

5.9 Sealed Bids received by the Procurement Office prior to the Bid Closing will be opened and publicly announced promptly after the Bid Closing. **Bid envelopes which fail to comply with any mandatory requirements stated in the Invitation or the Instructions to Bidders will be deemed to make the enclosed Bid nonresponsive and it will not be considered. Bids received after the Bid Closing shall not be considered.**

5.10. If Syphax is closed for any reason at the scheduled time of the Bid Closing the Bid Closing and the Bid Opening shall automatically be extended to the same time as originally stated on the next business day Syphax is open.

5.11 All Bids must be submitted on the Bid Form provided with the Bid Documents or a copy thereof. For purposes of this provision, a copy is an exact duplicate of the attached Bid Form reproduced in any manner with no modification, additions or deletions.

5.11.1 All blanks in the Bid Form must be completed or noted as not applicable. A notation of "not applicable" or "N/A" shall be used only if the information requested is not a required or mandatory element of the Bid. **It is mandatory that everything in the Bid Form is completed. A price must be entered for each line item to be considered for award. Failure to comply with this requirement shall make the Bid nonresponsive.**

5.11.2. Bid amounts shall be stated both in writing and in figures if the blanks in the Bid Form so provide, and shall state the same amount. If there is a variance between the written amount and the numerical amount, the written amount shall prevail.

5.11.3. Include only one price for each line item for which a price is to be provided.

5.11.4. If there is a variance between a unit price and an extension price, the unit price will

prevail.

5.11.5. All entries shall be typed or handwritten in ink or other form of permanent marker; pencil shall not be used.

5.11.6. In the event there are any erasures or other modifications to previously written or typed entries, each such erasure or other modification shall be initialed by the person signing the Bid and a brief explanation included in the margin on the same page.

5.11.7. Each signature appearing on the Bid Form shall be handwritten, shall indicate such person's authority to bind the Bidder, and shall be accompanied by the name of the signatory and the signatory's title either typed or printed legibly. A person authorized to bind the Bidder in contractual matters must sign the Bid Form.

5.11.7.1 If the Bidder is a corporation, the legal name of the corporation on file with the Virginia State Corporation Commission shall be set forth above the signature line, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation.

5.11.7.2 If the Bidder is a limited liability company, registered limited liability partnership, or limited partnership, the legal name of the firm on file with the Virginia State Corporation Commission shall be set forth above the signature line, together with the signature of the officer, officers, member, members, partner or partners as applicable authorized to sign Contracts on behalf of the firm.

5.11.7.3 If the Bidder is a partnership, the name of the partnership as stated in the partnership agreement shall be set forth above the signature line, together with the signature of the partner or partners authorized to sign Contracts on behalf of the firm.

5.11.7.4 If the Bidder is submitting a Bid under a trade name, the Bidder shall be identified on the signature line in the true name of the entity doing business as the trade name by the person authorized to sign Contracts on behalf of the firm.

5.11.7.5 If the Bidder submitting a Bid is a joint venture, the Bidder shall be identified on the signature line in the name of the joint venture as provided in the written joint venture agreement, and the Bid shall be signed by all ventures by the person authorized to sign Contracts on behalf of each venture.

5.11.8. The Bidder shall provide, in the space provided or directed in the Bid Form, (i) its Social Security number if an individual, or (ii) its federal employer identification number if a business entity other than an individual.

5.12 Any Bid received after the Bid Closing, whether by mail or otherwise, will not be considered and will be returned, unopened, without regard to the date of transmission.

5.13 Each Bidder must use the attached Bid Form for submitting its Bid. The Bidder shall return two (2) copies of the Bid Form, duly signed with the corporate seal impressed, if applicable, keeping all remaining pages for the Bidder's files. For purposes of this provision, a copy is an exact duplicate of the attached Bid Form reproduced in any manner with no modifications, additions or deletions. By executing and submitting the Bid Form, the Bidder acknowledges that it has read all Bid Documents, understands them, and agrees to be bound by all terms and conditions therein.

5.14 Submission of Proprietary Information. The Virginia Public Procurement Act provides limitations on the right of a Bidder to assert that information submitted as part of a Bid is proprietary information or contains trade secrets which are not subject to public disclosure. For any information the Bidder seeks to exclude from public disclosure, the burden shall be on the Bidder to comply with all applicable requirements of the Virginia Public Procurement Act. Any documentation related to such attempt to preserve the limitation of public disclosure of any information shall be submitted as a part of the Bid submission but as a separate Attachment properly marked and paginated to clearly establish the intent of such submission.

5.15 Any quantities set forth in the Bid Form or elsewhere in this solicitation are estimates only, and are given for the information of Bidders and for the purpose of Bid evaluation. They do not indicate the actual quantity that will be ordered since the actual volume will depend upon requirements that develop during the Contract Period.

**6. <u>Bid Security</u>:**

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

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

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

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

6.5. Bid security in the form of certified checks, cashier's checks or cash will be returned to all unsuccessful Bidders who submitted a certified check or cash within the earlier of rejection of all Bids or one hundred and twenty (120) days after Bid opening or one hundred and

twenty days (120) following issuance by the Owner of a Notice of Intent to Award to the Bidder.

6.6. If approved by the Arlington Public Schools' Attorney, a Bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Arlington Public Schools equivalent to a corporate surety's bond.

**7. <u>Guaranty Bonds</u>:**

7.1. The successful Bidder, at the time of the execution of the Contract, shall furnish a Performance Bond and a Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract Price and the Contract shall not be deemed to have been fully executed until such bonds are provided. Bonds shall be on the forms herein provided and shall be issued by a surety company licensed to conduct business in the commonwealth of Virginia and listed on the United States Treasury Department's latest Circular 570, and otherwise acceptable to Arlington Public Schools. The Performance Bond and the Payment Bond shall be in effect as of the date the successful Bidder signs the Contract, and if executed prior to the date the successful Bidder signs the Contract shall include written certification from the surety that the bond is effective as of the date of the Contract. If the successful Bidder is a partnership or joint venture all partners or ventures shall execute the bond as principal in a personal and not representative capacity, in addition to execution of the bond by the Contractor as principal. Cost of said bonds shall be included in the Contract Price.

7.2. Arlington Public Schools reserves the right to request documentation from the surety company as to its financial capabilities, past experience, and other evidence of security's reliability. In the event that the Contractor's surety company becomes insolvent, bankrupt or in any way is incapable of providing the services, the Contractor shall, within ten (10) days' notice from Arlington Public Schools, furnish new payment and performance bonds to Arlington Public Schools from a surety licensed to conduct business in Virginia, listed on the United States Treasury Department's latest Circular 570, and otherwise approved by Arlington Public Schools Procurement Agent. Any cost in securing new bonding will be the responsibility of the Contractor.

**8. <u>Contract Award</u>:**

8.1. A Notice of Intent to Award, or a Notice of Award of Contract, will be posted on the Procurement Office notice board located on the 4th Floor at Syphax.

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

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

8.3. Arlington Public Schools reserves the right to defer award or notice of intent to award of contract for a period of One Hundred Twenty (120) Days after Bid Opening.

8.4. In the case of a tie Bid, preference shall be given to goods, services and construction provided by a Bidder domiciled in Arlington County, if such a choice is available. Like preference shall be given to Bidders domiciled in Virginia when tied with Bidders not domiciled in Virginia.

8.5. Whenever the lowest responsible Bidder submitting a responsive Bid is a resident of or domiciled in any other state and such state under its laws allows a resident contractor of that state a preference of any kind, a like preference shall be allowed to the lowest responsible and qualified Bidder, submitting a responsive Bid, who is a resident of or domiciled in Virginia. If the lowest responsible and qualified Bidder submitting a responsive Bid is a resident of or domiciled in a state with an absolute preference, the Bid shall not be considered.

8.6. Notwithstanding the provisions of subsections 8.3 and 8.4, in the event that none of the foregoing provisions of this section resolve the tie, the tie shall be decided by lot.

8.7. A "responsive Bidder" shall mean a Bidder who has submitted a Bid which conforms, in all material respects, to the requirements of the Bidding Documents.

8.8. A "responsible Bidder" shall mean a Bidder who has the capability, in all respects, to perform fully the Contract requirements, and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified if applicable to this solicitation

**9. <u>Withdrawal of Bids</u>:**

9.1 All Bids submitted as of the Bid Closing shall remain in effect for a minimum of one hundred and twenty (120) Days following the Bid Opening if not permitted to be withdrawn as provided in these Instructions. If APS fails to either issue notice of intent to award, make an award, or request an extension of Bids prior to the expiration of such one hundred and twenty (120) day period, this solicitation shall be deemed cancelled. APS may request an extension of Bids prior to the expiration of such one hundred and twenty (120) Day period for a time stated in the request. No Bidder shall be required to consent to such extension and, if the Bidder declines to consent to the extension request, its Bid will be deemed withdrawn at the end of the one hundred and twentieth ($120^{th}$) Day after the Bid Opening and will not be considered further. For purposes of this circumstance only, the restrictions set forth below on withdrawal of a Bid are not applicable. The Bid of any Bidder who agrees to the extension request shall remain in effect for the period of time stated in the Owner's extension request.

9.2 A Bidder may make a written request to the Procurement Director/Procurement Agent to withdraw its Bid at any time prior to the Bid Opening. The request must be time stamped as received by the Procurement Director/Procurement Agent prior to the Bid Closing.

9.3 After the Bid Opening, a Bidder may make a written request to the Procurement Director/Procurement Agent to withdraw its Bid. The written request must be time stamped as received by the Procurement Director/Procurement Agent no later than 5:00 P.M. local time on the first full business day following the Bid Opening.

9.4 Whether the request to withdraw a Bid is made before or after the Bid Closing, a Bidder may request withdrawal of its Bid from consideration only if the price bid was substantially lower than the other Bids due solely to a clerical or arithmetical mistake therein, as opposed to a judgment mistake, and was actually due to an unintentional arithmetical error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the Bid, which can be clearly shown by objective evidence drawn from inspection of the Bidder's original work papers, documents and materials used in preparation of the Bid. The Bidder shall provide the original work papers, documents, and materials within the same time as required for the notice seeking withdrawal of the Bid.

9.5 If the Procurement Director/Procurement Agent denies the written request to withdraw a Bid, the Bidder shall be notified in writing stating the reasons for the decision. Award of the Contract, if any award is made, shall be made to the Bidder at the Bid price if the Bidder is a responsible Bidder submitting the lowest responsive Bid.

9.6 No Bid may be withdrawn when the result would be the awarding of the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five (5) percent.

9.7 If a Bid is permitted to be withdrawn, it shall not be considered in determining the lowest responsive Bid.

9.8 No Bidder who is permitted to withdraw a Bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Bid was submitted.

**10. Rejection of Bids:**

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

**11. Substitutions:**

11.1 The name of a certain brand, make, manufacturer, or definite specification is to denote the quality standard of article desired, but does not restrict Bidders to the specific brands, make, manufacturer, or specification named provided that the Bidder has obtained approval of the substitute as required below. It is to set forth and convey to prospective Bidders the general style, type, character and quality of article desired. Whenever in the Contract Documents a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded as a standard. Any other brand, make of materials, device, or equipment which, in the opinion of the Owner, is recognized as the equal of that specified, and is considered equal in quality, workmanship, design and economy of operation, and is suitable for the purpose intended, will be accepted and may be used in the work if approved as a substitute, except as stated otherwise in Product Requirements.

11.2 Substitute materials proposed as equals to materials specified must be submitted in writing to the Owner, in care of the Procurement Agent with full substantiating data for evaluation no later than five (5) Days prior to Bid Closing, providing all information in accordance with the required Specification, Product Requirements, in the Contract Documents,

**12. Form of Contract:**

The Contract shall be written on the form included with this ITB as a Contract Document, Agreement Between Owner and Contractor".

**13. Examination of Site:**

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

**14. Authority to Transact Business:**

Any Bidder organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be 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. The proper and full legal name of the firm or entity and the identification number issued to the Bidder by the Virginia State Corporation Commission must be written in the space provided on the Bid Form. If the Bidder is a joint venture which does not have a SCC identification number, then the name of the joint venture as appearing in the written joint venture agreement shall be provided, all members of the joint venture shall be identified by full name, and each member of the joint venture shall provide its SCC identification number or establish its exemption from such requirement. Any Bidder that is not required to be authorized to transact business in the Commonwealth shall include in its Bid a statement describing why the Bidder is not required to be so authorized. APS may require a Bidder or any member or principal of a Bidder identified above to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, joint venture, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a prospective and/or successful Bidder to provide such documentation shall be grounds for rejection of the Bid or cancellation of the award. For further information prospective Bidders should refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

**15. Interest in More Than One Proposal and Collusion:**

More than one Bid received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names, or as a member of a joint venture, will be rejected. Reasonable grounds for believing that a Bidder is interested in more than one (1) Bid for a solicitation both as a Bidder and as a subcontractor for another Bidder, will result in rejection of all Bids in which the Bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more Bidders submitting a Bid for the work. Any or all Bids may be rejected if reasonable grounds exist for believing that collusion exists among any Bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

**16. Request for Comments:**

Following the award of any Contract or Contracts, or the cancellation of this solicitation, all Bidders or potential Bidders are invited to provide to APS written comments regarding the manner in which this solicitation was conducted and any suggested modifications to that process which might make future solicitations by APS more efficient, more productive, and more attractive to potential Bidders.

**17. <u>Minimum Qualifications of Bidders</u>:**
Refer to Appendix A to Bid Form.

**18. <u>Mandatory Requirement</u>:**

18.1 The following are Class 1 Mandatory Requirements which **<u>must</u>** accompany your Bid. Failure to provide any of the following Class 1 Mandatory Requirements with your Bid will result in the Bid being considered non-responsive and not being considered for Contract award:

18.1.1 Inclusion on the outside of the Bid envelope of the Bidder's current Virginia Class A Contractor's License number and expiration date.

18.1.2 Required Bid Security in the form of either a certified check, cashier's check, cash escrow or Bid Bond in the amount of five percent (5 %) of the Bid amount.

18.1.3. Completed Bid Form and Appendix A to Bid Form.

18.1.4. If the Bidder is a joint venture, a copy of the written joint venture agreement.

18.1.5. If the Bidder is a partnership, a copy of the written partnership agreement.

18.2 The following are Class 2 Mandatory Requirements which should accompany your Bid, but if omitted the Bidder may be given the opportunity to supplement its Bid in accordance with the restrictions set forth below:

18.2.1 Pricing Breakdown for Total Bid in compliance with the requirements of Item 13 of the Bid Form

18.2.2. Item 16 of the Bid Form contains a list of divisions or features of the Work ("Identified Divisions or Features") for which the Owner requires the opportunity to review the qualifications of the person or entity the Bidder intends to have perform that work as an element of the Bidder's qualifications and in the evaluation of the Bids. For any Identified Division or Feature of the Work which the Bidder intends to perform with its own forces, the Bidder shall hold a classification or specialty designation to perform that Work. 18.2.3. For any Identified Division or Feature the Bidder intends to have performed by a Subcontractor, the Bidder shall provide in Item 16 of the Bid Form the name of the proposed Subcontractor and the Class A Virginia Contractor's License number of the proposed Subcontractor, which shall include the classification or specialty designation to perform the Identified Division or Feature. For any Subcontractors other than those identified in Item 16 of the Bid Form, see the requirements of Item 16 of the Bid Form.

18.2.3. An Insurance Acord demonstrating it meets the insurance coverage specified in Part 13 of the General Terms and Conditions.

18.3 If a Class 2 Mandatory Requirement is not provided with the Bid of the Apparent Low Bidder, the Apparent Low Bidder will be Notified by the Procurement Office that the omitted Class 2 Mandatory Requirements **<u>must</u>** be received by the Procurement Office by no later than 5:00 PM on the fifth ($5^{th}$) business day following the Notice to provide the information. Failure of the Apparent Low Bidder to provide the omitted Class 2 Mandatory Requirements within the stated timeframe will result in the Bid from the Apparent Low Bidder being considered non-responsive and no longer considered for Contract award.

The Bid from the Second Apparent Low Bidder will then be considered for Contract award. If any Class 2 Mandatory Requirement is not provided with the Bid of the Apparent Second Low Bidder, the Apparent Second Low Bidder will be Notified by the Procurement Office that the omitted Class 2 Mandatory Requirements **must** be received by the Procurement Office by no later than 5:00 PM on the fifth ($5^{th}$) business day following the Notice to provide the information.

Failure of the Apparent Second Low Bidder to provide the omitted Class 2 Mandatory Requirements within the stated timeframe will result in the Bid from the Apparent Second Low Bidder being considered non-responsive and no longer considered for Contract award.

This process will continue until a Contract, within budget, is awarded, or APS determines it to be in the best interests of APS to reject all bids and cancel the solicitation.

**19. Employment of Illegal Aliens:**

All Bidders are informed that any Contract which may be issued as a result of this solicitation will contain a provision by which the Contractor shall be required to confirm that it does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, in compliance with Va. Code. Ann. § 2.2-4311.1.

**20. Certification Regarding Criminal Convictions:**

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

(1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,

(2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:

(a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),

(b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,

(c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or

(d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

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

common scheme or plan as a violation of:

(a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,

(b) abduction with intent to extort money of for immoral purpose in violation of Va. Code Ann. § 18.2-48,

(c) burglary in violation of Va. Code Ann. § 18.2-89,

(d) entering a dwelling house with intent to commit murder, rape, robbery or arson in violation of Va. Code Ann. § 18.2-90,

(e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or

(f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

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

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

**21. <u>Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor.</u>**
As a condition of being awarded a Contract, or Contract Renewal, the Contractor acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the Contractor knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

**22. <u>Additions/Deletions</u>:**
APS reserves the right to add similar items/services or delete items/services specified in any resultant Contract as requirements change during the period of the Contract. APS and the Contractor will mutually agree to prices for items/services to be added to the Contract. In the absence of agreement, APS shall set the price based on the most comparable previously established unit price. Invoices and payments shall be made based on the price established by APS, with all rights reserved to Contractor to pursue any claim disputing the price. Change orders will be issued for all additions or deletions.

**23. <u>News Releases by Contractors</u>:**
As a matter of policy, APS does not endorse the products or services of a Contractor. Contractor will not make news releases concerning any resultant Contract from this solicitation without the prior written approval of APS, which approval APS is under no obligation to grant. No news release shall be issued by Contractor regarding any Contract without the prior approval by the Director/Procurement Agent of the content and format.

**24. <u>Officials not to Benefit</u>:**

24.1 By signing the Bid, the Bidder certifies, that to the best of his or her knowledge no APS official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Contract. If such a benefit has been received or will be received, this fact shall be disclosed with the Bid or as soon thereafter as it appears that such a benefit will be received. If such a benefit is discovered at any time after award of the Contract, it shall be disclosed immediately to APS. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the Contract made, or could affect payment pursuant to the terms of the Contract.

24.2 Whenever there is reason to believe that a financial benefit of the sort described in paragraph 24.1 has been or will be received in connection with a Bid or Contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the Director/Procurement Agent, as a prerequisite to payment pursuant to the Contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

24.3 In the event the Bidder has knowledge of benefits as outlined above, this information should be submitted with the Bid. If the above does not apply at time of award of Contract and becomes known after inception of a Contract, the Bidder shall address the disclosure of such facts to the Procurement Director/Procurement Agent, 2110 Washington Blvd., Arlington VA 22204. Relevant Invitation to Bid Number (see page 1) should be referenced in the disclosure.

**25. <u>Expenses Incurred in Preparing Bid</u>:**

APS shall have no liability for any expense incurred by any Bidder in the preparation and presentation of a Bid. All expenses related to a Bid are the sole responsibility of the Bidder.

**End of Instructions to Bidders**

## Scope of Work

The Contractor shall provide all supervision, labor, tools, equipment, transportation and permits for the complete and satisfactory performance of the 161,000-sq. ft. of Work. This section includes elastomeric membrane roofing for installation over granule surfaced built up roof (BUR) with existing elastomeric coating. HydroStop® PremiumCoat® or approved equal, detail drawings, site-specific drawings and general provisions of the contract, including general, supplementary and special conditions apply to the work:

**Definitions**

A. Roofing Terminology: Refer to ASTM D1079 and the glossary of the National Roofing Contractors Association (NRCA) Roofing and Waterproofing Manual for definitions of roofing terms related to this section.

**System Description**

A. The HydroStop® PremiumCoat® roofing work includes roofing, flashing and reinforcing of joints and junctions, and roof accessories integrally related to roof installation.
B. Final determination of the fitness of the system, or its components, for any given metal roof may not be made by any representative of GAF / HydroStop® other than a member of GAF's Field Services Department.
C. Provide an installed roofing membrane and base flashing system that does not permit the passage of water, and will withstand the design pressures calculated in accordance with the current revision of ASCE 7.
D. GAF shall provide all primary roofing materials that are physically and chemically compatible when installed in accordance with manufacturers current application requirements.

**Submittals**

A. Product Data:
   1. Provide Product Data Sheets for each type of product indicated in this section.
B. Shop Drawings:
   2. Provide manufacturers standard details and approved shop drawings for the system specified.

**Quality Assurance**

A. Manufacturer Qualifications: GAF shall provide a roofing system that meets or exceeds the criteria listed in this section
B. Installer Qualifications: A single installer or firm shall perform all work addressed in this section, and shall possess written certification from GAF / HydroStop® or which confirms their approval for installation of the HydroStop® PremiumCoat® Roofing System.
C. Source Limitations: Components listed shall be provided by a single manufacturer or approved by the primary roofing manufacturer.
D. Lightning protection must be removed during application and reinstalled and certified after application. Coordination with Sun Tribe Solar shall be required to ensure proper fitting for solar panels.

**Regulatory Requirements**

A. Work shall be performed in a safe, professional manner, conforming to federal, state and local codes.
B. UL Listing: Provide HydroStop® PremiumCoat® Roofing System or approved equal and component materials which have been evaluated by Underwriters Laboratories for flame-spread

and are listed in the "Underwriters Laboratory Roofing Materials and Systems Directory" for Class A construction over existing metal or other non-combustible roofing (Flame-spread shall pass ASTM E-108 and/or UL 790). Provide roof covering materials bearing UL approval marking on the container. This indicates that the material has been subjected to UL's examination, test procedures and follow-up inspection service.

**Pre-Installation Conference**

A. Prior to scheduled commencement of the roofing installation and associated work, conduct a meeting at the project site with the installer, architect, owner, GAF representative and any other persons directly involved with the performance of the work. The installer shall record conference discussions to include decisions, agreements, and open issues and furnish copies of recorded discussions to each attending party. The primary purpose of the meeting is to review foreseeable methods and procedures related to roofing work.
   1. Tour representative areas of roofing substrates to inspect and discuss conditions of substrate, penetrations and other preparatory work to be performed.
   2. Review HydroStop® PremiumCoat® roofing system requirements (HydroStop® PremiumCoat® specifications, detail drawings and the Contract Documents).
   3. Review required submittals, both completed and in progress.
   4. Review and finalize the construction schedule related to roofing work, and verify availability of materials, installer's personnel, equipment and facilities needed to consistently make progress and avoid delays.
   5. Review required inspection(s), testing, and certifying, and material usage accounting procedures. Review forecasted weather conditions.
   6. Establish procedures for coping with unfavorable conditions, including the possibility of temporary roofing work.

**Delivery, Storage and Protection**

A. Store and handle HydroStop® PremiumCoat® equal materials in a manner that will ensure there is no possibility of contamination.
B. Store in a dry, well ventilated, weather tight location at temperatures between 50°F (10 °C) and 80°F (27°C) until the products are ready to be applied (keep from freezing). Do not stack material pallets more than two (2) high.
C. Do not subject existing roof to unnecessary loading of stockpiled materials.
D. Store and dispose of solvent-based materials, and materials used with solvent-based materials, in accordance with requirements of local authorities having jurisdiction.

**Project Conditions**

A. Weather:
   1. Proceed with roofing only when existing and forecasted weather conditions permit.
   2. Ambient temperatures shall be above 50°F (10°C).

*CAUTION: Other weather and environmental conditions to consider are mist, dew, condensation and relative humidity. These factors may increase HydroStop® PremiumCoat® drying times. If various HydroStop® PremiumCoat®* products *are exposed to rain before they are completely dry, product may "wash-off" the roof.*

B. Proceed with roofing work only when existing and forecasted weather conditions will permit work

to be performed in accordance with HydroStop® PremiumCoat® recommendations and guarantee requirements as follows:

1. Do not begin work if precipitation is expected within twenty-four hours of application, or if temperatures are expected to fall below 50°F (10°C) during the duration of the job.
   a. FlexSeal™ Sealant may be used in temperatures lower than 42°F (6°C).
2. Upper temperature restriction (both air and substrate) for application of HydroStop® PremiumCoat® products is 105°F (40°C). If substrate temperatures exceed 105°F (40°C), HydroStop® PremiumCoat® or approved equal products shall be applied during cooler periods of the day. If this is not practical, the substrate shall be cooled with water, and then HydroStop® PremiumCoat® products applied just after the water has flashed-off.
3. No moisture may be present when applying HydroStop® PremiumCoat® products. Take into consideration to allow for sufficient daylight hours necessary for curing of materials.

**Substrate Conditions**

A. If any questions arise regarding the compatibility of HydroStop® PremiumCoat® products with an existing substrate, Installer shall prepare test patches to check adhesion (addressed in Part 3 of this specification). Always contact GAF's Technical Services Department concerning questionable substrates, required additional information and recommended test patch materials.

B. The HydroStop® PremiumCoat® Roofing System is not to be used on heavy-traffic bearing substrates. If foot traffic is expected, an approved walkway system should be installed.

C. The bonding surface must be free of ponding water, ice, and snow, and should have a horse hair or semi coarse finish.

D. The HydroStop® PremiumCoat® Roofing System is to be applied over dry, sound asphaltic BUR or MB only. Roof must have positive drainage. Do not apply on coal tar substrates which have been covered with gravel. Granule BUR or MB surface must be older than 90 days. Substrate should not pond water for a period longer than 48 hours after precipitation stops.

E. A moisture survey by an independent source shall be performed on the roof system to determine the suitability of the existing roof for application of a HydroStop® PremiumCoat® Roofing System. Any wet or deteriorated areas shall be removed and replaced. If the moisture survey reveals more than 20% of the roof area is wet, consider other roofing options. A copy of the moisture survey must accompany the Notice of Award for guarantee issuance.

F. Perform a thorough pre-job survey of property and all affected and adjacent areas of the building with Owner prior to starting the work in order to document existing damage. Contractor shall document the survey on video tape and provide a copy to the Owner prior to commencing work. Damaged items identified during the survey will not be the responsibility of Contractor unless further damaged by Contractor during execution of project.

G. All projects greater than 20,000 sq ft (200 squares) must be pre-approved by GAF's Field Services Area Manager.

H. All projects greater than 10,000 sq ft (100 squares) require an interim inspection.

I. The following specific requirements apply to HydroStop® PremiumCoat® restoration projects:
   1. Roof must have positive drainage and cap sheet must be older than 90 days.
   2. Moisture survey must be sent to Field Services Area Manager for review.
   3. If the moisture survey reveals more than 20% of the roof area is wet, GAF strongly recommends that other reroofing options are used.
   4. If moisture survey shows less than 20% wet, remove/replace all wet areas. Make typical repairs with original roof technology. Pressure wash roof and allow to dry at least 2 days.

**Warranty**

A. Liquid Applied Emerald Pledge™ Limited Warranty: Manufacturers standard form, in which GAF agrees to repair leaks through the HydroStop® PremiumCoat® products on the roof caused by manufacturing defects or natural deterioration of the HydroStop® PremiumCoat® roofing system.

1. Warranty Duration:
   a. Twenty (20) Years Labor and Material

**PART 2 PRODUCTS**

**Manufactures**

A. Acceptable Manufacturer: GAF, Commercial Roofing Products Division, which is located at: 1 Campus Drive; Parsippany, NJ 07054; Toll Free Tel: 800-ROOF-411; Tel: 973-628-3000; Fax: 973-628-3451; Email: technicalquestions@gaf.com ; Web: www.gaf.com or approved equal

**Coatings**

(Note: Drying Times: Listed drying times for various HydroStop® PremiumCoat® products are directly affected by environmental conditions and thickness of application. Additional drying time must be allowed when experiencing high relative humidity, low temperatures and/or very thick product application to prevent improper curing and/or product "wash-off".)

A. HydroStop® PremiumCoat® Finish Coat: An acrylic, permanently flexible, highly UV-resistant, chemical- resistant elastomeric compound fully reinforced with a tough stitch-bonded polyester fabric designed for roofing and flashing applications of all types.
   1. Application Rate: 0.75 gal per 100 sf (3.05 L/ 10 sqm) per coat.
   2. Application Method: Roof brush or 1" (25.4 mm) nap roller.
   3. Application Temperature (air, surface): 50 degrees (10 degrees C) - 105 degrees F (40 degrees C).
   4. Dry time: (touch dry) 1- 4 hours at 77°F (25°C), 40% R.H. (full cure): 7 days.

B. HydroStop® PremiumCoat® Foundation Coat: An acrylic, permanently flexible, highly UV resistant, chemical-resistant elastomeric compound fully reinforced with a tough stitch-bonded polyester fabric designed for roofing and flashing applications of all types.
   1. Application Rate: 0.75 gal per 100 sf (3.05 L/ 10 sqm) per coat.
   2. Application Method: Roof brush.
   3. Application Temperature (air, surface): 50 degrees (10 degrees C) - 105 degrees F (40 degrees C).
   4. Dry time: (touch dry) 1- 4 hours at 77°F (25°C), 40% R.H. (full cure): 7 days.

**Flashings, Fabric and Bulking Agents**

A. HydroStop® PremiumCoat® Butter Grade Flashing: A high volume solids for low shrinkage providing increased tensile strength and elongation on problem roof areas. It is ideally suited for sealing mechanical fasteners and horizontal seams on metal roofs, as well as around flashings, drains and protrusions.
   1. Application Rate: apply up to ¼" (6.4 mm) thickness
   2. Application Method: Putty Knife, spatula and stiff bristle brush.
   3. Application Temperature (ambient): minimum 50 degrees (10 degrees C).
   4. Dry Time: 1-4 hours depending on application thickness

5. Clean-up: Water before curing.

B. HydroStop® PremiumCoat® Fabric: tough, non-woven, stitch-bonded, heat-set polyester designed for roofing and flashing applications of all types. Available in 300 ft rolls and varying widths.
   1. Length: 300 ft. (91 m), Width: 4” (102 mm),6” (152 mm),8” (203 mm), 12” (305 mm), 16” (406 mm), 20” (508 mm), 24” (610 mm Length: 336 ft. (102 m), Width: 40” (1.02 m)

**Primers and Sealants:**

A. United Cleaning Concentrate (UCC)

**Equipment:**

A. Airless Sprayer and Accessories: As recommended by GAF’s Technical Services.

## PART 3 EXECUTION

**Preparation of Substrate**

A. Moisture Survey: A moisture survey shall be performed on the roof system to determine the suitability of the existing roof for application of a HydroStop® PremiumCoat® roofing system. Any wet or deteriorated areas shall be removed and replaced.

B. Preparation: Preparation of the roof substrate is the responsibility of the installer, who shall address and correct all of the conditions listed in this section. Examine substrates to receive new roofing. Do not proceed with the installation of the HydroStop® PremiumCoat® roofing system until unsatisfactory conditions have been corrected in a manner acceptable to the manufacturer (GAF).

C. Treatment of Ponding Water Areas: Installer shall make every effort to mechanically eliminate alL ponding water areas on the roof prior to application of HydroStop® PremiumCoat® products. Ponding water is defined as water that does not properly drain and remains on the roof for more than 48 hours after precipitation stops. Ponding water areas that cannot be eliminated shall be treated with FlexSeal™ Sealant prior to application of other HydroStop® PremiumCoat® products.

D. Deteriorated Seams: Repair all delaminated or open seams using method acceptable to the manufacturer.

E. Pitch Pans: Pitch pans shall be capped with sheet metal so they may be sealed with HydroStop® PremiumCoat® products.

F. Condensate Lines: Condensate lines shall be installed from HVAC units to gutters as part of the overall drainage system. The type of piping used for condensate lines may vary depending on local building codes.

G. Power wash roof with United Cleaning Concentrate and allow to dry.

H. Perform adhesion testing prior to installing any new materials.

**Flashing Application and Inspection Information**

A. Preliminary work consists of substrate preparation and all flashing details. After completion of substrate preparation, all flashing details, penetrations and curbs shall be flashed with either 6 inches (152 mm) or 12 inches (305 mm) HydroStop® PremiumCoat® Fabric and HydroStop® PremiumCoat® Foundation Coat in accordance with HydroStop® PremiumCoat® Detail Drawings. HydroStop® PremiumCoat® Foundation Coat shall be feathered at the edges (see current GAF Detail Drawings) so that water may flow over the various flashing details.

B. Parapet Walls: All parapet wall details within the roof system shall be secured and sealed with a 6 inches (152 mm) minimum width of HydroStop® PremiumCoat® Foundation Coat and

HydroStop® PremiumCoat® Fabric. All voids and open areas shall be filled with polyurethane foam prior to application of HydroStop® PremiumCoat® Fabric and HydroStop® PremiumCoat® Foundation Coat.

C. Curb Flashings: All curb flashings, including cricket details, shall be flashed with at least a 6 inches (152 mm) width of HydroStop® PremiumCoat® Fabric and HydroStop® PremiumCoat® Foundation Coat. Encapsulate all fasteners using HydroStop® PremiumCoat® Foundation Coat. Do not bridge fasteners. HydroStop® PremiumCoat® Fabric shall be cut around all fasteners so fabric lies flat.

D. Penetrations: HydroStop® PremiumCoat® Foundation Coat shall be applied around the base of the penetration, extending at least 4 inches (101 mm) onto the vertical and 4 inches (101 mm) onto the base. Embed a 6 inches (152 mm) width of HydroStop® PremiumCoat® Fabric using additional HydroStop® PremiumCoat® Foundation Coat, as necessary. Cut HydroStop® PremiumCoat® Fabric to accommodate the shape of the penetration. Both the top and bottom of neoprene pipe boots shall be flashed using HydroStop® PremiumCoat® Foundation Coat and HydroStop® PremiumCoat® Fabric as described above.

E. Skylights: Curb skylights shall be treated in the same fashion as curb flashings. The entire perimeter shall be flashed with a minimum 6 inches (152 mm) width of HydroStop® PremiumCoat® Foundation Coat and HydroStop® PremiumCoat® Fabric. All exposed skylight fasteners shall be encapsulated with HydroStop® PremiumCoat® Foundation Coat. Do not bridge fasteners. HydroStop® PremiumCoat® Fabric shall be cut around all fasteners so the fabric lies flat.

F. Gutters: Trowel or brush apply FlexSeal™ Sealant to the interior or exterior gutter incorporating 6 inches (152 mm) HydroStop® PremiumCoat® Fabric at all gutter seams. Gutter shall be completely clean and dry before applying FlexSeal™ Sealant.

G. Ponding Water Areas: The severity of the ponding water condition will determine the requirements for additional preparation. Contact the GAF's Technical Department for information.

H. Inspect Preliminary Work / Flashing Details for problem areas (e.g., gaps, cracks, fishmouths, air pockets, etc.) to ensure that work is complete and satisfactory.

**Other Items**

A. Installer shall take photographs of representative roof areas, including detail work, before work commences, after the surface has been properly prepared, after all flashing and detail work has been performed, and after the spray application of the HydroStop® PremiumCoat® membrane.

B. Installer shall provide the following support for on-site inspections by a representative from GAF's Field Services Department (list is not comprehensive):
   1. Representative from the installer's company who has authority to make binding decisions
   2. Required means to access all areas of the treated roof.
   3. Previous photographs of the roof, including test patch results, as applicable
   4. HydroStop® PremiumCoat® products and application equipment required to repair roof areas where destructive tests are to be performed by GAF's Field Services Department.

C. Special care shall be taken to avoid shading when spraying dark HydroStop® PremiumCoat® Roofing Membrane colors. When applying a dark HydroStop® PremiumCoat® Membrane color, Installer shall always spray wet material onto wet material to ensure that spray lines do not appear. HydroStop® PremiumCoat® strongly recommends the installation of any dark-colored finish coat by spraying two lighter coats (instead of one heavy coat) using a smaller tip size. Installer should

also use the roof ribs or standing seams to terminate each spray pass.

D. Installer shall take special care when moving spray hoses and other equipment on the roof so that flashing work and encapsulated fastener heads are not damaged. Also, all spray equipment shall remain on the ground for the duration of the job.

E. If there will be an extended period of time (6 months or greater) between application of base and finish coats, the use of HydroStop® PremiumCoat® white for the base coat (versus gray) is recommended. The base coat shall be thoroughly cleaned before applying the finish coat.

F. It is strongly recommended that walkways designed for metal roofing systems be installed in all high traffic areas. Contact the GAF's Technical Services Department for recommendations.

**Repairs**

A. In the event that the HydroStop® PremiumCoat® membrane is damaged or punctured, repairs are to be performed using HydroStop® PremiumCoat® Foundation Coat and HydroStop® PremiumCoat® Fabric (where necessary) as follows:

1. Damaged areas are to be cut, cleaned and dried.
2. Apply HydroStop® PremiumCoat® Butter Grade Flashing or HydroStop® PremiumCoat® Finish Coat with HydroStop® Hydrofiber Bulking Agent, and feather out onto the existing HydroStop® PremiumCoat® membrane.
3. If a new penetration area has been cut, embed HydroStop® PremiumCoat® Fabric into the HydroStop® PremiumCoat® Butter Grade Flashing or HydroStop® PremiumCoat® Finish Coat with HydroStop® Hydrofiber Bulking Agent according to standard HydroStop® PremiumCoat® specifications.
4. Once the HydroStop® PremiumCoat® Butter Grade Flashing has cured, HydroStop® PremiumCoat® white or appropriate HydroStop® color may be applied for aesthetic uniformity.

**Membrane Application**

A. Granule Surfaced BUR Coating with existing elastomeric coating 20 Year System:

1. Conduct moisture survey and remove/replace all wet areas.
2. Pressure-wash roof.
3. Apply Unibase Primer at 0.50 to 1.0 gal per 100 ft2 (2.03 to 4.08 L/ 10m2) per gallon on properly prepared surfaces. 1.33 gallon per 100 $ft^2$ (5.4 2 L/ $10m^2$) as fabric saturate.
4. Apply HydroStop® PremiumCoat® Foundation Coat by brush at the rate of 1 gallon per square and embed HydroStop® PremiumCoat® Fabric into the wet material to saturate the fabric.
5. Apply additional HydroStop® PremiumCoat® Foundation Coat by brush at the rate of 1.5 gallons per square over the fabric.
6. Spray-apply base coat of HydroStop® PremiumCoat® Finish Coat at 1 gallon per square.
7. Spray-apply finish coat of HydroStop® PremiumCoat® Finish Coat at 1 gallon per square.
8. Spray-apply finish coat of HydroStop® PremiumCoat® Finish Coat at 1 gallon per square.
9. After a minimum of 24 hours has elapsed, inspect the final roof surface for flaws, areas of insufficient coverage, insufficient thickness, etc. The specified dry membrane thickness is 52 mils in the field and 79 mils on the flashing details. At completion of all work, seams should not be visible on the roof. All unsatisfactory areas must be repaired

**Building As-Builts**
https://www.apsva.us/wp-content/uploads/2019/09/Washington-Liberty-As-Builts.pdf

**Building Details**
https://www.apsva.us/wp-content/uploads/2019/08/GAF-Hydrostop-Detail.zip.pdf

**End of Scope of Work**

**Bid Form**

| | |
|---|---|
| **Invitation to Bid Title:** | **Washington Liberty Roof Coating Restoration** |
| **Invitation to Bid #:** | **41FY20** |
| **Invitation to Bid Issue Date:** | **December 13, 2019** |
| **Bid Closing Date/Time:** | **January 7, 2020 at 10:00 A.M. (Local Prevailing Time)** |
| **Bid Opening Date/Time:** | **Promptly Following Bid Closing** |
| **Name of Bidder:** | _____ |

**Submit Bid**: **By Mail, Hand Delivery or Express Carrier to:**

Arlington Public Schools
Syphax Education Center
Procurement Office, 4th Floor
2110 Washington Boulevard,
Arlington, VA 22204

1. The undersigned Bidder declares that it has informed itself fully of all conditions pertaining to the Work and to the location where the Work is to be performed; that it has examined the Bid Documents and Contract Documents, including the Agreement between Owner and Contractor, Conditions of the Contract (General and other conditions), Instructions to Bidders, the Drawings, the Specifications, all Addenda, and all conditions relative to the Work to be performed.

2. The Bidder proposes and agrees, if this Bid is accepted within the number of days provided for in the Instruction to Bidders, to enter into a Contract with the Owner in the form of Contract specified, for the Contract Sum, and within the Contract Period indicated in the Bid Documents to furnish all necessary material, equipment, machinery, apparatus, transportation and labor as required to complete the project indicated on this Bid Form.

3. The Bidder certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated this Bid for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with Arlington Public Schools.

4. Arlington Public Schools requires that a minimum of thirty (30) days after receipt of an approved Application for Payment (invoice) be allowed for payment.

5. The Bidder certifies that it will comply with all provisions of the Virginia Public Procurement Act and with the regulations of Arlington Public Schools.

6. By submitting a Bid, the Bidder represents that the Bidder understands the Insurance Requirements of the Contract Documents and will comply in full if awarded the contract.

7. In submitting this Bid, Bidder represents, as more fully set forth elsewhere in the Bid and Contract Documents:

   a. Owner has recommended the Bidder examine the site and locality where the Work is to be, the legal requirements (federal, state, and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress of performance of the Work and has made such independent investigations as Bidder deems necessary.

   b. Bidder acknowledges that Owner and Owner's Representative (Architect) do not assume responsibility for the accuracy of dimensions or completeness of information and data shown or indicated in the Bid Documents with respect to existing facilities.

   c. Bidder acknowledges that it is obligated to provide to Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered or in the exercise of due diligence and reasonable care as a reasonably competent contractor for the Work to which this Bid is applicable should have discovered in the Bid and Contract Documents and the written resolution thereof by the Owner is acceptable to Bidder, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.

   d. By submitting a Bid in response to this Invitation to Bid Bidder represents that in the preparation and submission of this Bid, Bidder did not, either directly or indirectly, enter into any combination or arrangement with any person, firm, or corporation or enter into any agreement, participate in any, collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

   e. Bidder hereby certifies that, if awarded the Contract for construction of the Project, it will take all possible actions to minimize costs to Owner that are related to any disruptions in any part of the Work resulting from unforeseeable conditions which may be encountered and Work changes or additions which may be made.

   f. Bidder understands that the award of the Contract, if any, will be made on the Total Bid unless specifically stated otherwise in the Instructions to Bidders or in this pre-printed Bid Form. Bidder understands that upon award of Contract, all items specified in the Bid Documents shall be furnished unless an "Or-Equal" or "Substitute Item" is accepted by Owner in accordance with the Bid Documents and Contract Documents.

   g. The Bidder agrees to bear full cost of maintaining the Work until final acceptance of the Work is approved as provided by the Contract.

   h. This Bid will remain subject to acceptance for one hundred and twenty (120) days after the day of the Bid Opening.

   i. Owner may cancel this Invitation to Bid, and may reject any and all Bids received.

8. Bidder agrees to the required times for Substantial Completion, Final Completion, and to resulting Liquidated

Damages as follows:

a. The Work will commence in accordance with the Contract Documents and will have a Substantial Completion Date, a Final Completion Date, and liquidated damages, if any, as provided in the Contract Documents. These completion dates are subject to adjustments of the Contract Period as provided in the Contract Documents.

9. A. As a Class 1 Mandatory Requirement, the following documents are attached to and made part of this Bid:

1. Required Bid Security in the form of either a certified check, cashier's check, cash escrow or Bid Bond in the amount of five percent (5 %) of the Bid amount.

2. Contractor's License information in compliance with Paragraph 18.1.1 of the Instructions to Bidders.

3. Completed Appendix A to Bid Form.

4. If the Bidder is a joint venture, a copy of the written joint venture agreement.

5. If the Bidder is a partnership, a copy of the written partnership agreement.

B. The following documents are Class 2 Mandatory Requirements and are: (Please complete the following by checking the appropriate line that applies to providing the requested information)

a. _____ attached to and made a part of this Bid

b. _____will be supplemented in compliance with the provisions of Paragraph 18.3 of the Instructions to Bidders:

1. List of Subcontractors for major divisions and/or features of work in compliance with the requirements of Item 16 of this Bid Form and Paragraph 18.2.2 of the Instructions to Bidders.

2. Pricing Breakdown for Total Bid in compliance with the requirements of Item 13 of the Bid Form.

3. Insurance Acord in compliance with Paragraph 18.2.3 of the Instructions to Bidders

10. By submitting this Bid, Bidder certifies that the firm submitting this Bid and registered under that name has the appropriate license and/or certification, as determined by the Commonwealth of Virginia, Department of Professional and Occupational Regulation, Virginia Board for Contractors to perform the scope of work included in this Bid. Include license number below. **Note: See Instructions to Bidders for the requirement to include the contractor's license or certificate number, and date of expiration, on the face of the Bid envelope in addition to completing the information below.**

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

Licensed Class _____ Virginia Contractor No. _____ Valid until _____

_____ (Date).

Classifications and Specialty Designations _____

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

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

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

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

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

12. **Any Notation on the Exterior of the Envelope Purporting to Alter, Amend, Modify or Revise the Bid will be Disregarded.**

13. **Bid Schedule**

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

**Bid Item 1. Total Bid:**

_____ In Writing $_____In Figures

**Product/Manufacturer you are Bidding: _____**

If Arlington Public Schools is unable to achieve a Contract Sum within available funds for the Total Bid, Arlington Public Schools may negotiate to achieve a Contract Sum within available funds in the manner provided in the Invitation to Bid.

**Bid Item 2. Unit Prices:**

The Owner may elect certain aspects of the work, whose quantity cannot be determined at this time, to be performed or deleted by the Contractor. If such work items are elected or are not performed, the Contract price will be adjusted accordingly by the Unit Price amount shown for each item in the Bid Forms.

A Unit Price is a price per unit of measurement for materials or services added to or deducted from the Contract Sum by appropriate modification, if estimated quantities of Work required by the Contract Documents are increased or decreased.

By submitting a Bid, the Contractor acknowledges acceptance of the established Unit Prices for their use in determining the value of change work. Prices as stated will remain in effect until final completion of the Contract.

Performance of Work not authorized by a Change Order of Field Order, whether or not such work is set forth hereunder as a Unit Price item, shall not be considered cause for extra payment beyond the Contract Sum.

Unit Prices include all necessary material, plus cost for delivery, installation, insurance, applicable taxes, overhead and profit.

Prior to commencing removal or replacement of materials set forth in the schedule of Unit Prices, the Contractor shall notify the Owner in sufficient time to permit proper inspection and measurements to be taken. Only quantities that have been approved in writing by the Owner will be considered in determination of adjustments to the Contract Amount.

A Unit Price is an amount proposed by the Bidder and submitted with the Bid Form as a price per unit of measurement for materials or services that will be added to or deducted from the Contract Sum by Change Order in the event the Scope of Work required by the Contract Documents is increased or decreased.

Owner reserves the right to reject Contractor's measurement of work-in-place that involves use of established unit prices and to have this work measured, at Owner's expense, by an independent inspector acceptable to Contractor.

List of Unit Prices: A list of unit price quantities to be provided in the Total Bid is included in the Unit Price Schedule below.

UNIT PRICE SCHEDULE: Submit a Bid on the item identified on the Unit Price Schedule below. A Bid is required for both an addition and deletion to the Contract. Unit abbreviations are: square foot (SF).

| **UNIT PRICE SCHEDULE** | | | |
|---|---|---|---|
| **Item** | **Unit** | **Addition** | **Deletion** |
| For the insulation, labor, installation, membrane and full tear out to match existing roof of more or less than the 1,500 square feet of roofing in the Total Bid | SF | $ | $ |

**Bid Item 3. Pricing Breakdown for Total Bid Above:**

Provide Lump Sum prices per Division as listed in the Scope of Work and Bid Documents. (This information is a Class 2 Mandatory Requirement. Bidder may elect not to include the information in its Bid as submitted for Bid Closing. <u>If not included in the Bid submitted for Bid Closing, this information and this form must be received by Owner no later than 4:00 P.M. the next business day following the Bid Opening or the Bid will be deemed nonresponsive and not considered further.</u>):

A. General Conditions_____Dollars ($_____)

B. Existing Conditions_____Dollars ($_____)

C. Concrete_____Dollars ($_____)

D. Masonry_____Dollars ($_____)

E. Metals_____Dollars ($_____)

F. Thermal/Moisture_____Dollars ($_____)

G. Finishes_____Dollars ($_____)

I. Specialties_____Dollars ($_____)

J. Equipment_____Dollars ($_____ )

K. Fire Suppression_____Dollars ($_____ )

L. Plumbing_____ Dollars ($_____ )

M. Electrical_____Dollars ($_____)

14. **Contact for Administration:**

**Name:**

Address: (Office) _____

Telephone Number: (Office) _____

Fax Number: _____

Full Legal Name of Bidder _____

Remittance Address (If different):

Address:_____

Phone: (_____)_____

Email Address:_____

Fax: (_____)_____

Date:_____

Tax ID Number (EIN/SSN):_____

15. **State Corporation Commission (SCC) Identification Number:**

A Bidder is required to be 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 or as otherwise by law. The Bidder confirms that at the time of Bid Closing, the Bidder has met the requirements of the Virginia Public Procurement Act Section 2.2-4311.2. The Bidder shall include in its Bid the identification number issued to it by the Virginia State Corporation Commission ("SCC"). If the Bidder is a joint venture which does not have a SCC identification number, then the name of the joint venture shall be provided, all members of the joint venture shall be identified by full name, and each member of the joint venture shall provide its SCC identification number or establish its exemption from such requirement. For more information on how the SCC can expedite a request for an identification number, please contact the SCC at ***(www.scc.virginia.gov ) or the SCC Clerk's office at 1-804-371-9733.***

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

1. ____ Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC. The Bidder's identification number issued by the SCC is . ***(The SCC number is NOT your federal tax Identification number nor your eVA registration number)***.

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

3. ____ Bidder is a Virginia joint venture organized and authorized to transact business in Virginia by the SCC.

4. ____ Bidder is a joint venture which does not have an identification number issued to it by the SCC but each member of the joint venture is authorized to transact business in Virginia and the SCC identification numbers issued to each member of the joint venture are: [list member name and SCC identification number for each member, or provide the asserted exemption information in subSection 5 below]

_____

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

***If you check Option 5 above, you must attach additional sheets to explain in further detail why such Bidder is not required to be authorized to transact business in Virginia. Bids that fail to submit supporting details regarding option 3 above may be considered non-responsive by APS.***

***Note: If Bidder is required to have an SCC#, the SCC# shall be active at the date/time that the Bid is opened. Failure of Bidder to have an active SCC# at the date/time the Bid is opened will result in a determination that Bid is non-responsive and the Bid shall be rejected and will not be considered for Contract award.**

16. **List of Subcontractors and Identified Divisions or Features:**

Listed below are certain divisions or features of the Work contained in the Contract Documents ("Identified Features"). For any Identified Feature which the Bidder intends to perform itself, it is a Class 1 Mandatory Requirement that the Bidder hold the classifications or specialty designations required to permit it to perform that Identified Feature.

For any Identified Feature which the Bidder intends to have performed by a Subcontractor ("Identified Feature Subcontractor"), the Bidder shall state below the name of each proposed Identified Feature Subcontractor, and shall state the Virginia Class A Contractor's License number and expiration date for that Identified Feature Subcontractor. The Contractor's License for each proposed Identified Feature Subcontractor shall include the classification or specialty which permits the Identified Subcontractor to perform such Work. As a Class 2 Mandatory Requirement, the Bidder may elect to submit this Identified Feature Subcontractor Information as provided in Paragraph 18.3 of the Instructions to Bidders.

For any Subcontractors other than Identified Feature Subcontractors, all such Subcontractors shall have a Virginia Contractor's License in compliance with the Class A, Class B or Class C requirements established by applicable statutes and Virginia Board for Contractors Regulations. For all proposed Subcontractors other than Identified Feature Subcontractors, the successful Bidder shall have a maximum of fourteen (14) days after Notice to Proceed to submit to APS for vetting and approval the **final** list of such Subcontractors, which final list shall include the previously Identified Subcontractors. If the Bidder at any time after Bid Closing seeks to change an Identified Feature Subcontractor identified below, the Bidder shall comply with the requirements of General Conditions Part 6.

The Bidder certifies that all Subcontractors listed are eligible in all respects to perform the Work. Bidder's failure to submit the List of Subcontractors in compliance with Item 9.B of this Bid Form shall result in Bidder's Bid being deemed as non-responsive.

| Subcontractor's Work | Subcontractor's Name and Class A Contractor's License Number and Expiration Date |
|---|---|
| Structural Steel: | _____ |
| Electrical: | _____ |

Controls: _____

17. **Debarment Status:**

If you answer yes to any of the following, on a separate attachment, state the person or entity against whom the debarment was entered, give the location and date of the debarment, describe the project involved, and explain the circumstances relating to the debarment, including the names, addresses and phone numbers of persons who might be contacted for additional information

1. Is your organization or any officer, director, project manager, procurement manager, chief financial officer, partner or owner currently debarred from doing federal, state or local government work for any reason?
   Yes ___ No ___

2. Has your organization or any current officer, director, project manager, procurement manager, chief financial officer, partner or owner ever been debarred from doing federal, state or local government work for any reason?
   Yes ___ No ___

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

**Person signing must be authorized to bind the Bidder in contractual matters. If the Bidder is a joint venture the Bid must be signed by an authorized representative of each member of the joint venture. Add additional copies of this signature page if necessary**

**By:**_____

**Name:**_____

**Title:**_____

**Date:**_____

**End of Bid Form**

## Appendix A to Bid Form

## Bidder's Qualifications

**I.** **Bidder Experience**: The Bidder shall have experience and expertise in membrane roofing for installation over granule surface built up roof (BUR) with existing elastomeric coating. This experience shall include HydroStop® PremiumCoat® coat, or an approved equal, installation completed within a tight schedule. The Bidder must have a minimum of **three (3) years' experience as a Virginia Class A licensed contractor as of Bid Closing. The Bidder, or its Subcontractors, must have the classifications and/or specialty designations required to perform the work.** If the Bidder or its principals operated under another name or entity within five (5) years, the Bidder shall provide the same level of information on the other name or entity.

1. Please state whether the Bidder has a minimum of three (3) years' experience as a Virginia Class A licensed contractor and holds a current Class A Contractor's License: **Yes**_____ **No**_____
2. Please state whether the Bidder has all of the classifications and/or specialty designations required to perform the work: **Yes**_____ **No**_____
3. If the Bidder's answer to the preceding question was "No," comply with the requirements of Paragraph 18 of the Instruction to Bidders and Item 16 of the Bid Form regarding proposed Subcontractors
4. Name of Previous Business or Entity (If Applicable):_____.
5. Please provide the date on which the Bidder was established as a full time Virginia Class A Licensed Contractor:
   (Month/Day/Year): _____
6. Bidder must be certified as a GAF Master or Master Select Installer prior to Bid Closing, please provide the date that Bidder received certification:
   (Month/Day/Year): _____
   (Bidder shall attach certificates)
7. Bidder must attend GAF HydroStop® PremiumCoat® Coatings training prior to Bid Closing, please provide the date Bidder attended training:
   (Month/Day/Year): _____
   (Bidder shall attach certificates)

**II.** **Demonstrated Performance on Relevant Projects:** The Bidder must have demonstrated satisfactory performance, as determined by Arlington Public Schools, on at least **three (3) projects** that involve the installation of elastomeric membrane over granule surface BUR with existing elastomeric coating, completed in tight schedules where time is of the essence (durations of less than six months). Additionally, the projects submitted shall have **been successfully and substantially completed** within the **past five (5) years prior to Bid Closing**.

1. Please state whether the Bidder successfully and substantially completed three (3) projects? **YES**_____ **NO**_____

2. For each project listed, please provide the following information:

- **Project 1**:

i. Name of Project: _____

ii. Description: (Roof size in squares, type of roof system installed, product installed)_____
_____
_____

Project Duration: _____
(Bidder may attach additional project description to this form).

iii. Owner Name: _____

Address: _____
Contact Person: _____
Telephone Number: (_____)_____
Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____
Contact Person: _____
Telephone Number (_____)_____

v. Contract Dates - Attach additional information if project was not on schedule.

Started:_____

Original Contractual Completion: a) Substantial Completion _____
b) Final Completion _____

Actual Completion: a) Substantial Completion_____

b) Final Completion _____

vi. Original Contract Price $_____

Final Contract Price $_____

- **Project 2**:

i. Name of Project: _____

ii. Description: (Roof size in squares, type of roof system installed, product installed)_____

_____

_____

Project Duration: _____

(Bidder may attach project description to this form).

iii. Owner Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____)_____

Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____)_____

v. Contract Dates - Attach additional information if project was not on schedule.

Started:_____

Original Contractual Completion: a) Substantial Completion _____

b) Final Completion _____

Actual Completion: a) Substantial Completion_____

b) Final Completion _____

vi. Original Contract Price $_____

Final Contract Price $_____

- **Project 3**:

i. Name of Project: _____

ii. Description:(Roof size in squares, type of roof system installed, product installed) _____

_____

_____

Project Duration: _____

(Bidder may attach additional project description to this form).

iii. Owner Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

v. Contract Dates - Attach additional information if project was not on schedule.

Started:_____

Original Contractual Completion: a) Substantial Completion _____

b) Final Completion _____

Actual Completion: a) Substantial Completion_____

b) Final Completion _____

vi. Original Contract Price $_____

Final Contract Price $_____

**III.** **Key Personnel:** The Project Superintendent shall have **at least three (3) years** of experience as a Superintendent. Also, the Project Superintendent must have managed or supervised at least **three (3) projects** that involved installation of membrane roofing over granule surface BUR with existing coating, completed in tight schedules where time is of the essence (duration of less than six months). Additionally, the Projects submitted shall have been **successfully and substantially completed** within the **past five (5) years prior to Bid Closing**.

1. Please state whether the Project Superintendent has at least three (3) years of roof coating experience, if so please attach a copy of the Project Superintendent's resume?

   **Yes_____ No_____**

2. Please state whether the Bidder's Project Superintendent has successfully and substantially completed three (3) projects.

   **Yes_____ No_____**

3. For each project listed, please provide the following information:(**Note**: If Project Superintendent has managed the projects listed in response to Section II, there is no need to provide this information below).

- **Project 1**:

i. Name of Project: _____

ii. Description: _____

_____

_____

Project Duration: _____

(Bidder may attach additional project description to this form).

iii. Owner Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____

Contact Person: _____

Telephone Number (_____) _____

v. Contract Dates - Attach additional information if project was not on schedule.

Started:_____

Original Contractual Completion: a) Substantial Completion _____

b) Final Completion _____

Actual Completion: a) Substantial Completion_____

b) Final Completion _____

vi. Original Contract Price $_____

Final Contract Price $_____

- **Project 2**:

i. Name of Project: _____

ii. Description: _____

_____

_____

Project Duration: _____

(Bidder may attach project description to this form).

iii. Owner Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

v. Contract Dates - Attach additional information if project was not on schedule.

Started:_____

Original Contractual Completion: a) Substantial Completion _____

b) Final Completion _____

Actual Completion: a) Substantial Completion_____

b) Final Completion _____

vi. Original Contract Price $_____

Final Contract Price $_____

- **Project 3**:

i. Name of Project: _____

ii. Description: _____

_____

_____

Project Duration: _____

(Bidder may attach additional project description to this form).

iii. Owner Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

Name of Project Superintendent: _____

iv. Design Architect/Engineer Name: _____

Address: _____

Contact Person: _____

Telephone Number: (_____) _____

v. Contract Dates - Attach additional information if project was not on schedule.

Started: _____

Original Contractual Completion: a) Substantial Completion _____

b) Final Completion _____

Actual Completion: a) Substantial Completion _____

b) Final Completion _____

vi. Original Contract Price $ _____

Final Contract Price $ _____

**End of Appendix A to Bid Form**

**Agreement Between Owner and Contractor**

THIS AGREEMENT, made and entered into this ___ day of _____, 2020; between Arlington County School Board, operating as Arlington Public Schools, Virginia (the "Owner") and _____ (the "Contractor"), whose address is _____
_____
_____
_____

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

1. The Project

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

**Washington Liberty Roof Coating Restoration, Located at 1301 N. Stafford Street, Arlington, VA, 22201.**

2. The Contract Documents

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

1. Agreement Between Owner and Contractor
2. General Conditions
3. Scope of Work
4. Bid Documents and Addenda
5. Notice to Proceed
6. Building Details
7. Building as Built

Modifications issued after execution of this Agreement have the precedence as addressed below.

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

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

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

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

3. Definitions

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

4. Contract Period

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

February 24, 2020 – Anticipated Notice to Proceed (NTP) for Project Administrative Contract Deliverables

March 2, 2020 – Anticipated NTP for Project Site Mobilization and Construction

June 30, 2020 – Substantial Completion

July 31, 2020 – Final Completion

Note: These dates are subject to adjustments as provided in the Contract Documents.
The schedule found in the ITB is negotiable, APS is prepared to issue the Anticipated NTP for Project and Site Mobilization and Construction earlier to allow Contractor to capitalize on days when site conditions are optimal.

5. Contract Sum

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

In Writing: _____Dollars

In Figures: $_____.00

6. Liquidated Damages

The Owner and the Contractor recognize that time is of the essence in this Agreement and that Owner will suffer damages if Substantial Completion, and thereafter Final Completion, of the Work, or of any individual Phase of the Work for which a Substantial Completion, and if applicable, Final Completion, date with associated Liquidated Damages is established by the Contract Documents, is not complete within the time specified in Paragraph 4 above, plus any extensions thereof allowed in accordance with Part 10 of the General Conditions. The Owner and the Contractor agree that the actual damages to be incurred by the Owner in the event of late completion are not readily ascertainable or capable of estimation at the time of contracting. It is understood and agreed that the Liquidated Damages amount shall not be affected by the Owner's use or occupancy of, or by the achievement of Substantial Completion or Final Completion of, less than the entirety of the Work to which the Liquidated Damages amount may be applicable. The Contractor hereby waives without condition or limitation any objection that the amount of Liquidated Damages set forth below is void as a penalty or is not reasonably related to actual damages. Without limitation of the foregoing, Contractor also agrees that any deduction of Liquidated Damages from amounts otherwise payable to Contractor shall not constitute improper or wrongful nonpayment of Contractor and Contractor without limitation or condition conclusively waives any claim or cause of action premised in whole or in part on any such deduction of Liquidated Damages. In the event more than one ground for assessment of Liquidated Damages as set forth herein exists concurrently, such grounds shall be deemed to be, and hereby are agreed to be, independent and all applicable Liquidated Damages shall be assessed and deducted cumulatively. In the event that, subsequent to any deduction of Liquidated Damages as authorized herein, a time extension is granted or any determination is made which affects in whole or in part the amount of Liquidated Damages deducted, Contractor acknowledges and agrees that its sole remedy shall be payment by the Owner of the principal amount of Liquidated Damages so determined to be payable to the Contractor plus interest as provided in the Contract Documents. Accordingly, the Owner and the Contractor agree that as Liquidated Damages for delay in achieving timely completion as required by the Contract (but not as a penalty), the Contractor shall:

a. Pay Owner **One Thousand Dollars ($1,000.00)** for each day that expires after the time specified in Paragraph 4 for the **Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved; and Pay Owner **Two Hundred and Fifty Dollars ($250.00)** for each day that expires after the time specified in Paragraph 4 for the **Final Completion Date**, plus any approved time extensions, until Final Completion is achieved

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

7. Payment Procedures

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

b. Contractor hereby consents to the Owner deducting from amounts otherwise payable to the Contractor and retaining any and all amounts payable to the Owner by the Contractor for any reason stated in the Contract Documents assessed or payable through the date payment is due Contractor from Owner.

If the amount payable to the Owner by the Contractor exceeds the amount otherwise payable to Contractor by Owner, Contractor shall make payment thereof to Owner within fourteen (14) days following issuance by Owner of Notice of payment due.

8. Interest

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

9. No Assignments

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

10. Governing Law

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

11. Binding Agreement

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

**Signatures Appear on the Following Page**

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

**Contractor**

By: _____

Title: _____

_____
Dated

**Arlington Public Schools**

By: _____
**David J. Webb, C.P.M.**

Title: Director of Procurement

_____
Dated

**End of Agreement**

**Standard Bid Bond**

Bond #:_____
Amount: _____

KNOW ALL MEN BY THESE PRESENTS: That

_____

_____

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

as Principal, and

_____

(insert full legal title of the Surety)

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

_____

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

WHEREAS,

Principal has submitted a Bid to Obligee dated _____, 20___, in response to an Invitation to Bid issued by Principal titled for a project identified as **Washington Liberty Roof Coating Restoration Arlington Career Center, located at 1301 N. Stafford Street, Arlington, VA, 22201, BID #41FY20.**

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

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

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

and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance by Principal of the Bid as set forth in the Bid Form,

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

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

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

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

_____
Principal

_____
Witness

By: _____
Title

_____ (SEAL)
Surety

_____
Resident Virginia Agent

By: _____
Title

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

I, the undersigned notary public, do certify that _____ personally appeared before me in the jurisdiction aforesaid and made oath that he/she is attorney-in-fact of the _____ (Name of Surety), that he/she is duly authorized thereby to execute in its behalf a certain (payment) bond in the sum of _____ _____ Dollars ($_____), dated the _____ day of _____, 20___, wherein Arlington Public Schools is the Obligee, _____ is the Principal and _____ is Surety, by virtue of a certain power of attorney made by said Surety, dated _____ and _____ RECORDED in the Clerk's Office of the Circuit Court of _____, Virginia, in Deed Book

_____, Page _____, or Instrument # _____ / NOT RECORDED (check applicable box); that the said power of attorney has not been revoked; that the said Surety is legally qualified to do business in Virginia; and, that the said _____ thereupon, in the name and on behalf of the said Surety, acknowledged the aforesaid bond as its act and deed.

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

_____
Notary Public

My Commission expires: _____

**End of Standard Bid Bond**

# General Conditions

## PART 1 DEFINITIONS

1.1 **ACCEPTANCE OF BID**: Dollar amount of Bid is acceptable. Contractor should proceed with bond requirements.

1.2 **AMENDMENT**: Written authorization executed by the Purchasing Agent, acknowledging the Change Order(s) Modification, revised Contract Sum and current Contract Period.

1.3 **CHANGE ORDER**: A written order to the Contractor, signed by the Owner and the Owner's Representative, which authorizes a change in the Work, and adjustment to the Contract Sum, and/or an adjustment to the Contract Period, if any. A **Unilateral Change Order** is a Change Order signed only by the Owner and the Owner's Representative addressing any Modification to the Contract Sum or the Contract Period to which the Owner agrees. A **Mutual Change Order** is a Change Order signed by both the Owner and the Owner's Representative and by the Contractor reflecting agreement on all terms, conditions and requirements set forth therein. A Unilateral Change Order may be converted to a Mutual Change Order upon agreement being reached between the parties. Change Orders shall be initiated and processed as set forth in Part 9 of this subsection and Specification Section 01 2600. The latest edition of the AIA Standard Form G701 shall be utilized and shall be provided by the Owner's Representative.

1.4 **CONTRACT:** The signed Agreement between Owner and Contractor is the Contract.

1.5 **CONTRACT DOCUMENTS**: The Contract Documents consist of the following documents:

A. The signed Agreement between Owner and Contractor,

B. The General Conditions,

C. The Drawings and Specifications,

D. Bid Documents and Addenda,

E. The Notice of to Proceed issued by the Owner to the Contractor,

F. Modifications, issued after execution of the Contract, and

G. In case of a conflict between the Contract Documents, the order of precedence shall be as set forth in the Contract.

1.6 **CONTRACT PERIOD**: The period allotted in the Contract Documents for Substantial Completion, and thereafter Final Completion, of the Work, together with any extension of time granted in accordance with the provisions of the Contract Documents. Contract Period may also be referred to as "Contract Time" in the Contract Documents. Both terms have the same meaning.

1.7 **CONTRACT SUM**: The total amount payable to the Contractor for performance of the Work. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions of the Contract Documents.

1.8 **CONTRACTOR**: The individual, firm or organization which contracts with the Owner to perform the Work. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.

1.9 **DATE OF FINAL COMPLETION**: or **FINAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, is completely finished pursuant to the requirements of the Contract Documents, which date shall occur within thirty (30) calendar days after the Date of Substantial Completion of all Work, or a Phase of the Work, unless otherwise specified in the Contract Documents.

1.10 **DATE OF SUBSTANTIAL COMPLETION**: or **SUBSTANTIAL COMPLETION DATE:** The date certified by the Owner's Representative as the date upon which the Work, or a Phase of the Work, has been completed pursuant to the requirements of the Contract Documents.

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

1.12 **FINAL COMPLETION**: "Final Completion" or the state of being "Finally Complete" shall mean total completion of all Work required by or reasonably contemplated by the Contract Documents. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Final Completion is established. More specific requirements for Final Completion as to the Work or a defined portion thereof may be set forth in the Specifications.

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

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

1.15 **MODIFICATION:** Any written change to any provision of the Contract Documents made after Bid Closing, whether by Work Order, Change Order or other means provided by the Contract Documents.

1.16 **NORMAL WORKING DAY:** See "Working Day."

1.17 **NOTICE**: Notice or a requirement to "Notify" shall mean written notice. Written Notice shall be deemed to have been duly served if:

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

B. Delivered by mail, express mail or hand delivered to the office of the Procurement, Arlington Public Schools, Education Center, 2110 Washington Boulevard , Arlington, Virginia 22204 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.

D. All notices shall be given to the address shown in the Contract or such other address/addresses as may be provided by Notice after execution of the Contract. Notice sent by registered or certified return receipt mail shall be deemed received on the date shown on the return signed by the receiving party. Notice sent by courier or by hand delivery shall be deemed received on the date shown on the delivery receipt signed by the receiving party. Notice sent by email or facsimile transmission shall be deemed received at 9:00 A.M. on the first Working Day following the date of the transmission.

1.18 **NOTICE TO PROCEED:** A written Notice from the Owner to the Contractor, which gives consent for commencement of the Work. For projects with phased Work, a Notice to Proceed will be issued prior to the commencement of each Phase, if a Notice to Proceed is required by the Contract Documents. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Project Schedules shall be based upon that date.

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

1.20 **OWNER'S CONSTRUCTION PROJECT MANAGER**: APS' employee authorized to act on behalf of the Owner regarding matters related to the Contract, Contract Documents, and on-site construction. The Project Manager may designate on-site construction managers as Owner's Representative (Construction Manager) to act on the Owner's behalf.

1.21 **OWNER'S REPRESENTATIVES**: Owner's Representatives include the project Architect as identified in the Agreement and on-site Construction Manager who have been designated to act on behalf of the Owner. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the project Architect or the Construction Manager. Contractor will be given written direction regarding the individuals employed by either the Architect or the Construction Manager with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's Representative are set forth in Part 3 of these General Conditions. Notwithstanding any other provision in the Contract Documents to the contrary, any Modification of the Contract Sum or of the Contract Period may be made only by writing signed by the Arlington Public Schools Purchasing Agent or the designee of thereof as identified to the Contractor by writing issued by and signed by the Arlington Public Schools Purchasing Agent.

1.22 **PROJECT**: The construction services as performed by the Contractor, in accordance with the Contract Documents; collectively all of the improvements contemplated by the Contract; synonymous with the term "Work" as the context may require.

1.23 **PROJECT SCHEDULE:** The Critical Path Method Baseline Schedule for the Project as a whole established and updated by Monthly Project Schedule Update all in accordance with the provisions of Specifications Section 01 3200. The term "Project Schedule" does not include any Recovery

Schedule which may be directed by Owner unless incorporated into the Project Schedule pursuant to the Project Schedule Revisions procedures set forth in Specifications Section 01 3200.

1.24 **PROJECT SITE**: The location at which the improvements which are the subject of the Work are to be or are being constructed. May also be referred to as "Site."

1.25 **PROPOSED MODIFICATION**: A request by the Owner or the Owner's Representative for the Contractor's estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and processed as set forth in Specification Section 01 2600.

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

1.27 **SUB-SUBCONTRACTOR**: Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.

1.28 **SUBSTANTIAL COMPLETION**: "Substantial Completion" or the state of being "Substantially Complete" shall be that degree of completion of the Work which is sufficient to provide the Owner, in its sole discretion, with the full time use of the Project in all manners or modes of operation and for the purpose or purposes for which it was intended. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Substantial Completion is established. More specific requirements for Substantial Completion as to the Work or a defined portion thereof may be set forth in the Contract Documents.

1.29 **SURETY**: Any person, firm or corporation that has executed as Surety the Contractor's performance or payment bonds securing performance of this Contract or providing for protection of claimants who have and fulfill contracts to supply labor or materials to the Contractor or to a Subcontractor in connection with the Work. The Surety shall be authorized to do business in the Commonwealth of Virginia and shall be listed on the United States Treasury Department's latest Circular 570.

1.30 **WARRANTY PERIOD:** All warranties and guarantees against any defect in the Work shall apply from the date of Final Completion of the Work and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Owner occupies and commences using in the manner intended any designated portion of the Work prior to Final Completion thereof, the one (1) year Warranty as to such defined portion of the Work shall commence on the date the Owner commences such occupancy and use. Provided further, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

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

1.32 **WORK ORDER**: A written directive to the Contractor issued on or after the Effective Date of the Agreement which directs changes in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Period, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Representative of the Contractor's agreement or disagreement with the method, if any, provided in

the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.

1.33 **WORKING DAY:** The hours between 7:00 A.M. and 5:00 P.M., local prevailing time, Monday through Friday, excluding Owner Holidays. Also, may be referred to as "Business Day."

## PART 2 EXECUTION AND INTENT OF THE CONTRACT

2.1 **CONTRACT SIGNATURE**: Four (4) copies of the Agreement Between the Owner and the Contractor shall be signed by both the Owner and the Contractor.

2.2 **EXECUTION OF AGREEMENT**: Execution of the Contract by the Contractor is a certification that the Contractor has examined the Project Site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents, and has examined all Contract Documents, as required by the Contract.

2.3 **INTENT OF THE CONTRACT DOCUMENTS**: The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use of the term "include" or "including" shall be deemed to mean "include without limitation," "including but not limited to," and similar expansive intent.

2.4 **DRAWINGS AND SPECIFICATIONS:**

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

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

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

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

## 2.5 CONTRACT INTERPRETATIONS:

A. The Owner and/or the Contractor may request Contract interpretations in writing from the Owner's Representative. Such requests for interpretations must be submitted sufficiently in advance of the date upon which the interpretation is actually required by the Owner or the Contractor to allow the Owner's Representative to issue the interpretation so as not to delay the Work. Contractor shall be responsible for any delay resulting from failure to submit a request for interpretation in a timely manner. Written interpretations so requested shall be issued by the Owner's Representative in a manner commensurate with the timely execution of the Work, shall be consistent with the intent of the Contract Documents, and shall be in accordance with the approved Project Schedule.

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

## 2.6 COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:

A. The Contractor **will not** be provided with hard copies of the Drawings, Project Manual and other Documents prepared by the Owner's Representative. The Contractor will be provided access to an FTP site or online electronic storage site where electronic copies, in PDF file format, of the aforementioned documents will be available free of charge. The Contractor shall bear any costs of training required to access the FTP or electronic storage site. Should the mode of storage of electronic documents change during the Contract Period, the Contractor shall not be entitled to a change in the Contract Sum.

B. Original Drawings and Specifications are the property of the Owner, and the Contractor may not use the Drawings and Specifications produced pursuant to this Agreement for any purpose not relating to the Project without the Owner's consent.

C. The Owner's Representative (Architect) will make available to the Contractor, versions of the Drawings, Specifications, and Addenda in electronic format (i.e. PDF file formats). The Contract Drawings executed or identified in accordance with Paragraph 1.1. shall prevail in cases of an inconsistency with subsequent versions made through manipulative electronic means involving computers.

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

2.7 **SUBSTITUTIONS**: Substitutions are not permitted after Bids are received.

## PART 3 OWNER'S REPRESENTATIVE

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

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

3.3 **SITE VISITS**: The Owner's Representative shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. Based upon its on-site evaluations, the Owner's Representative will advise the Owner of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work. The Owner's Representative shall not have control over or charge of and shall not be responsible for construction methods, techniques, procedures, sequences or safety measures employed in connection with the Work. The Owner's Representative shall not be responsible for the failure of the Contractor, Subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.

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

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

3.6 **REJECTION OF WORK**: The Owner's Representative and/or the Owner shall have the authority to reject Work that does not conform to the requirements of the Contract Documents. In the event rejected Work requires additional testing or additional inspections, Contractor shall pay the Owner all amounts paid by the Owner to the Owner's Representative and other third party consultants for any such additional testing or inspections. The Owner's Representative and/or the Owner shall have the authority to order special inspections or tests, regardless of whether or not the Work has been fabricated, installed or completed. Such special inspections or tests shall be performed at the Contractor's sole expense and no increase to the Contract Sum. No responsibility or duty of the Owner's Representative and/or the Owner to the Contractor, Subcontractors, or Sub-subcontractors shall be created by this authority or by good faith decisions rendered in the exercise of this authority. At all times the Contractor is fully responsible for the quality of the Work and full and complete performance of the terms and specifications of the Contract. The Owner has the right to withhold from payment otherwise due the Contractor 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. If the balance due to the Contractor is not sufficient to cover the amount due the Owner, the Contractor shall pay to the Owner the difference upon demand by Owner.

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

## PART 4 OWNER

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

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

4.2 **REJECTION OF WORK**: The Owner shall have the right but not the obligation to reject Work in accordance with Paragraph 3.6 or of any other provision of the Contract Documents, without waiver of the Contractor's obligation to fully perform under the Contract.

4.3 **CERTIFICATION OF PAYMENTS**: The Owner shall have the right but not the obligation to review, revise, and approve the Owner's Representative's certifications concerning payment.

4.4 **RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES**: If the Contractor does not correct non-complying Work, or is consistent in not supplying and/or furnishing labor, material, and equipment necessary to Work performance, the Owner has the right to order the Contractor to stop the Work until such time as the cause of the order has been corrected. Should the Contractor default, fail to perform the Work, or improperly perform the Work, the Owner has the right, after three (3) days written notice, to correct the deficiencies. The Owner may deduct from amounts otherwise due Contractor 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. If the balance due to the Contractor is not sufficient to cover the amount due the Owner, the Contractor shall pay to the Owner the difference upon demand by Owner. The Owner's exercise of the right to correct deficiencies shall in no way prejudice or limit any other remedy that the Owner may have.

## PART 5 CONTRACTOR

### 5.1 GENERAL REVIEW OF CONTRACT DOCUMENTS:

A. The Contractor shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work in strict compliance with the requirements of the Contract Documents. The Contractor shall be responsible for the entire Work until Final Completion of all Work has been achieved.

B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.

C. Supervisor and Construction Procedures: The Contractor shall supervise and direct the Work and coordinate the Work with that of separate Contractors using Contractor's best skill and attention, with at least the use of an onsite full-time superintendent, onsite full-time project engineer and full-time project manager. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. Neither the Owner's Representative's approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner's Representative's approval or failure to approve create a cause of action for damages against the Owner's Representative or the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor.

D. The Contractor shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The Contractor shall be responsible for advising the Owner's Representative and the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered by it.

E. The Contractor shall be responsible for all costs or delays resulting from the Contractor's or a Subcontractor's failure to obtain and review Contract Documents provided by the Owner.

F. The Contractor shall employ on the site at all times at least one person in a supervisory capacity fluent in English to communicate with the Owner's Representatives and capable of communicating with all workers on the Project site to facilitate compliance with all necessary instructions and safety requirements.

### 5.2 CHARACTER AND COMPETENCY:

A. The Contractor and its Subcontractors represent a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction services required hereunder. The Contractor agrees that it and its Subcontractors shall provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to the Owner to perform the Work in an efficient and timely manner. The Contractor represents that it and its Subcontractors are capable in all

respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide construction services of high quality. The Contractor agrees that it and its Subcontractors shall diligently and conscientiously devote their resources to the performance of the Work.

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

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

D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any Subcontractor from the Project Site. Sexual harassment, profanity, and inappropriate behavior are not permitted on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any of its Subcontractor.

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

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

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

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

3. State in all solicitations or advertisements for employees place by or on behalf of the Contractor that the Contractor maintains a drug-free work place; and

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

G. The Contractor shall have no portion of the Work performed by any Subcontractor or Sub-subcontractor which does not have a current Virginia Contractor's License of the Class and Specialty required for performance of that portion of the Work.

H. Contractor Certification Regarding Criminal Convictions

1. As a condition of awarding a contract for the provision of Work that require the Contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Arlington School Board shall require the Contractor to provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors and the employees thereof.

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

3. The Contractor shall submit to the Owner a completed Contractor Certification Regarding Criminal Convictions on the form set forth below. Contractor shall be responsible for making such additional copies of the form as may be required.

## CONTRACTOR CERTIFICATION
## REGARDING CRIMINAL CONVICTIONS

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

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

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

1. No employee of the organization who will be in the presence of students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Va. Code Ann. Section 18.2-370.4, no employee who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Va. Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

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

| | |
|---|---|
| _____ | _____ |
| Name of Firm | Signature |
| _____ | _____ |
| | Name and Title (please type or print) |
| _____ | |
| Address of Firm | |
| _____ | _____ |
| Telephone | Date |

5.3 **PERMITS, FEES AND NOTICES:**

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

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

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

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

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

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

5.7 **SHOP DRAWINGS:**

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

B. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be performed in accordance with the approved submittals.

C. By approving and submitting Shop Drawings and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

D. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings or similar submittals unless the Contractor has specifically informed the Owner's Representative in writing of such deviation at the time of submittal and the Owner's Representative has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings or similar submittals by the Owner's Representative's approval thereof.

E. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings or similar submittals, to revisions other than those requested by the Owner's Representative on previous submittals.

F. Informational submittals upon which the Owner's Representative is not required to take responsive action may be so identified in the Contract Documents.

G. Additional requirements are contained in Submittals, Section 01 3300 of the General Requirements.

5.8 **INSPECTION OF WORK**: The Contractor shall be responsible for inspection of portions of Work or Phases of Work already performed hereunder, and for any pre-existing improvements not being replaced by Contractor which may impact Contractor's Work to determine that such portions are in proper condition to receive subsequent Work. In calling for inspections, the Contractor certifies that the Work being called for inspection meets the Contract and all building code and other statutory or regulatory requirements for completeness and quality. Irrespective of any third-party inspections, the

Contractor remains responsible for any after discovered defects in Work and is fully responsible for any delays and costs associated with such defective, insufficient or non-compliant Work.

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

5.10 **USE OF SITE:**

A. The Contractor shall confine the Work to areas of the Project Site permitted by the Contract Documents and shall comply with all applicable laws, ordinances, and permits related to the Project Site.

B. The Contractor shall establish and maintain security procedures controlling access to the Project Site. These procedures shall include the maintenance of a centrally located sign-in/sign-out log and the issuance of temporary security badges to short term visitors to the Site. The Owner's Representative (Construction Manager) will provide project specific hardhat stickers to all Contractor and Subcontractor employees assigned to work on the Project. Request for such stickers will not be valid unless accompanied with a completed "Contractor Certification Regarding Criminal Convictions" form.

C. Contractor workers shall not be present in any building and/or property owned or controlled by Owner without an Owner employee present nor without a Contractor issued APS hard hat sticker. In the event the Contractor desires to perform Work outside the Normal Working Hours in any building and/or property owned or controlled by Owner, Contractor shall notify the Owner in writing at least two working days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for overtime and weekend Work shall be paid by the Contractor to the Owner at a rate of $40 per hour per person. The cost of custodial support for Sunday or holiday work shall be paid by the Contractor to the Owner at a rate of $70 per hour per person. The Owner shall submit employee time sheets to the Contractor for review and verification. The cost for the Owners Representatives and/or consultants for Weekend or Holiday work shall be paid by the Contractor at rate of $150 per hour.

D. The Contractor shall maintain the building interior and exterior grounds of the Project Site in a clean and orderly state. The Contractor shall conduct periodic cleaning of the building interior, grounds, parking lots, driveways and sidewalks to assure that construction debris and unnecessary material and equipment do not accumulate. The Contractor shall also conduct periodic landscape maintenance of vegetated areas of the Site.

E. If in the Owner's sole discretion, the Project Site requires cleaning, landscape maintenance, or excess material removal, in total or in part, the Owner shall request the Contractor conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the requested cleaning within three (3) Working Days, the Owner may use outside sources to conduct the cleaning or maintenance and maycharge the Contractor for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.

F. The Contractor shall be responsible for the protection and security of the Project Site and shall have in place procedures to maintain positive control over vehicular and pedestrian traffic entering the Site and maintain a security perimeter around the construction Site by employing the following measures:

1. Completely enclose the Project Site at the outer limits of the construction area with a chain link fence with a minimum of six feet height. The fence shall be firmly anchored in the ground or into concrete bases to prevent movement, lifting, or passage beneath the fence. The fence shall be continuous and securely fastened at seams to prevent gaps greater 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 Contractor covenants to save, defend, hold harmless, and indemnify the Owner, Arlington School Board, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's intentional, negligent, or grossly negligent acts or omissions in performance or nonperformance of its Work called for by the Contract Documents or otherwise occurring on the Project Site. This indemnification obligation shall survive the termination of this Contract.

5.12 **CONFLICT OF INTEREST:**

A. The provisions of Va. Code Title 2.2, Chapter 43, Article 6, Ethics in Public Contracting, §§ 2.2-4367 through 4377 are incorporated herein. These incorporated provisions 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 incorporated provisions shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

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

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited

by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.

C. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 as amended in 2008, and as may be amended thereafter, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

D. 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.

E. The Contractor will include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over $10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.

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

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

## PART 6 SUBCONTRACTORS

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

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

A. Unless otherwise specified in the Contract Documents, within fourteen (14) Days after the Notice to Proceed, the Contractor must submit a written statement to the Owner's Representative and the Owner setting forth the name and address, and telephone number of all proposed Subcontractors and the portion of the Work and materials for which each such Subcontractor is responsible. Should any proposed Subcontractor for a division and/or feature of work outlined in the Bid Form, Section 16, differ from the Subcontractor actually performing the Work, the Contractor must provide justification for the change to the proposed Subcontractor prior to any Work commencing by the Subcontractor. The Contractor also must furnish any other information intended to prove that the proposed

Subcontractor has the necessary facilities, skill, integrity, safety records, past experience and financial resources to perform the Work in accordance with the terms and conditions of the Contract Documents.

B. If the Owner finds, in its sole and absolute discretion, that the proposed Subcontractor is not qualified, the Contractor will be notified in writing within ten (10) days of the Owner receiving the request for approval of the Subcontractor. If no such notice is provided, the Owner shall be deemed to have accepted the Subcontractor. The Owner may retract its acceptance of any Subcontractor in the event such Subcontractor evidences an unwillingness or inability to perform its portion of the Work in strict accordance with the Contract Documents. Notice of such retraction will be given in writing to the Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within five (5) days, submit a new Subcontractor for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the Contractor for any increase in the Contract Sum or any extension of the Contract Period.

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

D. Upon request, the Contractor promptly shall file with the Owner a copy of any one or more of its subcontracts. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses due to its exercising of its rights under this paragraph.

E. The Owner's review or acceptance of Subcontractors as described herein shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees, and any other persons or entities performing any portion of the Work.

6.3 **SUBCONTRACTOR AND SUB-SUBCONTRACTOR AGREEMENTS**: Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the Contractor, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement shall:

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

B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;

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

D. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in Part 13 of these General Conditions. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;

E. Contain all provisions required by any of the Contract Documents to be included in a subcontract;

F. Make specific reference to the conditions of Paragraph 6.3 of this section as a mutually binding provision; and

G. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work shall be submitted by the Contractor to the Owner's Representative within ten (10) days of the Subcontractor award.

H. The Contractor shall include in each subcontract the same requirements as Parts 5.2 H herein; require the completion by the Subcontractor of a form containing the same certifications as appearing in the Contractor Certification Regarding Criminal Activity on pages 11 and 12 herein; and require that the Subcontractor obtain from each of its Sub-subcontractors a similar Certification Regarding Criminal Activity .

## 6.4 PAYMENTS OF SUBCONTRACTORS:

A. Within seven (7) days after receipt of payment from the Owner, the Contractor shall:

1. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor, less an amount equal to the percentage of payments to be retained by the Owner from the Contractor as retainage; or

2. Notify the Owner and the Subcontractor in writing of the intention to withhold all or part of the amount due a Subcontractor and state the reason for such withholding.

B. In the event the Contractor fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the Contractor, the Subcontractor shall have the right to be paid by the Contractor upon demand of the amounts due.

C. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the Contractor's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld pursuant to Paragraph 6.4.A.2 shall not accrue interest.

D. Insurance proceeds received by the Contractor under the insurance policies described in Paragraph 13.1 shall be equitably distributed to the Subcontractors affected by the insured loss.

E. Information concerning percentages of completion of Work performed by a Subcontractor as shown in Application for Payment may be made available to that Subcontractor upon determination of the Owner.

F. The Contractor shall include in each subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.

G. The Contractor's obligations with respect to payments to its Subcontractors as outlined in Paragraph 6.4 above shall not operate to create any obligation or contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.

H. The Contractor's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

I. All provisions herein required to be included in a subcontract are intended for the benefit of Subcontractors.

## PART 7 SEPARATE CONTRACTS

### 7.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS:

A. The Owner reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.

B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate contract for construction.

C. At no additional cost to the Owner, the Contractor shall coordinate the Work with the activities of each separate Contractor. When directed to do so by the Owner, the Contractor shall participate with separate Contractors and the Owner in reviewing their separate construction schedules and shall make any revisions to incorporate that activity into the Project Schedule necessitated thereby.

D. The Contractor shall afford the Owner and any separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

## PART 8 MISCELLANEOUS PROVISIONS

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

8.2 **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES**: This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who or which was an unsuccessful bidder, who or which was deemed not to be qualified, or who or which was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.

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

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

8.5 **CLAIMS FOR DAMAGES OR OTHER RELIEF**: If the Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

A. The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based deliver to the Owner's Representative, to the Purchasing Agent, and to the Owner's Project Manager a written statement identifying itself as a Notice of claim, stating the circumstances of the occurrence, specifying the additional work contemplated as being required, state why such work is not

already included within the scope of the Contract Documents, and to the extent reasonably foreseeable estimate the anticipated amount of the claim..

B. If the Owner within five (5) Working Days following receipt of such Notice of claim does not direct the Contractor otherwise, the Contractor shall proceed with the work which is the subject of the claim and within ten (10) calendar days after completion of the work for which additional compensation is claimed shall submit in writing to the Owner's Representative, to the Owner's Project Manager, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.

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

D. The Contractor shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

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

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

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

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

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

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

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

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

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

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

A. In seeking subcontractors, suppliers and vendors necessary to perform the Work, the Contractor shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses, and service disabled veteran-owned businesses and employment services organizations. At a minimum, for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category 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. "Employment Service Organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

2. "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 b 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.

3. "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.

4. "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.

5. "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.

6. "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.

7. "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:

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

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

# 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 materially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to be not within the reasonably foreseeable scope of the Project and a material change to the scope of the Project for which the Contractor is entitled to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.

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

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

9.2 **EXTRA WORK:**

A. The Owner may, in its sole and absolute discretion, at any time by a Work Order or Change Order, and without notice to the Sureties, require the performance of such extra work as it deems necessary or desirable. Procedures and authorization for extra work shall be subject to the provisions set forth in Section 01 2600 of the Specifications or as otherwise provided by the Contract Documents.

B. The Contractor shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in 10.3, for any extra work performed by the Contractor without a valid Work Order or Change Order, and the Owner may order the removal or alteration at the Contractor's expense of any extra work performed without a validly issued Work Order or Change Order. Notwithstanding the foregoing, in the event of an emergency situation as a result of which the Contractor is required to proceed with mitigating or corrective action before giving Notice to the Owner to prevent or mitigate damage to person or property, the Contractor shall do so. In such event, the onset of the emergency shall be deemed the date of the occurrence and any claim for additional compensation or for an extension of the Contract Period shall be submitted in compliance with the claims procedures set forth in the Contract Documents.

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

D. A Work Order shall be valid only if issued by Notice by the Owner and/or the Owner’s Representative prior to the initiation of the work described therein. A Work Order directs changes in the work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job. Upon receipt of a Work Order the Contractor shall promptly proceed with the change in the Work involved and advise the Owner’s Representative of the Contractor’s agreement or disagreement with the method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not give Notice to the Owner of any disagreement with the method provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time within five (5) Days following issuance of the Work Order, the Contractor shall be deemed conclusively to have agreed with the terms of the Work Order. Such Notice, if given, shall include the Contractor’s proposed alternative method and the justification therefor. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.

E. The amount of compensation to be paid to the Contractor for any extra work so ordered shall be determined in accordance with Sections 01 2600 of the Specifications. No additional compensation shall be paid to the Contractor until a Change Order specifying the change in the scope of Work, the increase in the Contract Sum, and any impact on the Contract Period has been signed by both the Contractor and the Owner, and a purchase order for the agreed additional compensation has been issued by Owner. If there is no agreement on these terms,

the Owner may in its sole discretion issue a Unilateral Change Order approving any change in scope of Work, Contract Sum and/or Contract Period to which it agrees and issue a purchase order for such approved amount.

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

G. Records of extra work performed hereunder, if any, shall be submitted to the Owner's Representative, within 24 hours of the work being complete. Advanced notification must be provided to the Owner and/or 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 strict compliance shall not of itself establish any entitlement to additional compensation or extension of time. Duplicate copies of accepted records shall be made and signed by both Contractor or its representative and the Owner's Representative, and one copy retained by each.

H. The Contractor may be entitled to an extension of time for extra work duly authorized by the Owner or Owner's Representative as defined in Part 10.3 below and Section 01 2600.

## 9.3. HAZARDOUS MATERIALS:

A. "Hazardous Materials" shall mean any substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes, "hazardous materials," "toxic substances," "toxic pollutants" or words of similar import under any federal law or law of the Commonwealth of Virginia, or are regulated or prohibited under any federal law or law of the Commonwealth of Virginia pertaining to protection of human health, the environment, or natural resources.

B. Contractor shall not, nor shall it permit others, to bring any Hazardous Materials onto the Project Site, unless such Hazardous Materials are specified by the Contract Documents as required to perform the Work. In the event any Hazardous Materials are brought onto the Project Site in violation of this provision, Contractor shall be solely responsible for all costs associated with responding to governmental action, removal, investigation, cleanup, or other remedial action required by applicable governmental authorities.

C. If the Contract Documents identify pre-existing Hazardous Materials on the Project Site, Contractor shall comply strictly with all directions given by the Contract Documents in dealing with such Hazardous Materials. In the event Hazardous Materials are released due to failure of Contractor to comply with the directions given by the Contract Documents, or due to negligent or reckless conduct for which Contractor is responsible, Contractor shall be solely responsible for all costs associated with responding to governmental action, removal, investigation, cleanup, or other remedial action required by applicable governmental authorities.

D. If the Contractor encounters Hazardous Materials not disclosed by the Contract Documents, the Contractor shall immediately cease Work in the affected area, seal the affected area off to the extent conditions allow, and Notify the Owner's Representatives, the Owner's Project Manager, and the Purchasing Agent. Owner shall be responsible for any remedial action

required to address the condition. Contractor shall continue performance on Work not requiring remedial action by Owner. Any claim by Contractor for the unexpected presence of Hazardous Materials shall be subject to the claims submission procedures of the Contract Documents, with the date of discovery of the Hazardous Materials being the date of the occurrence.

9.4 **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. In such event the Work so ordered must be omitted by the Contractor. The amount by which the Contract Sum shall be reduced shall be determined in accordance with Section 01 2600 of the Specifications.

C. Contractor shall not be entitled to any extension of the Contract Period as a direct or indirect result of any omission or deletion of Work by Owner except to the extent Contractor can establish that, despite prompt, reasonable and diligent efforts to do so, it was not able to modify the Project Schedule in a manner which would avoid delay to the critical path resulting solely from such omission or deletion of Work by Owner. All claims for any such delay shall be governed by the claims procedures set forth in the Contract Documents.

9.5 **AUDIT:**

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

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

9.6 **DISPUTED WORK:**

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

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

## PART 10 TIME

### 10.1 TIME OF START AND COMPLETION:

A. The Contractor shall commence Work within ten (10) days after receipt of the Notice to Proceed. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the work within the Contract Period. The Contractor shall provide a Project Schedule as prescribed in Section 01 3200 of the Specifications. By submitting a Bid, the Contractor confirms that the Contract Period is a reasonable period for performing the Work. The Contractor shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Contract Period.

B. The Owner and the Contractor hereby acknowledge and agree that time is of the essence with respect to this Contract and that in the event the Contractor fails to complete the Work within the Contract Period, the Owner and the Contractor agree to liquidated damages for late completion as set forth in the Contract. The Contractor and its Surety hereby agree that the stated sum per day for each such day of delay shall be deducted and retained out of the moneys which may become due hereunder and if not so deductible, the Contractor and its Surety shall promptly make payment to Owner of the amount due upon receipt of demand therefore.

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

A. Submission of an acceptable detailed Schedule of Values immediately after Notice to Proceed and prior to the submission of the first request for payment, as required by Part 11.2 of this Section;

B. Submission of an acceptable Startup Construction Schedule within seven (7) days of Notice to Proceed as required by Section 01 3200 of the Specifications.

C. Submission of Contractor/Subcontractor Certification of Criminal Conviction forms, due within ten (10) days of Notice to Proceed;

D. Submission of a proposed List of Sub-contractors within ten (10) days of Notice to Proceed as required by Part 6 of these General Conditions;

E. Submission of an acceptable Contractor Quality Control Plan within ten (10) days of Notice to Proceed as required by Section 01 4000 of the Specifications;

F. Submission of an acceptable Project Schedule as required by Section 01 3200 of the Specifications;

G. Submission of an acceptable Submittal Schedule as required by Submittals, Section 01 3300 of the Specifications; and

H. Submission of an acceptable Waste Management Plan as required by Section 01 7419 of the Specifications.

10.3 **EXTENSION OF TIME:**

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

1. Give Notice of delay in writing to the Owner's Representative, to the Owner's Project Manager, and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with, and are subject to the limitations of, Part 10.7, Weather Delays, of these General Conditions. The Notice of claim for delay shall identify itself as a notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. Strict compliance with all of these submission requirements shall be a condition precedent to consideration of any claim for delay related to weather, but compliance of itself shall not establish the validity of any claim.

2. The Contractor shall submit to the Owner's Representative, to the Project Manager, and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this article and by any applicable Contract Specifications, within twenty-one (21) days after the delay has ceased.

3. The Contractor shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

4. The Contractor shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in

connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.

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

B. The Contractor shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the Contractor. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner's Representative may determine to be due solely to such causes and only to the extent that such occurrences actually delay achieving the applicable completion date, and then only if the Contractor shall have strictly complied with all applicable claims submission requirements of this Contract, including, without limitation, Paragraph 10.1. To the extent any delay for which the Contractor seeks an extension of time is due concurrently to causes for which Contractor may be entitled to a delay and to causes within the reasonable control or foreseeability of the Contractor, the Contractor shall not be entitled to any extension of time.

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

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

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

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

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

H. The Contractor shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

10.4 **RECOVERY SCHEDULE:**

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

B. If the Contractor believes that all of the time can be recovered during the subsequent pay period, the Contractor will be permitted to prepare a Recovery Schedule as set forth below. However, if the Contractor believes it will take more than thirty (30) days to recover all of the lost time, it shall prepare and submit a request for revision of the Project Schedule and comply with all of the requirements for a Schedule Revision.

1. The Contractor shall prepare and submit to the Owner a one-month maximum duration Recovery Schedule, incorporating best available information from Subcontractors and others which will permit return to the approved Project Schedule at the earliest possible time. The Contractor shall prepare a Recovery Schedule to the same level of detail as the Project Schedule for a maximum duration of one month. This Recovery Schedule shall be prepared in coordination with other separate Contractors on the Project.

2. Within two (2) days after submission of Recovery Schedule to the Owner, the Contractor shall participate in a conference with the Owner to review and evaluate the Recovery Schedule. Within two (2) days of that conference, the Contractor shall submit the revisions necessitated by the review for the Owner's review and approval. The Contractor shall use the approved Recovery Schedule as his plan for returning to the Project Schedule.

3. Contractor shall confer continuously with the Owner to assess the effectiveness of the Recovery Schedule. As a result of these conferences, the Owner will direct the

Contractor as follows: (i) If the Owner determines the Contractor is still behind schedule, the Owner will direct the Contractor to prepare a revised Recovery Schedule and comply with all of the requirements of a Schedule Revision as stated herein and the other requirements of the Contract Documents; provided, however, that nothing herein shall limit in any way the rights and remedies of the Owner as provided elsewhere in the Contract Documents. (ii) If the Owner determines the Contractor has successfully complied with provisions of the Recovery Schedule, the Owner will direct the Contractor to return to the use of the approved Project Schedule.

10.5 **PHASING MILESTONES**: Substantial Completion and Final Completion Dates for each Phase must be accomplished in an orderly and timely manner in order to complete the Project on time and not delay or hinder the Owner's occupancy of the completed Project. The Substantial Completion and Final Completion Dates are set forth the Contract. These dates shall be binding upon the Contractor, subject to the provision of the Contract Documents allowing for agreed upon extensions of the Contract Period. The Contractor shall include each of these dates in its Project Schedule in accordance with scheduling standards set forth in Specification Section 01 3200.

10.6 **CONTRACTOR DELAYS**: The Contractor agrees that wherever it becomes apparent from review of the current monthly Project Schedule Update that delays to the critical path have resulted and, hence, that any Substantial Completion Date or Final Completion Date established by the Contract will not be met, or when so directed by the Owner, the Contractor shall take some or all of the following actions at no additional cost to the Owner:

A. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;

B. Increase the number of working hours per shift; shifts per working day, or days per week; the amount of construction equipment; the forms for concrete work or other trade specific materials or equipment; or any combination of the foregoing to substantially eliminate the backlog of Work;

C. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and comply with those revisions;

D. The Contractor shall submit to the Owner’s Representative for review, a written statement of the steps the Contractor intends to take to remove or arrest the delay to the Project Schedule. If the Contractor shall fail to submit a written statement of the steps it intends to take or should fail to take such steps as required by the Contract, the Owner or the Owner’s Representative may direct the level-of-effort in manpower (trades), equipment, and work schedule (overtime, weekend and Holiday work, etc.) to be employed by the Contractor in order to remove or arrest the delay to the critical path in the accepted Project Schedule, and the Contractor shall promptly provide such level-of-effort at no additional cost to the Owner. In addition, should schedule delays persist, the Contractor’s Surety will be asked to attend meetings to update the Project Schedule.

E. Should it be deemed necessary, in the Owner’s sole discretion, that delays or incomplete work have warranted the use of outside sources to arrest a delay or to complete incomplete work, the Owner reserves the right to back-charge the Contractor for all costs incurred by the Owner in the use of outside sources.

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

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

1. Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure.

2. Temperatures that do not rise above that required for the Day's planned Work, if such temperature requirement is specified or accepted as standard industry practice.

3. Sustained wind in excess of twenty-five (25) m.p.h.

B. Inclement Weather may include, if appropriate, "dry-out" or "mud" days:

1. Resulting from precipitation Days that occur beyond the Monthly Assumed Inclement Weather Days;

2. Only if there is a hindrance to planned Work and the Contractor has taken all reasonable accommodations to avoid such hindrance; and,

3. At a rate no greater than one (1) Day for each Day that has precipitation in the amount of 1.0 inch or more, liquid measure, but if there is precipitation on consecutive Days which totals 1.0 inch or more, liquid measure, only one (1) Day may be included for those consecutive Days.

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

D. In accordance with Paragraph 10.3 above, as a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:

1. Notify the Owner's Representative, the Owner's Project Manager, and the Purchasing Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a notice of claim for Inclement Weather delay, shall describe in reasonable

detail the type of Inclement Weather encountered by the Contractor and the activities on the longest critical path on the Project Schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.

2. Submit to the Owner's Representative a statement of the actual time extension requested in strict compliance with Paragraph 10.3.A(2) above.

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

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

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

1. Any request for an extension of time on the basis of Inclement Weather MUST prove impact to activities on the longest critical path of the Project Schedule in effect at the time of the occurrence.

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

3. Should the Contractor be granted an extension of time on the basis of Inclement Weather, the Owner may or may not elect to use any of the Owner Float described in Paragraph 10.3 in lieu of granting a time extension.

## PART 11 PAYMENTS AND COMPLETION

### 11.1 PRICES:

A. For the Contractor's complete performance of the Work, the Owner agrees to pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the Contract Sum, plus the amount required to be paid for Extra Work approved under Paragraph 9.2 hereof, less credit for any work omitted pursuant to Paragraph 9.3 hereof, and any other credits or offsets, including reimbursements or liquidated damages to which the Owner is entitled.

B. The amount awarded as a unit price for any unit price Contract item shall represent payment in full, including overhead and profit, for all material, equipment and labor necessary to complete, in conformity with the Contract Documents, each unit or item of work shown, specified, or required under the said unit price Contract item.

C. No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract item or a unit price Contract item, unless specific provision is made therefore in the Contract Documents.

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

11.3 **APPLICATION FOR PAYMENT:**

A. The Contractor must submit applications for payment using AIA Document G702 - Application and Certificate for Payment. Affidavits from each Subcontractor verifying receipt of payments of amounts billed in the previous payment request must accompany each application for payment. Failure to submit all affidavits will delay payment.

B. Upon the request of the Owner's Representative, as a condition precedent to payment pursuant to the terms of this Contract, the Contractor shall give the Owner a statement that no employee of the Owner has received or has been promised, directly or indirectly, any financial benefit, by way of a fee, commission, finder's fee or in any other manner, remuneration arising from or directly or indirectly related to this Contract. All parties agree that the Owner shall have the right, in its sole and absolute discretion, to withhold payment to the extent of any such fee or commission. The Contractor shall not be entitled to interest and shall not have any claim on account of any payments being withheld under this paragraph.

11.4 **PARTIAL PAYMENTS:**

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

B. Whenever the monthly estimate, after approval by the Owner's Representative (Architect), shows that the value of the work completed during the previous month exceeds $1,000.00, the Owner's Representative (Architect) will certify the Contractor's Application and Certificate for Payment for such Work. Such Application and Certificate for Payment as approved by the Owner's Representative will authorize payment by the Owner in an amount equal to the value of the Work completed less any sums retained or deducted by the Owner under the terms of the Contract Documents, and less retainage of five (5) percent of payments approved.

C. An Application and Certificate for Payment shall not be considered received by the Owner unless accompanied by the following:

1. An affidavit that payrolls, bills for materials and equipment, Subcontractors invoices, and all other indebtedness in connection with amounts paid by the Owner to the Contractor under previous Application and Certificates for Payment have been paid and otherwise satisfied; and

2. All construction photos as required by Contract Specification 01 3233; and

3. A revised Project Schedule as required by Contract Specification 01 3200.

D. Within forty-five (45) days after receipt of each approved Application and Certificate for Payment, the Owner shall pay the Contractor in accordance with the applicable Certificate and the Contract Documents.

E. Unless otherwise provided herein, no payment will be made for any materials or equipment supplied hereunder before they are:

1. Incorporated in the work in a permanent manner required by the Contract Documents,

2. Properly stored at the site of the Project, or

3. Properly insured and stored in a bonded warehouse to the satisfaction of the Owner.

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

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

11.5 **DELAYED PAYMENTS:**

A. Owner may withhold payment to such an extent as may be necessary in the opinion of the Owner in consultation with the Owner's Representatives to protect the Owner due to loss because of:

1. Defective work not remedied,

2. Third party claims filed or reasonable evidence indicating probable filing of such claims,

3. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,

5. Damage to the Owner or another Contractor,

6. Reasonable evidence that the Work will not be completed within the time required for completion,

7. Persistent failure to carry out the Work in accordance with the Contract Documents, or

8. Liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors of others, caused by the act or neglect of the Contractor of any of its Subcontractors.

B. The Owner shall have the right, as an authorized representative for the Contractor and without the Surety's consent, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. The application of these amounts shall be deemed payments for the account of the Contractor and shall reduce the Owner's obligation to the Contractor accordingly. The Contractor may not stop Work as a result of any payment or portion thereof being properly withheld in accordance with this Contract. If Contractor does order Work stopped, or if the Work is stopped in whole or in part as a result thereof, the Contractor shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

11.6 **SUBSTANTIAL COMPLETION:**

A. **WRITTEN NOTIFICATION**: When the Contractor considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor shall provide the Owner and the Owner's Representatives written notification of such fact accompanied by a complete list of Contract

work items remaining to be completed (Contractor's Punch List) and as set forth in Section 01 7700.

B. **PUNCH LISTS**:

1. Within fourteen (14) days following receipt of the Contractor's written notification of Substantial Completion (including a Contractor's punch list, as set forth in Paragraph 11.6.A), the Owner's Representative (Architect) shall conduct an inspection of the Work and compile a comprehensive list of deficiencies and incomplete Work (i.e. Architect's Punch List). The Owner's Representative (Architect) shall then issue a Consolidated Punch List incorporating the Contractor's and the Architect's Punch Lists into a single list in a uniform format ("Consolidated Punch List").

2. Following issuance of the Consolidated Punch List and to achieve Final Completion, unless otherwise specified in the Contract Documents. If the Work for which Final Completion is requested is not Finally Complete within the required period, it is understood and agreed by all parties that the Contractor shall become liable to the Owner for Liquidated Damages as established by the Contract, which shall continue in effect until the applicable Final Completion has been achieved.

3. If the Owner takes beneficial occupancy or commences use of any aspect of the Work prior to the date required for Substantial Completion of that portion of the Work, the Contractor shall notify the Owner in a timely manner when access to such occupied or in use space or facilities is required, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof by the Owner. Until the date required for Substantial Completion of any portion of the Work occupied or used by Owner, any impact upon the Contract Period or the Contract Sum arising from such occupancy or use shall be governed by the claims submittal procedures and requirements of the Contract Documents. If the Owner takes or continues occupancy or commences or continues use of any aspect of the Work after the date required for Substantial Completion, and the Contractor requires access to the occupied or in use space or facility, prior to Final Completion, and is currently occupying and in use of any aspects of the Work, the Contractor shall notify the Owner in a timely manner, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof the spaces by the Owner. Should the Contractor access to such spaces or facilities to perform complete any portion of the Work, including but not limited to Punch List item repairs, require the temporary removal of furniture or other items and furnishings put in place by the Owner, the Contractor shall its own cost and effort, protect any and all furniture or other items that will not be moved and timely remove and reinstall all Owners furnishings and furniture or other items within the affected spaces to their original location and condition. Contractor shall be responsible for any damage done to the Work in place, to the furniture or to other items in such event. If for any reasons, the Owner moves the furniture or other items and reinstalls them as noted above, all associated costs for time, material and labor shall be charged to the Contractor plus an administrative fee of 10%.

4. Except with the consent of the Owner, the Owner's Representative (Architect and Construction Manager) shall perform no more than two Substantial Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Substantial Completion inspections be required, the Contractor

shall pay the Owner any amounts paid to the Owner's Representative (Architect and Construction Manager) and other third-party consultants for any additional inspections.

5. Should the Contractor fail to complete or correct any item on the Consolidated Punch List within the required period, the Owner may, at any time thereafter, complete one or more items on the list with its own forces or with such other Contractors as it deems advisable and recover from the Contractor the cost for performing such work plus a markup of ten percent (10%) to cover administrative costs. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents. Any action taken by the Owner to complete or correct any item the Contractor has failed to complete or correct as above shall have no impact on the Contractor's Warranty obligations.

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

1. Submit a progress payment request coincident with or following the Substantial Completion date claimed, showing one hundred (100 %) percent completion for the portion of the Work claimed as Substantially Complete.

2. Submit all outstanding changes to the Contract Sum which are not barred by the claims submission procedures of the Contract Documents.

3. Advise Owner of pending insurance changeover requirements.

4. Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, and similar documents.

5. Obtain and submit final releases of liens, which may reserve rights for Work performed after the date of the release, (include with Certificate of Substantial Completion) from all Subcontractors, construction materials suppliers, and services and utilities, enabling the Owner's full and unrestricted use of the Work and access to services and utilities, and including (where required) Occupancy Permits, facility operating certificates, and similar releases from authorities having jurisdiction.

6. Submit two (2) electronic copies and three (3) paper copies (8- 1/2" x 11"page format in 3-ring notebook binders, with a table of contents) of Project record documents, maintenance manuals, final Project photographs, damage or settlement survey, property survey, and similar final Project record information.

7. Submit certifications of compliance for each test and inspection required by all Sections of the Project Manual. The certifications shall be signed by the Contractor and by the parties conducting the test.

8. Deliver tools, spare parts, extra stocks of materials, and similar physical items to Owner.

9. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.

10. Complete start-up testing of systems, water and air balancing, adjust and calibrate temperature control system, fire alarm system, generator (as required, if included in the design). Clean all HVAC units, ducts if necessary. Remove temporary filters and install new filters in all air-handling units and in all unit ventilators.

11. Complete all commissioning and acceptance tests.

12. Complete instruction for Owner’s operating/maintenance personnel for all equipment and machinery installed under the Contract Work as specified by the Owner.

13. Discontinue (or change over) and remove from Project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.

14. Complete Final Cleaning and Repair of the Work as specified in Specifications Division 1 Section, “Closeout Procedures”.

15. Touch up and otherwise repair and restore marred exposed finishes.

16. Warranties shall become effective, once Owner and Owner’s Representative determine that the Contractor has achieved Substantial Completion and execute the Certificate of Substantial Completion.

17. If the Owner partially occupies the Project Site, this shall not indicate acceptance of Substantial Completion or activation of warranties.

The Contractor shall provide extended warranties. Warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.

D. Upon receipt of Contractor's request, the Owner and Owner’s Representative will either proceed with inspection or advise the Contractor of pre-requisites not fulfilled. Following inspection, the Owner and Owner’s Representative will either prepare the Certificate of Substantial Completion, or advise the Contractor of Work, or additional Work, which must be performed prior to issuance of the Certificate of Substantial Completion. Should the Owner and/or Owner’s Representative determine that the Work is not Substantially Complete, notification in writing will be given to the Contractor stating the reasons therefore. Contractor shall remedy the deficiencies in the Work and shall send to the Owner and Owner’s Representative (Architect) a second written notice of Substantial Completion. The Owner and Owner’s Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the provisions of General Condition 11.6.B.4 shall be applicable until the Certificate of Substantial Completion is issued.

E. When the Owner and Owner's Representative concur that the Work is Substantially Complete, the Owner's Representative shall:

1. Prepare a Certificate of Substantial Completion on AIA Form G704 accompanied by Contractor's list of items to be completed or corrected to achieve Final Completion, as verified and amended by the Owner's Representative

2. Submit the Certificate of Substantial Completion to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in the Certificate.

3. Notify the Contractor to submit Final As-Built Mylar drawings and one digital copy, which are to be labeled "FINAL AS-BUILTS" and submitted to the Owner's Representative for approval. Approval and acceptance by Owner of Final As-Builts shall be a condition precedent to Contractor requesting Final Completion approval.

## 11.7 FINAL COMPLETION:

A. Upon written notification by the Contractor that the Work is Finally Complete, and upon the Contractor's submission of a final Application and Certificate for Payment, the Owner's Representative will conduct a final inspection of the Work. If the Owner's Representative determines that the Work is not Finally Complete, a Final Completion Punch List will be issued to Contractor. Contractor may request a second inspection when Contractor deems the Final Completion Punch List to have been completed. If the Certificate of Final Completion is not issued following the second inspection, the provisions of General Condition 11.B.4 shall be applicable until the Certificate of Final Completion is issued. When the Owner's Representative determines that the Work has been satisfactorily completed and the Contract Documents fully performed, the Owner's Representative shall promptly prepare and issue a Final Certificate for Payment stating that to the best of the Owner's Representative's knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the Contract Documents is due and payable. Final Completion shall occur within thirty (30) calendar days after the Date of Substantial Completion, or as otherwise specified in the Contract Documents.

B. Except with the consent of the Owner, the Owner's Representative shall perform only Final Completion inspection for any designated portion of the Work or for the entirety of the Work. Should more than one Final Completion inspection be required, the Contractor shall pay the Owner amounts paid by the Owner to the Owner's Representative for any additional inspections necessary to achieve Final Completion.

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

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

A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the Contractor shall, within three days after written notice from the Owner, commence to remove all defective and deteriorated Work and materials and replace it at the Contractor's expense with Work and materials in accordance with the requirements of the Contract Documents and to complete

all incomplete Work in accordance with the Contract Documents within a reasonable time period.

B. In the event the Contractor fails to commence the removal, replacement, completion or correction of such Work within three days after the date of written notice from the Owner and to complete such Work within a reasonable time period thereafter, the Owner will cause such Work to be performed by other Contractors and the Contractor and its Surety under the Performance Bond will be obligated to pay the Owner all costs incurred in the performance of such Work plus an administrative fee of ten percent (10%) within thirty (30) days following submission by Owner to Contractor of such demand for payment.

C. The Contractor's Warranty obligations shall remain in full force and effect regardless of whether the Warranty Work was performed by the Contractor or by the Owner.

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

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

11.10 **CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT**: The Contractor's acceptance of final payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment previously submitted in strict compliance with the claims submission requirements of the Contract Documents and not finally resolved. If at the time Contractor requests Final Payment there are claims pending which were submitted in strict compliance with the claims submission requirements of the Contract Documents, the Owner may pay undisputed portions

of the Final Application and Certificate for Payment as if it were an Application and Certificate for Partial Payment. No payment, final or otherwise, shall operate to release the Contractor, or its Surety, from any obligations under the Contract.

11.11 **RELEASE AND REQUEST FOR FINAL PAYMENT**: Upon completion of the Work and before final payment, the Contractor will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment form as follows:

**RELEASE AND REQUEST FOR FINAL PAYMENT**

PROJECT NAME: _____

CONTRACT NUMBER: _____

CONTRACTOR NAME: _____

FINAL PAYMENT AMOUNT: _____

TOTAL PAYMENT AMOUNT: _____

FINAL CONTRACT AMOUNT: _____

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

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

_____ _____

AUTHORIZED SIGNATURE DATE

## PART 12 PROTECTION OF PERSONS AND PROPERTY

12.1 **CONTRACTOR'S RESPONSIBILITY FOR SAFETY PROCEDURES**: The Contractor shall select one or more on-site personnel whose duty shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of school or jurisdictional authorities in order to prevent injury, damage or loss to:

A. All persons involved in performance of the Work.

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

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

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

12.2 **SAFETY BARRIERS AND HAZARD WARNINGS**: The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.

12.3 **USE OF EXPLOSIVES**: The Contractor's use of explosives on the Owner's property shall be limited to that necessary for the performance of the Work, and will be permitted only after submission of a written request by the Contractor to the Owner, and receipt of written approval from the Owner. The Owner may in its sole discretion deny such request if the use of explosives is not called for by the Specifications. The Owner may in its sole discretion as a condition of granting any approval for the use of explosives set specific times when the explosives may be used, including outside normal working hours and the Contractor shall comply with such time restrictions without additional cost to the Owner. The use of all explosives by the Contractor shall be carried out by qualified personnel in accordance with applicable safety laws and regulations.

12.4 **PROTECTION OF PROPERTY AND PROPERTY DAMAGE**: During performance of the Work and until Final Completion thereof, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The Contractor shall take proper precautions to protect the finished Work from loss or damage, pending completion and Final Completion of all Work included in the Contract. Such precautions shall not relieve the Contractor from all liability and responsibility for loss or damage to the Work occurring before Final Completion. Such loss or damage shall be at the risk of and borne by the Contractor, whether arising from acts or omissions of the Contractor or others and whether or not covered by the Contractor's builder's risk insurance. In the event of any such loss or damage, the Contractor shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise specified in the Contract Documents. The Contractor shall take special precautions throughout all its operations to guard against fire and shall limit the amount of inflammable materials stored at the Project Site to the minimum amount necessary to perform the Work and consistent with the proper handling and storing of such materials.

12.5 **ACCIDENT PREVENTION SUPERVISOR**: The Contractor shall select one or more on-site personnel whose duty shall be site safety and accident prevention. One such person shall be the Contractor's Superintendent, or another key personnel member of its on-site project management team unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.

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

## PART 13 INSURANCE

13.1 **CONTRACTOR'S INSURANCE**:

A. During the term of this Contract, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:

1. Commercial General Liability occurrence-based insurance shall be in the amount of $5/$10 Million ($5 Million per occurrence / $10 Million aggregate. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The Contractor shall provide a certificate of insurance that names Arlington Public Schools / Arlington School Board, including elected and appointed officials, agents and employees as an additional insured. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington Public Schools including its elected and appointed officials, agents and employees. If the insurance policy represented by certificate requires endorsement in order to add Arlington Public Schools, et al., as an additional insureds, then such endorsement must accompany the Certificate.

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

3. Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of his subcontractors shall be not less than $1 million.

4. Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than $5 million per occurrence.

5. All risk insurance covering damage, loss or injury to the Work, excluding earthquake damage. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the Contractor of its obligations under this Contract and, upon such performance, shall be released to the Contractor. Such policy shall be in an amount equal to the Contract Sum.

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

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

13.2 **PROPERTY INSURANCE:**

A. The Contractor shall purchase Builder’s Risk insurance upon the entire Work at the Project Site to the full insurance value of the new improvements thereof. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:

1. Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).

2. Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).

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

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

5. Coverage of Contractor's labor, overhead and profit.

6. Coverage of materials stored or installed on the Project Site, until said materials are accepted by the Owner per Substantial Completion and Acceptance requirements. Payment by Owner for materials stored or installed on the Project Site does not eliminate Contractor's responsibility or liability with regards to theft and vandalism or other damage.

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

## PART 14 CONTRACT SECURITY

### 14.1 CONTRACT SECURITY:

A. The Contractor shall execute and deliver to the Owner Performance and Labor and Material Payment Bonds on the forms provided in the Contract Documents, each in an amount equal to the Contract Sum. The Performance and Labor and Material Payment Bonds shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. These bonds shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance and Labor and Material Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract consistent with the requirements of the Virginia Public Procurement Act. The premiums on the Performance and Labor and Material Payment Bonds shall be paid by the Contractor and shall be included in the Contract Sum.

B. If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such bonds shall cease to be adequate security for the Contractor, the Contractor shall within ten (10) days after notification of such fact, substitute acceptable bonds in such form and sum and signed by such other Sureties as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor and shall be included in the Contract Sum. No further partial payments shall be deemed due nor shall be made until the new Bonds are in effect and provided to and approved by Owner.

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

## PART 15 UNCOVERING AND CORRECTION OF WORK

### 15.1 UNCOVERING OF WORK:

A. If a portion of the Work is covered contrary to the Owner's Representatives' request or to the requirements contained in the Contract Documents, the Contractor shall, at its own expense and upon the written request of the Owner's Representative, uncover and replace such Work without an adjustment to the Contract Period or Contract Sum.

B. If a portion of the Work has been covered which the Owner's Representative and/or Arlington County Inspector has not specifically requested to observe prior to its being covered and is, under the Contract Documents, allowed to be covered without observation of the Owner's Representative or Owner or applicable law or regulation, the Owner's Representative and/or Arlington County Inspector may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order process as set forth in the Contract Documents, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall be responsible for uncovering and replacing such Work and for all costs associated therewith.

### 15.2 CORRECTION OF WORK:

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

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

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

## PART 16 POWERS OF THE PURCHASING AGENT

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

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

B. To modify or change this Contract in accordance with the Contract Documents 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 15.1.A through 15.1.D, but only to the extent the Contractor has been given written notice by the Purchasing Agent of such delegation.

## PART 17 CONTRACTOR'S DEFAULT AND TERMINATION

### 17.1 OWNER'S RIGHT AND NOTICE:

A. The parties agree that:

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

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

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

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

5. If the Contractor fails in any manner of substance to observe the provisions of this Contract; or

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

B. The parties further agree that:

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

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

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

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

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

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

7. If the Work to be done under this Contract is abandoned; then such fact or condition shall be certified by the Owner’s Representative (Architect) to the Owner and thereupon, without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written notice to the Contractor or, in the Owner’s sole discretion, exercise any other rights available to it.

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

17.3 **COMPLETION OF WORK AFTER DEFAULT:**

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

1. Have the defaulted Work performed by others;

2. Supplement the Contractor's work force;

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

4. Replace or repair any defective Work;

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

6. Terminate the Contractor's performance of the Contract.

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

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

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

17.6 **OWNER'S RIGHT TO TERMINATE**: Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%; or (2) the pro rata percentage of completion based upon the approved Schedule of Values, Section 01291 of the Specifications, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a

similar termination provision for the benefit of the Contractor and the Owner. The Contractor shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Paragraph. The Owner shall have the right of audit (and Contractor shall have the obligations) stated in Paragraph 9.5, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Paragraph 17.6.

## PART 18 MISCELLANEOUS SPECIAL CONDITIONS

18.1 **LAYING OUT WORK**: The Contractor shall, upon entering the Project Site for the purpose of commencing the Work, locate all general reference points and take all such action as is necessary to prevent their destruction; lay out the Work, except where otherwise required by Contract Documents, and be responsible for all lines, elevations, measurements of buildings, grading, paving, utilities and other Work executed under the Contract. If benchmarks or other general reference points necessary for layout of the Work supplied by the Owner are impaired or destroyed by the Contractor, the Contractor shall be responsible at its cost to re-establish such bench marks or general reference points. The Contractor shall exercise proper and reasonable care in verifying figures shown on the Drawings before laying out the Work and will be held responsible for any error resulting from its failure to exercise such care. The Contractor shall establish permanent benchmarks referenced to finish floor lines. Contractor shall employ a licensed surveyor who shall, after masonry corners have been set, certify on a drawing over its seal to the Owner that the building is located properly in relation to property lines and in accordance with the Drawings.

18.2 **INSPECTION AND APPROVAL OF SITE IMPROVEMENTS:**

A. On-site and off-site improvements shall conform to Arlington County Design and Construction Standards.

B. The Contractor shall notify the Owner's Representative three (3) days prior to the beginning of all street or storm sewer Work.

C. All Work shall be staked out by a certified surveyor and cut sheets shall be submitted to the Arlington County Department of Environmental Services with a copy to the Owner's Representative before commencing such Work.

D. The Contractor shall perform the Work in such a manner as to control surface flow of water to minimize its impact upon the Work or adjacent properties, in accordance with all State of Virginia and Arlington County regulations and to prevent the washing of any soil, silt or debris onto adjacent properties. The Contractor shall be held responsible for any damage resulting from its failure to control surface flow or to prevent the washing of such materials upon adjacent properties for a period of one year after Final Completion of the completed Work.

18.3 **PARTIAL USE OR OCCUPANCY:**

A. The Contractor shall permit the Owner to use and occupy any defined portion or unit of the Project prior to Substantial Completion of the portion of the Project of which it is a part.

B. The Owner's use and occupancy shall not constitute Substantial Completion or Final Completion of the Work and shall in no event relieve the Contractor of its obligation to maintain the insurance coverage described in Paragraph 13.1 hereof.

18.4 **RELEASE OF BONDS**: No bond required by the Contract Documents shall be deemed released without a written release from the Owner specifically granting such release.

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

**End of General Conditions**

**Standard Labor and Material Payment Bond**

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

Bond #:_____
Amount: _____

KNOW ALL MEN BY THESE PRESENTS: That

_____

_____

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

as Principal, and _____

(insert full legal title of the Surety)

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

_____

_____,

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

_____

(name of the Agency or Institution of the Commonwealth)

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

WHEREAS,

Principal has by written agreement dated _____, 20___, entered into a contract with Obligee for _____the **Washington Liberty Roof Coating Restoration, Located at, located at 1301 N. Stafford Street Arlington, VA, 22201**, which Contract 41FY20 (the "Contract") is by reference expressly made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall promptly

make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions.

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

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal but who has no contractual relationship, express or implied, with the Principal, for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, is one who has a direct contract with the Principal, express or implied. "Labor" and "material" shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.

2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract Documents in the prosecution of the work provided in the Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any damages, costs or expenses of any such suit.

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal , but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph.

4. No suit or action shall be commenced hereunder by any claimant:

    a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

    b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.

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

_____
Principal

_____
Witness

By: _____
Title

_____ (SEAL)
Surety

_____
Resident Virginia Agent

By: _____
Title

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

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

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

_____
Notary Public

My Commission expires: _____

**End of Standard Labor and Material Payment Bond**

**Standard Performance Bond**

Bond #:_____
Amount: _____

KNOW ALL MEN BY THESE PRESENTS: That _____

_____
(insert full name or legal title of Contractor and address)
as Principal, and _____,
(insert full legal title of the Surety)
a corporation duly organized under the laws of the State of _____ and qualified to do business in Virginia, having its principal place of business at
_____
_____,
as Surety, are held and firmly bound unto the Arlington Public Schools and
_____
(name of the Agency or Institution of the Commonwealth)
as Obligee, in the amount of _____ Dollars ($_____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____, 20_____, entered into a contract with Obligee for the **Washington Liberty Roof Coating Restoration, located at 1301 N. Stafford Street, Arlington, VA, 22201**, which Contract 41FY20 (the "Contract") is by reference expressly made a part hereof.

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

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

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

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

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

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

_____ Principal

_____
Witness

By: _____
Title

_____ (SEAL)
Surety

_____
Resident Virginia Agent

By: _____
Title

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, To-wit:

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

_____
Notary Public

My Commission expires: _____

Contractor: _____

Name of Surety: _____

Address: _____

Suite: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

Agent Information:

Contact Person: _____

Firm Name: _____

Address: _____

Suite: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

**End of Standard Performance Bond**

**APPENDIX A**

**It is preferred that the mailing label, as found below be used:**

**PLEASE COMPLETE THE LABEL BELOW AND ATTACH IT TO THE OUTSIDE OF THE ENVELOPE:**

✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂

# Sealed Bid

**ITB No. 41FY20 Title: Washington Liberty Roof Coating Restoration**

**Bid Closing Date/Time: January 7, 2020 Prior to 10:00 A.M.**

**From:**

Name of Bidder: _____

Address of Bidder: _____

_____

Commonwealth of Virginia Class A Contractor's License # _____

Contractor's License Expiration Date: _____

**IF THIS INFORMATION IS NOT CONTAINED ON THE OUTSIDE OF THE ENVELOPE THE BID WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FOR CONTRACT AWARD.**

**Deliver To:**

**Arlington Public Schools**
**Syphax Education Center**
**Procurement Office**
**Attn: Dyanna McMullen**
**2110 Washington Blvd., 4th Floor**
**Arlington, VA 22204**