



Arlington Public Schools

Procurement Office
2110 Washington Blvd., Arlington, VA 22204
Phone: (703) 228-6123
www.apsva.us

Agreement Between Owner and Contractor

Contract 55FY24 is made and entered into this 30 day of January, 2024; the date the Agreement is fully executed, between Arlington School Board, operating as Arlington Public Schools, Virginia (the "Owner" or "APS") and Nastos Construction (the "Contractor"), whose address is 640 Forbes Blvd, Suite 203, Lanham, MD 20706.

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:

Claremont Immersion Security Vestibule Renovation, located at 4700 S Chesterfield Rd, Arlington, VA 22206

2. **The Contract Documents**

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

1. Agreement Between Owner and Contractor
2. General Conditions
3. Drawings and Specifications
4. Bid Documents and Addenda
5. Notice to Proceed

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 1, 2024:	Anticipated Notice to Proceed (NTP) for Project Administrative Contract Deliverables (except as needed for preparing the Drawings, equipment layout, measurement, etc. No on-site mobilization or other activity is permitted until the Construction NTP is issued)
June 18, 2024:	Anticipated NTP for Project Site Mobilization and Construction (Obtaining all trade permits required for the Work and approval of all Submittals is a condition precedent to issuance of the Site Mobilization/Construction NTP)
August 15, 2024:	Substantial Completion
September 29, 2024:	Final Completion

These dates are subject to adjustments as provided in the Contract Documents. In the event of any change to either Substantial Completion Date as provided by the Contract Documents, the Final Completion

Date shall be thirty (30) days after the latest revised Substantial Completion Date.

5. **Contract Sum**

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

In Writing: One Million Five Hundred Ninety One Thousand Nine Hundred Sixty Four

In Figures: \$1,591,964.00

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, One Hundred Dollars (\$1,100.00)** for each day that expires after the time specified in Paragraph 4 for each of the **Substantial Completion Dates**, plus any approved time extensions, until Substantial Completion is achieved; and Pay Owner **Six Hundred Dollars (\$600.00)** 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

Claremont Immersion Security Vestibule Renovation
Arlington Public Schools

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

Contractor

By: *George Nix*

Title: V.P. Operations

1/26/2024
Dated

Owner

By: *Danielle Godfrey*

Title: Assistant Director of Procurement

January 30, 2024
Dated

End of Agreement

General Conditions

PART 1 DEFINITIONS

- 1.1 **AMENDMENT:** Written authorization executed by the Procurement Agent, acknowledging the Change Order(s) Modification, revised Contract Sum and current Contract Period.
- 1.2 **APS:** See “Owner.”
- 1.3 **ARCHITECT, ENGINEER, ARCHITECT/ENGINEER OR A/E:** The term used to designate the Architect and/or the Engineer who or which contracts with the Owner to provide the architectural and engineering services for the Project. The A/E is a Separate Contractor and not an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.
- 1.4 **CHANGE ORDER:** A written order to the Contractor, signed by the Owner and the Owner’s Representative, which authorizes a change in the Work, an 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 related to the Work or changes 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 General Conditions, Part 9, CHANGES IN THE WORK, ACTUAL OR ASSERTED, and Specification Section 01 2600.
- 1.5 **CLAIM:** A request or demand by either party against the other for monetary damages, extension of time, or other relief under the Contract or the Work not resolved by a Change Order, or by either party against a third party, or by any third party against either party.
- 1.6 **CONSOLIDATED SUBSTANTIAL COMPLETION PUNCHLIST:** See General Conditions Part 12 SUBSTANTIAL COMPLETION Paragraph 12.2.
- 1.7 **CONTRACT:** The signed Agreement between Owner and Contractor is the Contract.
- 1.8 **CONTRACT DOCUMENTS:** The Contract Documents are as defined in the Agreement Between Owner and Contractor Contract.
- 1.9 **CONTRACT PERIOD OR CONTRACT TIME:**
The period allotted in the Contract for Substantial Completion, and thereafter Final Completion, of the Work, together with any extension of time granted in accordance with the provisions of the Contract Documents.
- 1.10 **CONTRACT SUM OR CONTRACT PRICE:**
The total amount payable to the Contractor for performance of the Work required for the performance of the Contract. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions of the Contract Documents.

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- 1.11. **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.
- 1.12. **CONTRACTOR’S SUBSTANTIAL COMPLETION PUNCHLIST:** See General Conditions Part 12 SUBSTANTIAL COMPLETION Paragraph 12.1.
- 1.13. **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.
- 1.14. **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.
- 1.15. **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.
- 1.16. **DEFECTIVE WORK:** Any Work which does not comply strictly with the requirements of the Contract Documents and(or) authorities having jurisdiction.
- 1.17. **EFFECTIVE DATE OF THE AGREEMENT:** The Effective Date of the Agreement is the date on which the Agreement has been signed by both the Contractor and the Owner.
- 1.18. **FINAL COMPLETION:** “Final Completion” or the state of being “Finally Complete” shall mean total completion of all Work required by or reasonably contemplated by the Contract Documents. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Final Completion is established. More specific requirements for Final Completion as to the Work or a defined portion thereof may be set forth in General Conditions Part 13, FINAL COMPLETION, and in Specifications Section 01 7700.
- 1.19. **FINAL COMPLETION PUNCH LIST;** See General Conditions 12 SUBSTANTIAL COMPLETION and 13 FINAL COMPLETION.
- 1.20. **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.
- 1.21. **HAZARDOUS MATERIALS:** See General Condition Part 9 HAZARDOUS MATERIALS Paragraph 9.5.
- 1.22. **HOLIDAY:** Holidays recognized by the Owner which shall not be considered Normal Working Days are as follows: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Actual dates should be based on the most current Arlington Public Schools calendar. Arlington Public Schools may recognize additional holidays for students or for employees or both but no Owner holiday not listed herein shall be deemed a Holiday.

- 1.23. **INCLEMENT WEATHER:** See General Conditions Part 10 WEATHER DELAYS Paragraph 10.6.
- 1.24. **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.
- 1.25. **NORMAL WORKING DAY:** See “Working Day.”
- 1.26. **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, or e-mail 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 Agent, Arlington Public Schools, Syphax 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. A party may change its address for receipt of Notice by Notice to the other Party; provided, however, the Contractor may not remove any person or position provided by the foregoing subsection A as an authorized recipient of Notices. 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.
- 1.27. **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. Notice to Proceed on more than one phase may be issued simultaneously if deemed to be in Owner’s best interests consistent with the Project Schedule. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Project Schedules shall be based upon that date.
- 1.28. **OWNER:** Arlington School Board operating as Arlington Public Schools (APS) and employees authorized to represent APS.
- 1.29. **OWNER’S PROJECT MANAGER:**
- A. 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 Advisor) to act on the Owner’s behalf.

- B. Notwithstanding any other provision in the Contract Documents to the contrary, the Project Manager is not authorized to bind Owner to any Modifications. Any Modification to the Work, the Contract Sum, or the Contract Period may be made only in writing signed by the Procurement Agent or by such person as may be designated to act on the Procurement Agent's behalf.
- 1.30. **OWNER'S REPRESENTATIVES:**
- A. Owner's Representatives include the Architect and Project Manager and such additional construction personnel who have been designated by the Project Manager by Notice to Contractor to act on behalf of the Owner. If the Notice from the Project Manager restricts the scope of the designee's authority, no action by the designee not within the authorized scope shall bind Owner. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the Project Architect or the Project Manager. Use of the designation "Owner's Representative (Architect)" in the Contract Documents shall mean that the referenced action should be by the Architect. Contractor will be given Notice regarding the individuals employed by either the Architect or the Project Manager with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's Representative are set forth generally in General Conditions Part 3, OWNER'S REPRESENTATIVE, and additional authority to act in specific circumstances may be granted in the Contract Documents.
- B. Notwithstanding any other provision in the Contract Documents to the contrary, the Owner's Representatives are not authorized to bind Owner to any Modifications. Any Modification to the Work, the Contract Sum, or the Contract Period may be made only in writing signed by the Procurement Agent or by such person as may be designated to act on the Procurement Agent's behalf.
- 1.31. **OWNER'S SUBSTANTIAL COMPLETION PUNCHLIST:** See General Conditions Part 12 SUBSTANTIAL COMPLETION Paragraph 12.2.
- 1.32. **PROCUREMENT AGENT:** The person appointed by the Owner to serve in the position of Arlington Public Schools Procurement Agent. The Procurement Agent may designate one or more persons to act in his place. Any such designation shall be in writing, and such designee, including but not limited to the Owner's Representative, shall have only such authority as may be specifically stated in the written designation. Only the Procurement Agent or his properly appointed designee has authority to act on behalf of and to bind the Owner. It is the responsibility of the Contractor to determine the scope of any designee's authority.
- 1.33. **PROJECT:** The construction services to be performed by the Contractor in strict compliance with the Contract Document; collectively all of the improvements contemplated by the Contract; synonymous with the term "Work" as the context may require.
- 1.34. **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."
- 1.35. **PROPOSED MODIFICATION:** A request by the Owner or the Owner's Representative for the Contractor to submit an estimate of the cost for a contemplated change to the Work. Such request shall be initiated in writing by the Owner or the Owner's Representative and processed as set forth in Specification Section 01 2600.

- 1.36. **REJECTED WORK:** Any Work which fails to conform strictly to the requirements of the Contract Documents. See General Conditions Part 19 UNCOVERING AND CORRECTION OF WORK Paragraph 19.2.A.
- 1.37. **SEPARATE CONTRACTOR:** Any person or entity under contract with Owner to perform construction, architectural, engineering, Project management or other services of any kind on the Project Site other than the Contractor.
- 1.38. **SPECIFICATIONS:** Those portions of the Contract Documents which consist of written technical descriptions of materials equipment, construction systems, standards and workmanship to be applied to the Work and certain administrative details, procedures and requirements applicable thereto.
- 1.39. **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.
- 1.40. **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 or who otherwise performs any portion of the Work.
- 1.41. **SUBSTANTIAL COMPLETION:** “Substantial Completion” or the state of being “Substantially Complete” shall be that degree of completion of the Work which meets all requirements and conditions set forth in General Conditions Part 12, SUBSTANTIAL COMPLETION, and 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. Occupancy or use of any portion of the Project or of the Project as a whole shall not of itself qualify as Substantial Completion. More specific requirements for Substantial Completion as to the Work or a defined portion thereof in General Conditions Part 12 SUBSTANTIAL COMPLETION and may be set forth in Specification Section 01 7700.
- 1.42. **SUPPLEMENTAL INSTRUCTIONS:** A written directive issued by the Owner or the Owner’s Representative directing minor changes in the Work which do not involve a Modification to the Contract Price or the Contract Time.
- 1.43. **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. See General Conditions Part 18, CONTRACT SECURITY for additional requirements.
- 1.44. **TECHNICAL SPECIFICATIONS:** The written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services
- 1.45. **WARRANTY PERIOD:** All warranties and guarantees against any defect in the Work shall apply from the date the Owner issues the Certificate of Substantial Completion of the Work and shall continue for a period of one (1) year thereafter. Provided further, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

- 1.46. **WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.
- 1.47. **WORK ORDER:** A written directive issued by the Owner or the Owner's Representative on or after the Effective Date of the Agreement which directs changes in the Work, states any adjustment in the Contract Sum or Contract Period, or both, (i) to which the Owner agrees, or (ii) states that the directed Work is not compensable or has no impact on the Contract Period, or both. A Work Order may be used by Owner or Owner's Representative 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 any resulting adjustment in the Contract Sum or Contract Period or providing the adjustment to the Contract Sum or Contract Period resulting from the Work Order. Issuance of the Work Order shall be the date of occurrence for any Claim by Contractor arising from any impact of the Work Order.
- 1.48. **WORKING DAY:** The hours between 7:00 A.M. and 5:00 P.M., local prevailing time, Monday through Friday, excluding Holidays. Also may be referred to as "**Business Day.**" Notwithstanding the foregoing, the Contractor may in its sole discretion perform the Work on any day and at any time of day, subject to and in compliance with any limitations or restrictions imposed by applicable permits, codes, ordinances, regulations, statutes or any provision of the Contract documents.

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. Contractor shall not commence any Work prior to submission to the Owner of a fully executed payment bond and a fully executed performance bond in the form provided by the Owner in the Invitation to Bid, each in the principal amount of the Contract Sum. The Performance Bond and the Payment Bond both shall be in effect as of the date the successful Offeror signs the Contract, and shall remain in effect through the later of the expiration of all applicable Warranty Periods or final conclusion of all third party Claims against the Contractor, including all appeals. If executed prior to the date the successful Offeror signs the Contract, each of the bonds shall include written certification from the surety that the bond is effective as of the Effective Date of the Agreement.
- 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, and that all of the foregoing conditions are included in the Contract Sum.
- 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:**

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- 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 Contract Interpretation, 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, Contractor shall consult the Owner's Representative before proceeding with the affected Work. 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 to 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 1.7. 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 the Effective Date of the Agreement except as otherwise approved by the Owner by Change Order.

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 between the Owner and the Owner's Representative.
- 3.2 **OWNER'S REPRESENTATIVE:**
The Owner may engage an Architect or a Construction Manager Advisor to 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. In those situations, 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. In the absence of a third party under contract with the Owner to serve as Owner's Representative, the Owner's Representative will be the Owner's Project Manager.
- 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 General Conditions Part 2 EXECUTION AND INTENT OF THE CONTRACT 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 change 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 Documents. 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 General Conditions Part 12 SUBSTANTIAL COMPLETION and Part 13 FINAL COMPLETION.

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 General Conditions Part 3 OWNER'S REPRESENTATIVE 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, or otherwise is failing to comply strictly with the requirements of the Contract Documents in performance of the Work, the Owner has the right to order the Contractor to stop the Work, in whole or in part, 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. Except as may be provided expressly in 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. **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 Documents, 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 additional 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. **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 benchmarks 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.

- F. The Contractor shall be responsible for all costs or delays resulting from the failure of the Contractor, a Subcontractor, or a Sub-Subcontractor, to obtain and review Contract Documents or additional information provided by the Owner.
- G. 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 and Sub-Subcontractors each 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 and Sub-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 and Sub-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 agree to provide construction services of high quality. The Contractor agrees that it and its Subcontractors and Sub-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 and Sub-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 or Sub-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 Subcontractors or Sub-Subcontractors.

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- E. No Smoking Policy on Arlington Public Schools' property: Contractor, its Subcontractors and its Sub-Subcontractors, including the employees or agents of any or all of them, 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 and for the employees of its Subcontractors and Sub-Subcontractors;
 - 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 placed 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 Certification or 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 requires the Contractor or its employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Contractor shall provide to Owner 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, Sub-Subcontractors and the employees thereof.

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2. The Contractor certification shall also cover its employees, its Subcontractors, its Sub-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 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.

<u>Nastos Construction, Inc</u> Name of Firm	 Signature
<u>4640 Forbes Blvd-Suite 203</u> Address of Firm	<u>George Nixon, VP of Operations</u> Name and Title (please type or print)
<u>Lanham, MD 20706</u> Address of Firm	
<u>301-306-4411</u> Telephone	<u>12/18/2023</u> Date

I. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor

As a condition of the award of this Contract and to continuation thereof, 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 employees 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.

J. Conflict of Interest

1. 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.
2. 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.

5.3 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 Change Order. 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 prior Notice to the Owner's Representative, the Contractor shall accept all responsibility and bear all cost and delay resulting therefrom.
- 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, which may include but are not limited to, Interim, Partial or Final. Should the Contractor not meet the stipulated contractual dates for Permits, Inspections and Occupancy, the Owner may issue a deduct Unilateral Change Order to cover any and all costs,

overtime fees and other costs related to the delay in obtaining the required Permits, Inspections or Occupancy.

- 5.4 **RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE:** The Contractor shall be responsible as a part of the Work to use such software or software products as may be designated by the Contract Documents or otherwise directed for use by the Owner in performing all obligations, and exercising all rights, under the Contract Documents. Should there be any changes in any such software requirements during the Contract Period such change shall not be the basis of any Claim of any sort by Contractor.
- 5.5 **RESPONSIBILITY FOR THOSE PERFORMING THE WORK:** The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors, Sub-subcontractors, Separate Contractors, or other persons performing any of the Work.
- 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 set forth in the submittal schedule specifications Section 01 3300 or, if none, in a timely and complete manner 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. Contractor's submittals shall be made in such time as to allow for review and approval by the Owner and not affect the procurement and installation of the submitted items or otherwise cause delay. Contractor shall not be entitled to any Modification of the Contract Sum or the Contract Time 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. Commencement of Work prior to receiving Shop Drawing approval or other submittal approval shall be at Contractor's risk, and all removal or correction of Work in place to achieve compliance with approved Shop Drawings or other submittals affected by such premature commencement shall not be the basis for any Claim for additional compensation or for an extension of the Contract Time.
 - 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 Specifications.
- 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 give Notice to 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 Contractor shall provide Owner-approved project specific hardhat stickers to all its, Subcontractor, and Sub-Subcontractor employees assigned to work on the Project. Such stickers shall be a minimum of three inches (3") in diameter or square, with the identification information thereon subject to review and approval by the Owner. No such sticker shall be

issued to any person who does not satisfy the requirements of the “Contractor Certification Regarding Criminal Convictions” form.

- C. No workers performing any portion of the Work shall 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 give Notice to the Owner 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, Holiday or Owner 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. The Contractor shall be responsible for removal of dirt, silt, trash or debris from the Project Site which enters upon the property of others off-Site, and for damage to the property of others off-Site caused by Contractor’s performance of the Work.
- F. 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 may direct the Contractor to 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 may charge the Contractor for all costs incurred by the use of the outside sources, plus a markup of ten percent (10%) to cover administrative costs.
- G. 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 at least the following measures:
 - 1. Completely enclose the Project Site at the outer limits of the construction area with a chain link fence with a minimum of six feet height. The fence shall be firmly anchored in the ground or into concrete bases to prevent movement, lifting, or passage beneath the fence. The fence shall be continuous and securely fastened at seams to prevent gaps greater than 3 inches in width at any point.
 - 2. The perimeter fence may be penetrated to provide vehicular and pedestrian access. These entrance penetrations must be capable of being closed and locked and shall be constructed of chain link to a minimum of height of six feet when closed.
 - 3. Such other measures as may be set forth in the Contract Documents.

- 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.

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 or Sub-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, 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 17, 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 any proposed Subcontractor is not qualified, Notice of such determination will be given to the Contractor 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 Notice 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 Sub-Subcontractors and of Contractor's, Subcontractors' and Sub-Subcontractor's' 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. A copy of each Subcontract shall be submitted by the Contractor to the Owner's Representative within ten (10) days of the Subcontract award. 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. Contain those provisions required by General Conditions Part 6.4, PAYMENT OF SUBCONTRACTORS, to be included in subcontracts and sub-subcontracts.
- D. 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;
- E. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in General Conditions Part 17 INSURANCE. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
- F. Contain all provisions required by any of the Contract Documents to be included in a subcontract;
- G. Make specific reference to the conditions of Paragraph 6.3 of this section as a mutually binding provision; and
- H. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work.
- I. The Contractor shall include in each subcontract the same requirements as Parts 5.2 H of these General Conditions; require the completion by the Subcontractor of a form containing the same certifications as appearing in the Contractor Certification Regarding Criminal Certification found immediately below Part 5.2 H of these General Conditions; and require that the Subcontractor obtain from each of its Sub-subcontractors a similar Certification Regarding Criminal Certification.

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. In the event that the Contractor has not received payment from Owner for Work performed by a Subcontractor, the Contractor shall be liable for the entire amount owed to such Subcontractor and shall pay such Subcontractor within sixty (60) days of the receipt of an invoice following satisfactory completion of the Work for which the Subcontractor has invoiced. The Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of the Subcontract. However, in the event that the Contractor withholds all or a part of the amount invoiced by the Subcontractor under the terms of the Subcontract, the Contractor shall notify the Subcontractor within fifty (50) days of the receipt of such invoice, in writing, of the Contractor's intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier Subcontractor responsible for the contractual noncompliance. Payment by Owner to the Contractor shall not be a condition precedent to payment of any lower-tier Subcontractor, regardless of that Contractor's receiving payment for amounts owed to that Contractor. Any provision in any Subcontract contrary to this Paragraph 6.4.C shall be unenforceable. Nothing in this Paragraph 6.4.C shall be construed to apply to or prohibit the inclusion of any retainage provisions in a Subcontract.
- D. 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 or which remain unpaid pursuant to the requirements of Paragraph 6.4.C. 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.
- Insurance proceeds received by the Contractor under the insurance policies described in Paragraph 13.D 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 to Separate Contractors separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.“”
- B. 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.
- C. 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.
- D. 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 CLAIMS FOR MONETARY RELIEF

- 8.1 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.

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- 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 Procurement 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 Procurement Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.
- C. The Procurement 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 Procurement Agent to issue a final decision shall be deemed a final decision to deny the Claim as of the ninetieth (90th) day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the Claim. The Contractor's right to seek judicial appeal of denial of a Claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any Claim shall extend this six-month limitation.
- D. The Contractor shall comply with all directions and decisions of the Owner's Representative, the Owner's Project Manager, or the Procurement 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.

PART 9 CHANGES IN THE WORK, ACTUAL OR ASSERTED

9.1 MINOR CHANGES:

- A. The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary or desirable 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 Time, such Claim shall be governed by the Claims submittal procedures set forth in the Contract Documents and the date of 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 Notice from 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 following such Notice from the Owner's Representative. The Owner's Representative shall act as an advisor to the Owner in what constitutes a minor change for which no additional compensation or time shall be allowed. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Time, such Claim shall be governed by 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, and without invalidating the Contract, at any time, and without notice to the Sureties, require the performance of such Extra Work as it deems necessary or desirable. The Owner may order changes in the Work by altering, adding to or deducting from the Work by issuing a Work Order or a Unilateral Change Order. If the Contractor disagrees with the Owner's Modification of the Contract Price or Contract Time as set forth in the Work Order or Unilateral Change Order, or disagrees that the subject of the Work Order or Unilateral Change Order does not impact Contract Price or Contract Time, the Contractor shall proceed with the Work as directed and any Claim for additional compensation or an extension of time shall be governed by the Claims submittal

procedures set forth in the Contract Documents and the date of the Work Order or Unilateral Change Order shall be deemed to be the occurrence.

- B. The Contractor shall not be entitled to any additional compensation or to any increase in the Contract Time for any work performed by Contractor which Contractor asserts is Extra Work performed by the Contractor prior to issuance by Owner of a Work Order or Change Order. If Owner may order the removal or alteration at the Contractor's expense of any work the Contractor asserts is extra work performed without a validly issued Work Order or a Change Order. If removal or alteration is ordered any Claim for additional compensation or an extension of time arising from such removal or alteration shall be governed by the Claims submittal procedures of the Contract Documents and the date of the Owner's order to remove or alter shall be the occurrence.
- C. A Work 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 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, the Contract Time, or both. A Work Order may 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 any method, if any, provided in the Work Order for any proposed adjustment in the Contract Sum or Contract Time, or both, resulting from the Work Order, or with the method, if any, provided in the Work Order for determining any adjustment to the Contract Sum or Contract Time resulting from the Work Order. Regardless of any objection by Contractor to the terms of the Work Order, Contractor shall proceed with the Work directed thereunder. If the Contractor does not give Notice to the Owner and the Owner's Representative of any disagreement with the adjustment or method of adjustment of the Contract Price or the Contract Time set forth in the Work Order 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 and shall be barred from pursuing any Claim based on disagreement therewith. Such Notice, if given, shall be valid only if Contractor includes its proposed alternative adjustment or method for determining adjustment to the Contract Price or the Contract Time, or both, and the justification therefore. When agreement is reached on any adjustment on Contract Time or Contract Price, or both, whether by affirmative consent or by deemed accepted, the terms of the Work Order shall be incorporated into a Change Order. Any Claim arising from a Work Order shall be governed by the Claims submittal procedures set forth in the Contract Documents, and the date of the Work Order shall be the occurrence.
- D. If the Contractor signs a Change Order, or the Change Order results from agreement on a Work Order as set forth above, Contractor acknowledges and accepts the terms and conditions of the Change Order as full and final agreement and an accord and satisfaction as to all Claims for compensation or time for the Work described.
- E. Additional provisions regarding determination of the amount of compensation to be paid to the Contractor for any extra work ordered by a Work Order are set forth in Section 01 2600 of the Specifications.
- F. Records of extra work performed hereunder, if any, shall be submitted to the Owner's Representative, within 24 hours of the work being complete. Advanced notification must be provided to the Owner and / or Owners Representative prior to the initiation of the work described therein. Strict compliance with these requirements shall be a condition precedent

to compensation for such work, but strict compliance shall not of itself entitle Contractor to any additional compensation sought. Duplicate copies of accepted records shall be made and signed by both Contractor or his representative and the Owner's Representative, and one copy retained by each.

9.3. OMITTED OR DELETED WORK:

- A. The Owner may at any time by a written order and without Notice to the Surety require the omission or deletion of such Work as the Owner may find necessary or desirable in its sole and absolute discretion.
- B. An order for omission or deletion of Work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative. Upon receipt of such Notice the Contractor shall remove the deleted Work from the Schedule of Values and from the Project Schedule. The amount by which the Contract Sum shall be reduced shall be determined in accordance with Specifications, Section 01 2600.
- C. Contractor shall not be entitled to any extension of the Contract Time 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 submittal procedures set forth in the Contract Documents, and the date of the Owner's Notice shall be the occurrence.

9.4. AUDIT:

- A. The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the Contractor for the purposes of verifying that the certified cost or pricing data submitted in support of any Claim or other request for payment were accurate, complete and current. The Owner shall, until the expiration of three years from the date of Final Payment, 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 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 or the Work of Subcontractor.

9.5. 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 regulations promulgated by the Commonwealth of Virginia Department of Environmental Quality, 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. No materials or equipment containing asbestos, or any other Hazardous Material shall be utilized in the construction of the Project, unless such Hazardous Materials are specified by the Contract Documents as required to perform the Work. 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.
- C. 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.
- D. 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.
- E. 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 Procurement 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.

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 Time. The Contractor shall provide a Project Schedule for the performance and completion of the Work as prescribed in Specifications Section 01 3200. 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 the 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 Contractor 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 by Owner for such payment.

10.2. CONSTRUCTION MOBILIZATION:

The Contractor's mobilization to perform the 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:

1. Submission of an acceptable detailed Schedule of Values in compliance with the requirements of General Conditions Part 11 PAYMENTS AND COMPLETION Paragraph 11.2 within ten (10) Days of the date of the Notice to Proceed;
2. Submission of Contractor Certification of Criminal Conviction form, due within ten (10) days of Notice to Proceed;
3. Submission of an acceptable Startup Construction Schedule within seven (7) Days of the date of the Notice to Proceed pursuant to Specifications Section 01 3200.
4. Submission of a proposed List of Sub-contractors within ten (10) days of Notice to Proceed as required by General Conditions Part 6 SUBCONTRACTORS Paragraph 6.2
5. Submission of an acceptable Project Schedule pursuant to the requirements of Specifications Section 01 3200;
6. Submission of an acceptable submittal schedule pursuant to the requirements of Specifications Section 01 3300.
7. Submission of an acceptable Erosion and Sedimentation Control Plan as required by Specifications Section 01 5000;
8. Completed installation of required Phase 1 Erosion & Sediment Controls, perimeter construction fence and Contractor and Owner's Representative's onsite construction trailers, as required by the Contract Documents;
9. Submission of an acceptable Waste Management Plan.
10. Satisfaction of all of the foregoing requirements construction mobilization requirements is a condition precedent to any obligation of Owner to accept, consider or act upon any request by Contractor for payment, or to make any payment of any kind to Contractor.

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 Procurement 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 all of the following requirements, but compliance of itself shall not establish the validity of any Claim:

1. Give Notice of delay in writing to the Owner's Representative, to the Owner's Project Manager, and to the Procurement 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, General Conditions Part 10 TIME Paragraph 10.6. 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.
 2. The Contractor shall submit to the Owner's Representative, to the Project Manager, and to the Procurement 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 Procurement 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 ten (10) Days delay from the date of Notice to Proceed to the date of Project Substantial Completion. These ten (10) 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 Procurement 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 Procurement 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 Procurement 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:

If at any time during Contractor’s performance, in the sole opinion of the Owner, it may reasonably be predicted that the Contractor is going to achieve Substantial more than 14 days later than the Contract Time, or should the Contractor be required to undertake actions under General Conditions Part 10 TIME

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Paragraph 10.6, the Contractor shall submit a Recovery Schedule to the Owner within five (5) days after receiving a written request from the Owner to do so. The Recovery Schedule shall explain and display how the Contractor intends to reschedule its Work at no additional cost to the Owner, in order to regain during the immediate subsequent pay period a reasonable projection of achieving Substantial Completion within the Contract Time. The Recovery Schedule shall include as many of the following actions as may be necessary, all 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. If the Contractor shall fail to submit an acceptable Recovery Schedule within the time required, 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 schedule, and the Contractor shall promptly provide such level-of-effort at no additional cost to the Owner.
- 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 has the right to back-charge the Contractor for all costs incurred by the Owner in the use of outside sources.

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 in the Contract. These dates shall be binding upon the Contractor, subject to the provisions of the Contract Documents addressing extensions of the Contract Time. The Contractor shall include all required Substantial Completion and Final Completion 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 whenever it becomes apparent from review of the current monthly Project Schedule Update that delays to the critical path have resulted and, hence, that there is reasonable ground to anticipate 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;

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- 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 has 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 Section 10.5 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 Procurement 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 General Conditions Part 9 CHANGES IN THE WORK, ACTUAL OR ASSERTED Paragraph 9.2, less credit for any work omitted pursuant to General Conditions Part 9 CHANGES IN THE WORK, ACTUAL OR ASSERTED Paragraph 9.3, 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 as set forth in Specifications Section 01 2900. 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. Satisfaction of all requirements for an application for payment set forth in the Contract Documents is a condition precedent to any obligation of Owner to make any payment to Contractor.
- B. 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.
- C. Upon the request of the Owner's Representative, 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:

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- 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 consistent with the Schedule of Values and any approved Modifications 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, shows that the value of the Work approved for payment during the previous month exceeds \$1,000.00, the Owner's Representative 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 performed 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 Specifications Section 01 3200; and
 - 3. A revised construction schedule as required by Specifications Section 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 Specification'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. Failure of the Contractor to prepare, maintain or update the Project Schedule in compliance with the Contract Documents,
 7. Reasonable evidence that the Work will not be completed within the time required for completion,
 8. Persistent failure to carry out the Work in accordance with the Contract Documents, or
 9. Liability, damage, or loss due to injury to persons or damages to the Work or property of Separate Contractors, or subcontractors or sub-subcontractors of Separate Contractors, caused by the act or neglect of the Contractor of any of its Subcontractors or Sub-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 withheld in accordance with the Contract Documents. 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 and solely liable for any damages from delay, or otherwise, which may arise because of such stoppage.

PART 12 SUBSTANTIAL COMPLETION:

12.1. REQUIREMENTS FOR SUBSTANTIAL COMPLETION:

Prior to making any request for Owner's approval of Substantial Completion, whether for the Work as a whole or for a portion or phase thereof which, the following must be completed:

- A. 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.
- B. Submit all outstanding Requests for Change Order which are not barred by the Claims submission procedures of the Contract Documents.
- C. Advise Owner of pending insurance changeover requirements.
- D. Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, and similar documents.
- E. 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.
- F. 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.
- G. Submit certifications of compliance for each test and inspection required by the Contract Documents. The certifications shall be signed by the Contractor and by the parties conducting the test.
- H. Deliver tools, spare parts, extra stocks of materials, and similar physical items to Owner.
- I. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.
- J. 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.
- K. Complete all commissioning and acceptance tests.
- L. Complete instruction for Owner's operating/maintenance personnel for all equipment and machinery installed as a part of the Work as specified by the Owner.

- M. Discontinue (or change over) and remove from Project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
- N. Complete Final Cleaning and Repair of the Work
- O. Touch up and otherwise repair and restore marred exposed finishes.
- P. Warranties shall become effective as of the date Owner and Owner's Representative determine that the Contractor has achieved Substantial Completion and execute the Certificate of Substantial Completion.
- Q. The Contractor shall permit the Owner to occupy and use the Project Site or a portion thereof prior to Substantial Completion but such use or occupation shall not indicate or constitute acceptance of Substantial Completion or activation of warranties, nor relieve Contractor of its obligations to maintain insurance coverage in compliance with the requirements of General Conditions Part 17, INSURANCE.
- R. The Contractor shall provide extended warranties with all Warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.

12.2. CONTRACTOR REQUEST FOR SUBSTANTIAL COMPLETION:

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 (Architect):

- 1. A written request for an inspection of the Work,
- 2. A complete list of Contract Work items remaining to be completed or corrected to achieve Substantial Completion ("Contractor's Substantial Completion Punch List") and of Contract Work items remaining to be completed for Final Completion ("Contractor's Final Completion Punch List") in accordance with the provisions of Specifications Section 01 7700,
- 3. A Certificate of Substantial Completion, and
- 4. A request for inspection for Substantial Completion.
- 5. The foregoing request, Contractor's Punch List, and Certificate of Substantial Completion shall be submitted by Notice giving Owner and Owner's Representative reasonable time to schedule a Substantial Completion inspection.

12.3. OWNER'S APPROVAL OF SUBSTANTIAL COMPLETION:

- A. Except as provided in Paragraph 12.3.B of this Section, 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 12.2), the Owner's Representative shall conduct an inspection of the Work and compile a comprehensive list of deficiencies and incomplete Work ("Owner's Punch List"). The Owner's Representative shall then issue a Consolidated Punch List incorporating the Contractor's and the Owner's Punch Lists into a single list in a uniform format, designating which Work items are required for Substantial Completion and which Work items are required for Final Completion ("Consolidated Punch List"). If there are items on the Consolidated Punch List which preclude the Owner's

Representative from issuing a Certificate of Substantial Completion, the Consolidated Punch List shall be provided to the Contractor with those items identified and Contractor shall not make any request for re-inspection or renew the Notice requesting Substantial Completion approval until such items have been completed. The Consolidated Punch List may be revised from time to time to identify additional incomplete items as they are discovered.

- B. Upon receipt of Contractor's request for approval of Substantial Completion, the Owner and Owner's Representative will either proceed with inspection or advise the Contractor of pre-requisites not fulfilled which do not require an inspection of the Work. Within fourteen (14) days after all pre-requisites which do not require an inspection of the Work have been fulfilled, the Owner's Representative will inspect the Work and will either prepare the Certificate of Substantial Completion or submit to Contractor the Owner's Punch List and the Consolidated Punch List. Contractor shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative a second written notice of Substantial Completion. The Owner and Owner's Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the provisions of Paragraph 12.3.C shall be applicable until the Certificate of Substantial Completion is issued.
- C. Except with the consent of the Owner, Owner's Representative shall perform no more than two Substantial Completion inspections for any designated portion or Phase of the Work or for the Work as a whole. Should more than two Substantial Completion inspections be required, the Contractor shall pay the Owner any amounts paid to the Owner's Representative and other third party consultants for any additional inspections.
- D. Should the Contractor fail to complete or correct any item on the Consolidated Punch List on or before the required Substantial Completion Date, the Owner may, at any time thereafter, complete one or more items on the list with its own forces or with such Separate 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. All such completed Work shall be entitled to the protection of all Warranty provisions of the Contract Documents. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents.
- 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 a list of items to be completed or corrected to achieve Final Completion ("Final Completion Punch List"), 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 as 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 and achieving Final Completion approval.

PART 13 FINAL COMPLETION:

- A. Following issuance of the Certificate of Substantial Completion in accordance with the provisions of General Conditions Part 12 SUBSTANTIAL COMPLETION, the Contractor shall have thirty (30) days 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 Documents, which shall continue in effect until the applicable Final Completion has been achieved.
- B. 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, an updated 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 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 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 and Final Payment is due and payable. Final Completion shall occur within thirty (30) calendar days after the Date the Owner signs the Certificate of Substantial Completion, or as otherwise specified in the Contract Documents.
- C. Except with the consent of the Owner, the Owner's Representative shall perform only one Final Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Final Completion inspections 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.
- D. The Owner shall, within forty-five (45) days after receipt of the approved Final Application and Certificate for Payment, pay the Contractor the amount stated therein.

PART 14 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 (3) days after 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 (3) days after the date of 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 Separate 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. The Owner in its sole discretion may elect to accept such Defective Work pursuant to the provisions of General Conditions Part 19 UNCOVERING AND CORRECTION OF WORK Paragraph 19.3.

- 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.

PART 15 FINAL PAYMENT

15.1 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; (v) all fully executed and effectual warranties and guaranties associated with the Work, and (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.

15.2 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 or for extension of the Contract Time 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.

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15.3 **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 operating as 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 16 PROTECTION OF PERSONS AND PROPERTY

- 16.1 **CONTRACTOR'S RESPONSIBILITY FOR SAFETY PROCEDURES:** The Contractor shall select one or more on-site personnel who shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of school or jurisdictional authorities in order to prevent injury, damage or loss to:
- A. All persons involved in performance of the Work.
 - B. All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work.
 - C. The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site.
 - D. Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.
- 16.2 **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.
- 16.3 **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.
- 16.4 **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. 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.
- 16.5 **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.

16.6 **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 17 INSURANCE

17.1 INSURANCE

A. Overview

During the term of this Contract, The Contractor and all of their Subcontractors shall procure and maintain the **types of insurance that are referenced in section D below**. All insurance policies shall be with insurance companies that meet the following criteria:

1. Are authorized to do business under the laws of the Commonwealth of Virginia and acceptable to the APS, in its sole discretion.
2. Are rated with an AM Best rating of A- or better. APS reserves the right to require the Contractor and/or its Subcontractors to change their insurance to an insurance company that has the minimum required AM Best rating. This right can be exercised at any time the insurance requirements set forth in the Contract Documents remain applicable. If the AM Best rating of the insurance company changes to a rating under A- during the Contract Term, the Contractor and/or its Subcontractors will notify APS in writing immediately upon discovery and change the insurance immediately to an insurance company that meets or exceeds the AM Best rating of A-.
3. If APS suffers damages under the Contract and makes a claim on the named insurance company by APS, and the claim is not paid in full by the insurance company, Contractor acknowledges that it shall remain wholly liable for the full amount of the claim regardless of the solvency of the insurance company or the insurance company's willingness to pay the claim in full.
4. The Contractor and/or its Subcontractors must disclose in the Certificate of Insurance the amount of any deductible or self-insurance component applicable to all required insurance policies herein, if any. APS has the right to request additional information to determine if the Contractor and/or its Subcontractors have the financial capacity to meet their obligations under a deductible or self – insurance program. If, in its discretion, APS is not satisfied as to the Contractor and/or its Subcontractors financial capacity to meet its obligations under a proposed deductible or self – insurance program, the Contractor and/or its Subcontractors shall re-submit revised acceptable insurance coverage at the sole discretion of APS and with no obligation to do so agree to alternative approaches proposed by the Contractor and/or its Subcontractors to ensure protection for APS.

B. Certificates of Insurance & Additional Insured Status:

1. Contractor

The Contractor is required to provide a Certificate of Insurance that names Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds by endorsement for all insurance policies except Workers Compensation, Professional Liability, and Cyber Liability coverage.

2. Subcontractors

- All Subcontractors will provide the Contractor with Certificates of Insurance for the policies that are required under this contract. All Certificates of Insurance should by endorsement name Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds for all contracts of insurance except Workers Compensation & Professional Liability.
- All Subcontractors shall provide the Contractor with a certificate of insurance that will serve as proof of insurance for their Cyber Liability coverage (if required as listed in the General Conditions Part 13 Section D) , but APS will not need to be added as an additional insured.
- The Contractor will maintain all certificates of insurance for their subcontractors.
- The Contractor will provide APS with its Subcontractors certificates of insurance at any time upon request.

C. Termination & or Augmentation of Insurance Policies:

1. All required insurance policies must be endorsed through a Certificate of Insurance 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 Work, the Contractor shall provide APS with a Certificate of Insurance referencing each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment. Contractors and or their Subcontractors terminating or augmenting any insurance policy without giving APS forty-five (45) days' notice will be in direct violation of the terms and conditions of the Contract.
2. If insurance coverage is allowed to lapse and a loss occurs, the Contractors and or their Subcontractors will still be required to indemnify and hold APS harmless for all losses sustained. Regardless of whether insurance is present or not.

D. Insurance Required by The Contract:

Casualty Insurance:

1. Commercial General Liability occurrence-based insurance:

Commercial General Liability occurrence-based insurance shall be in place until APS confirms the Contract has expired. 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. For work that specifically deals with purchase, construction and or maintenance of physical property the insurance coverage for contractors and subcontractors shall also include coverage for explosions, collapse, underground utilities and completed products and operations. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board including its elected and appointed officials, agents, and employees.

Sexual Abuse and Molestation (SAM) occurrence-based insurance:

Sexual Abuse and Molestation (SAM) Coverage must be included if the Contractor and or their Subcontractors are working around students where a 1 on 1 situation is possible.

In addition to providing this coverage the Contractor and or their Subcontractors will run both criminal background checks and sex offender checks on all employees that are interacting with APS students (Upon award and every 2 years afterward) as well as require their employees to receive training upon award and annually on the prevention of abuse and molestation. Criminal background checks should go back at least 5 years. The Contractor and or their Subcontractors further agrees to keep all training records, background and sex offender checks on file and to provide APS with copies whenever APS requests them.

Lastly, the Contractor and/or their Subcontractors agrees to abide by the 2-person rule at all times when working with students. If there are times when the 2-person rule cannot be followed APS should be notified immediately and the activity will be evaluated by APS, the Contractor and or their Subcontractors.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial General Liability	\$1,000,000	\$3,000,000
Sexual Abuse and Molestation Liability	\$1,000,000	\$3,000,000

2. Subcontractor’s Commercial General Liability Insurance:

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 contract.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Subcontractors Commercial General Liability	\$1,000,000	\$3,000,000

3. Worker's Compensation and Employer's Liability Insurance:

Worker’s Compensation and Employer’s Liability Insurance is mandatory 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 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.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Worker’s Compensation	Statutory Limit	Statutory Limit
Employer’s Liability	\$1,000,000	\$1,000,000

4. Commercial Automobile Liability Insurance:

Commercial Automobile Liability insurance, including coverage for owned, non-owned and hired vehicles shall be in place for the Contractor and all of its Subcontractors.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial Automobile Liability	\$1,000,000	\$3,000,000

Property Insurance:

1. Builder’s Risk:

The Contractor shall purchase Builder’s Risk insurance upon the entire Work at the Project Site to the full value of the Contract Sum of the new improvements thereof. This insurance shall include the interests of APS, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except for exclusions included in the Certificate of Insurance and approved by Owner. This insurance shall include coverage for the following:

- a) Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).
- b) Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).
- c) Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).
- d) Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.
- e) Coverage of Contractor's labor, overhead and profit.
- f) 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.

Please Note: At APS’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.

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 APS 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.**

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Builder’s Risk	Full Amount of Contract Sum	Full Amount of Contract Sum

E. Receipt of Certificates of Insurance:

Proof of satisfaction, of insurance for each type of coverage listed herein shall be provided to APS **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 insurance required of the Subcontractor has been obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein.

F. Use of Excess / Umbrella Liability Insurance:

The use of Excess / Umbrella Liability insurance is permitted. If Excess / Umbrella insurance is used the policy must be endorsed to show that the lines that the policy is bolstering are covered under the policy. All Excess / Umbrella Liability insurance coverage is subject to review by APS' Risk Manager and its use can be denied based on that review.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Umbrella Liability	\$1,000,000	\$3,000,000

G. Consideration of Claims Made Insurance Coverage:

APS will consider claims made insurance coverage on a case-by-case basis **APS reserves the right to accept or deny the use of Claims Made Insurance coverage at any time.**

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Consultant must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two (2) years after final payment for the Contract for General Liability policies five (5) years for Professional Liability & Cyber policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Consultant's work under this Contract.

or

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

If claims made insurance is utilized by the Contractor and or their Subcontractors and a claim occurs that relates back to the vendor's services. The Contractor and or their Subcontractors will indemnify and hold APS harmless of all losses regardless of whether they have insurance coverage in place or not.

H. Contract Identification:

All certificates of insurance shall state the Contract number and title.

PART 18 CONTRACT SECURITY

18.1 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. The Payment Bond and the Performance Bond each shall provide that the penal sum of the Bond shall increase automatically in the event that at any time the total value of outstanding Work under the Contract exceeds the penal sum of the Bond then in effect.

- 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 receiving Notice 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 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 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 19 UNCOVERING AND CORRECTION OF WORK

19.1 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 Sum or Contract Time.
- 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 Detailed Scope of Work and other Contract Documents, costs of uncovering and replacement shall, by Change Order, be charged to the

Owner. If such Work is not in strict compliance with the Contract Documents, the Contractor shall pay the costs of uncovering and replacing such Work.

19.2 CORRECTION OF WORK:

- A. The Contractor shall promptly correct any Work which fails to conform strictly 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, plus an administrative fee of ten percent (10%).
- B. Nothing contained herein shall affect the Owner's right to correct Defective Work pursuant to the provisions of the Contract Documents.

19.3 ACCEPTANCE OF DEFECTIVE WORK:

The Owner has the right to accept any Defective 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 by a credit to Owner against any future application for payment or, if the unpaid Contract Sum is less than the credit to which Owner is entitled, within thirty (30) days following Notice by Owner to Contractor making demand for payment. Any such acceptance shall not constitute a waiver or approval of the performance requirements of the Contract Documents.

PART 20 POWERS OF THE PROCUREMENT AGENT:

The Owner's Procurement 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 issue a Change Order or other Modification in accordance with General Conditions Part 9 CHANGES IN THE WORK, ACTUAL OR ASSERTED 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 Procurement Agent or his designee, the Owner's Representative, shall deem it necessary.
- E. To exercise on behalf of the Owner any right or power granted to the Owner by the Contract Documents.

- F. The Procurement Agent may delegate his authority/power to his designee as to those matters identified in Paragraphs 20.A through E of this Part 20, but only to the extent the Contractor has been given Notice by the Procurement Agent of such delegation. In the event of any dispute whether the Procurement Agent has or has not delegated a particular exercise of authority/power, the burden shall be upon the Contractor to prove the specific Notice granting such delegation.

PART 21 CONTRACTOR'S DEFAULT AND TERMINATION

21.1 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 in its sole discretion 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 in compliance with the Contract Documents; 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, in whole or in part, the Owner shall Notify the Contractor 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. Any Notice related to a default by Contractor may also be given to the Surety, but no such Notice is required to be given to the Surety.

- 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

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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 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. Notice of termination may be given to the Surety, but Owner is not required to give such Notice to the Surety.

21.2 **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.

21.3 **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 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 in whole or in part.
- 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.
- 21.4 **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 Separate 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.
- 21.5. **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 21.1, 21.2, 21.3 and 21.4 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 21.1 hereof, shall not be required to be given in the event of such death or adjudication of incompetence.

PART 22 OWNER'S RIGHT TO TERMINATE FOR CONVENIENCE

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, 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 General Conditions Part 9 CHANGES IN THE WORK, ACTUAL OR ASSERTED, Paragraph 9.4, insofar as they pertain to amounts Claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Part 22.

PART 23 MISCELLANEOUS CONDITIONS

- 23.1 **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.
- 23.2. **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who was an unsuccessful bidder, who was deemed not to be qualified, or who was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.
- 23.3. **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.
- 23.4. **ROYALTIES AND PATENTS:** 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. 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.
- 23.5. **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.
- 23.6. **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.
- 23.7. **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.
- 23.8. **VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT:**
- A. During the performance of this Contract the Contractor agrees as follows:

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1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this action.
 4. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order over \$10,000.00, in order that the provisions above will be binding upon each Subcontractor.
- B. Nothing contained in this provision shall be deemed to empower the Owner 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 Contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the state.
- C. Arlington Public Schools does not discriminate against faith-based organizations.

23.9. **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:

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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 by the community of which this person claims to be a part.
 - b. “Asian American” means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
 - c. “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
 - d. “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
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, or in the case of a cooperative association organized pursuant to

Chapter 3 (§13.1-301 et seq.) of Title 13.1 as a nonstock corporation, controlled by one or more members, 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 or members 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.

23.10 LABOR UNIONS AND RIGHT TO WORK:

- A. 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.
- B. Notwithstanding the foregoing, this Contract and all other contracts and Subcontracts are subject to the provisions of Title 40.1, Chapter 4, Code of Virginia. The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all applicable provisions of Title 40.1, Chapter 4, Code of Virginia.

23.11 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.

23.12 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.

23.13. MATERIALS AND EQUIPMENT – HAZARDOUS MATERIALS: No materials or equipment containing asbestos or any other hazardous material recognized and identified by the Commonwealth

Claremont Immersion Security Vestibule Renovation
Arlington Public Schools

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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/16/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Jacobs Company, Inc. - AP 7075 Samuel Morse Drive Suite 120 Columbia, MD 21046	CONTACT NAME: Kimberly Donohue	
	PHONE (A/C, No, Ext): (410) 910-8345	FAX (A/C, No):
	E-MAIL ADDRESS: kdonohue@jacobscompany.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : The Travelers Indemnity Company	NAIC # 25658
	INSURER B : The Phoenix Insurance Company	NAIC # 25623
	INSURER C : Travelers Property Casualty Company of America	NAIC # 25674
	INSURER D : The Charter Oak Fire Insurance Company	NAIC # 25615
	INSURER E :	
	INSURER F :	

INSURED

Nastos Construction, Inc.
4640 Forbes Blvd Ste 203
Lanham, MD 20706

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			2X985873	1/1/2024	1/1/2025	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			2X99254A	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			3X002256	1/1/2024	1/1/2025	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below			2X998740	1/1/2024	1/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Bid # - Contract 55FY24 Claremont Immersion Security Vestibule Renovation

Arlington Public Schools, its officers, elected & appointed officials, employees & agents shall be named as an additional insured as required by written & executed contract.

Additional Coverage Included: Abuse & Molestation (Sexual Misconduct Liability) \$1,000,000 Occurrence/\$3,000,000 Aggregate written through Beazley Insurance Company Policy # 432904-1 eff 12/18/23 - 12/18/24; Builders Risk written through American Zurich Insurance Company Limit for Renovations \$1,591,964 Policy # BR78581413 effective 1/10/24-1/10/25

CERTIFICATE HOLDER

CANCELLATION

Arlington Public Schools
2110 Washington Blvd
Arlington, VA 22204

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE