



## Agreement

### **Contract Title: Ashlawn Kitchen Project**

CONTRACT 45FY26 is made and entered into this 5th day of Feb, 2026; the date the Agreement is fully executed, between Arlington School Board, operating as Arlington Public Schools, Virginia (the "Owner" or "APS") and Henley Construction Co. Inc. (the "Contractor"), whose address is 7940 Queenair Dr. Gaithersburg, MD 20879.

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:

Ashlawn Kitchen Project located at 5950 8th Rd. N, Arlington VA 22205

#### 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 03, 2026	Anticipated NTP to GC for Construction Administration only
June 19, 2026	Anticipated GC Project Site Mobilization
August 14, 2026	Substantial Completion
September 25, 2026	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 (42) 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 eight thousand

In Figures: \$ 1,508,000.00

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 **Two Thousand, Eight Hundred Forty Dollars (\$2,840.00)** for each day that expires after the time specified in Paragraph 4 for the **Substantial Completion Date**, plus any approved time extensions, until Substantial Completion is achieved.
- b. Pay Owner **Two Thousand, Five Hundred Dollars (\$2,500.00)** 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.
- c. Contractor hereby consents to the Owner withholding from amounts otherwise payable to the Contractor 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. The contractor shall submit Application for Payment in accordance with the General Conditions and Applications for Payment will be processed by the Owner's Representative and Owner as provided in the General Conditions.
- b. Contractor hereby consents to the Owner deducting from amounts otherwise payable to the Contractor and retaining any and all amounts payable to the Owner by the Contractor for any reason stated in the Contract Documents assessed or payable through the date payment is due Contractor from Owner. If the amount payable to the Owner by the Contractor exceeds the amount otherwise payable to Contractor by Owner, Contractor shall make payment thereof to Owner within fourteen (14) days following issuance by Owner of Notice of payment due.

8. Interest

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

9. No Assignments

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

10. Governing Law

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

11. Binding Agreement

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

Signatures Appear on the Following Page

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

**Contractor**

By: \_\_\_\_\_

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

2.2.2026

Dated

**Owner**

By: \_\_\_\_\_

Title

Procurement

Asst. Director of Procurement

February 5, 2026

Date

End of Agreement

## **Terms and Conditions**

### **PART 1        DEFINITIONS**

- 1.1    **ACCEPTANCE OF BID:** Dollar amount of Bid is acceptable. The contractor should proceed with bond requirements.
- 1.2    **AMENDMENT:** Written authorization executed by the Procurement Agent, acknowledging the Change Order(s) Modification, revised Contract Sum and current Contract Period.
- 1.3    **ARCHITECT:** The Architect is the person or entity identified in the Contract who has been designated to act as the Owner's Representative.
- 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, and adjustment to the Contract Sum, and/or an adjustment to the Contract Period, if any. A **Unilateral Change Order** is a Change Order signed only by the Owner and the Owner's Representative addressing any Modification to the Contract Sum or the Contract Period to which the Owner agrees. A **Mutual Change Order** is a Change Order signed by both the Owner and the Owner's Representative and by the Contractor reflecting agreement on all terms, conditions and requirements 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 Part 9 of this subsection and Specification Section 01 2600. The latest edition of the AIA Standard Form G701 shall be utilized and shall be provided by the Owner's Representative.
- 1.5    **CONSTRUCTION MANAGER:** The Construction Manager is the person or entity identified in the Contract who has been designated to act as the Owner's Representative.
- 1.6    **CONTRACT:** The signed Agreement between Owner and Contractor is the Contract.
- 1.7    **CONTRACT DOCUMENTS:** The Contract Documents consist of the following documents:
  - A.    The signed Agreement between Owner and Contractor,
  - B.    The General Conditions,
  - C.    The Drawings and Specifications,
  - D.    Bid Documents and Addenda,
  - E.    The Notice of to Proceed issued by the Owner to the Contractor,
  - F.    Modifications, issued after execution of the Contract, and
  - G.    In case of a conflict between the Contract Documents, the order of precedence shall be as set forth in the Contract.
- 1.8    **CONTRACT PERIOD:** The period allotted in the Contract Documents for Substantial Completion, and thereafter Final Completion, of the Work, together with any extension of time granted in

accordance with the provisions of the Contract Documents. Contract Period may also be referred to as "Contract Time" in the Contract Documents. Both terms have the same meaning. No additional time may be allowed to the Contractor without a Modification of the Contract Period by Change Order.

- 1.9 **CONTRACT SUM:** The total amount payable to the Contractor for performance of the Work. The Contract Sum is stated in the Contract and shall include any adjustments granted in accordance with the provisions of the Contract Documents. Contract Sum may also be referred to as "Contract Price" in the Contract Documents. Both terms have the same meaning. No compensation shall be paid to the Contractor without a Modification of the Contract Sum by Change Order.
- 1.10 **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.
- 1.11 **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 forty-two (42) calendar days after the Date of Substantial Completion of all Work, or a Phase of the Work, unless otherwise specified in the Contract Documents.
- 1.12 **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.
- 1.13 **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.
- 1.14 **DEFECTIVE WORK:** Any Work which does not comply strictly with the requirements of the Contract Documents and(or) authorities having jurisdiction.
- 1.15 **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.
- 1.16 **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 these General Conditions or in the Specifications.
- 1.17 **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.
- 1.18 **HAZARDOUS MATERIALS:** See General Conditions section HAZARDOUS MATERIALS.
- 1.19 **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.

- 1.20 **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.
- 1.21 **NORMAL WORKING DAY:** See “Working Day.”
- 1.22 **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 registered or certified mail or by courier with delivery receipts provided to both parties via email on the same day to the Contractor's office at the Project Site or to the business address of the Contractor as stated in the Contract , or by e-mail to the Contractor's Project Manager, Superintendent, or the officer who signed the Contract. .
  - B. Delivered by registered or certified mail or by courier with delivery receipts provided to both parties via email on the same day, to the office of the Procurement Agent, Arlington Public Schools, Syphax Education Center, 2110 Washington Boulevard, Arlington, Virginia 22204 or, e-mail to the Procurement Agent, and when expressly so stated in the Contract Documents, delivered by email to the Owner and Owner's Representative.
  - C. Any requirement in the Contract Documents that an action be taken in writing shall require transmission of the writing to the other party in the form required of a Notice, unless otherwise expressly stated.
  - D. All Notices shall be given to the address shown in the Contract or such other address/addresses as may be provided by Notice after execution of the Contract. Notice sent by registered or certified return receipt mail, by courier or e-mail shall be deemed received at 9:00 A.M. on the first Working Day following the date of the transmission.
- 1.23 **NOTICE TO PROCEED:** A written Notice from the Owner to the Contractor, which gives consent for commencement of the Work. For projects with phased Work, a Notice to Proceed will be issued prior to the commencement of each phase, if a Notice to Proceed is required by the Contract Documents. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Project Schedules shall be based upon that date.
- 1.24 **OWNER:** Arlington Public Schools (APS) and employees authorized to represent APS.
- 1.25 **OWNER'S CONSTRUCTION PROJECT MANAGER:** APS' employee authorized to act on behalf of the Owner regarding matters related to the Contract, Contract Documents, and on-site construction. The Project Manager may designate on-site construction managers as Owner's Representative (Construction Manager) to act on the Owner's behalf.
- 1.26 **OWNER'S REPRESENTATIVES:** Owner's Representatives include the project Architect as identified in the Agreement and on-site Construction Manager who has been designated to act on behalf of the Owner. Unless otherwise expressly stated or directed by the Owner, reference herein to Owner's Representative shall mean either the project Architect or the Construction Manager.



Contractor will be given written direction regarding the individuals employed by either the Architect or the Construction Manager with authority to exercise the duties of the Owner's Representative. The duties and authority of Owner's Representative are set forth in Part 3 of these General Conditions. Notwithstanding any other provision in the Contract Documents to the contrary, any Modification of the Contract Sum or of the Contract Period may be made only by writing signed by the Arlington Public Schools Procurement Agent or the designee thereof as identified to the Contractor by Notice issued by and signed by the Arlington Public Schools Procurement Agent.

- 1.27 **PROCUREMENT AGENT:** The term "Procurement Agent" shall mean the person employed by the Owner and holding the office of Director of Procurement.
- 1.28 **PROJECT:** The construction services as performed by the Contractor, in accordance with the Contract Documents; collectively all of the improvements contemplated by the Contract; synonymous with the term "Work" as the context may require.
- 1.29 **PROJECT SCHEDULE:** The Critical Path Method Baseline Schedule for the Project as a whole established and updated by Monthly Project Schedule Update all in accordance with the provisions of Specifications Section 01 3200. The term "Project Schedule" does not include any Recovery Schedule which may be directed by Owner unless incorporated into the Project Schedule pursuant to the Project Schedule Revisions procedures set forth in Specifications Section 01 3200.
- 1.30 **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."
- 1.31 **PROPOSED CHANGE ORDER:** A request by the Contractor for additional compensation and shall include all costs and time for a change to the Work. Such a request shall be initiated in writing and processed as set forth in Specification Section 01 2600.
- 1.32 **PROPOSED MODIFICATION:** A request by the Owner or the Owner's Representative for the Contractor's estimate of cost for a contemplated change to the Work. Such request shall be initiated in writing and processed as set forth in Specification Section 01 2600.
- 1.33 **SEPARATE CONTRACTORS:** The term "Separate Contractors" as used in these Contract Documents shall mean persons or entities performing work on the Site who are not Subcontractors or Sub-Subcontractors, or otherwise not performing at the direction and under the supervision of the Contractor.
- 1.34 **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.
- 1.35 **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 otherwise performs any portion of the Work.
- 1.36 **SUBSTANTIAL COMPLETION:** "Substantial Completion" or the state of being "Substantially Complete" shall be that degree of completion of the Work which is sufficient to provide the Owner, in its sole discretion, with the full-time use of the Project in all manners or modes of operation and for the purpose or purposes for which it was intended. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Substantial Completion is established.

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 may be set forth in the Contract Documents.

- 1.37 **SURETY:** Any person, firm or corporation that has executed as Surety the Contractor's performance or payment bonds securing performance of this Contract or providing for protection of claimants who have and fulfill contracts to supply labor or materials to the Contractor or to a Subcontractor in connection with the Work. The Surety shall be authorized to do business in the Commonwealth of Virginia and shall be listed on the United States Treasury Department's latest Circular 570.
- 1.38 **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.
- 1.39 **WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.
- 1.40 **WORK ORDER:** A written directive to the Contractor issued on or after the Effective Date of the Agreement which directs changes in the Work or which directs the Contractor to proceed with work the Contractor disputes is included in the Work and will state the basis for adjustment, if any, in the Contract Sum, or Contract Period, or both. A Work Order shall be used in the absence of total agreement on the terms of a Change Order or when, in the Opinion of the Owner, the time needed to process a Change Order or to determine if a Change Order is required would adversely affect progress on the job. Upon receipt of a Work Order the Contractor shall promptly proceed with the Work involved. If the Contractor has any disagreement with the terms addressing adjustment to the Contract Sum or Contract Time or method, if any, provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time, the Contractor shall proceed in compliance with the provisions of General Conditions Part 9 CHANGES IN THE WORK. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.
- 1.41 **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:** The Agreement Between the Owner and the Contractor shall be signed by both the Owner and the Contractor.
- 2.2 **EXECUTION OF AGREEMENT:** Execution of the Contract by the Contractor is a certification that the Contractor has examined the Project Site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents, and has examined all Contract Documents, as required by the Contract.
- 2.3 **INTENT OF THE CONTRACT DOCUMENTS:** The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that the Work is within the scope of the Contract. Use

of the term “include” or “including” shall be deemed to mean “include without limitation,” “including but not limited to,” and similar expansive intent.

## 2.4 DRAWINGS AND SPECIFICATIONS:

- A. The application of Specification Section designation and page numbering to the Contract and the subdivision of the Drawings and Specifications into divisions, Sections, articles and page numbering 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 of these General Conditions or in any Section of the Specifications of any article or operation requires that the Contractor shall provide all such items indicated on, or reasonably inferred from, the Drawings, furnishing for such purpose all labor, materials and equipment required in connection therewith. Omission of any article, operation, or detail does not relieve the Contractor of the responsibility for completion of the Work reasonably intended by the Drawings and Specifications to be included in the Contract.
- C. In the case of conflict or inconsistency between the Drawings and Specifications or within Drawings, or Specifications not clarified by Addendum or by a response to a request for clarification, the Contractor shall: (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement either or both in accordance with the Owner’s Representative’s interpretation. The Contractor shall notify the Owner’s Representative of discrepancies found before materials are fabricated or Work performed.
- D. The Contractor shall adhere to dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner’s Representative before proceeding. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding. By proceeding without first consulting and obtaining clarification from the Owner’s Representative as to such absence or measurement, or without verifying actual field dimensions, the Contractor assumes the risk of all cost or time impacts resulting therefrom and shall have no right to any increase in the Contract Sum or the Contract Time caused thereby.

## 2.5 CONTRACT INTERPRETATIONS:

- A. The Contractor may request interpretations or requests for clarification of any Contract Document other than the Contract or the GENERAL CONDITIONS in writing to the Owner’s Representative. Such requests by the Contractor shall be submitted to the Owner’s Representative in strict compliance with the procedures and requirements set forth in the Division 01 Specifications for submission of a Request for Information (“RFI”). Such RFIs by the Contractor shall be submitted sufficiently in advance of the date upon which the interpretation or clarification is actually required by the Contractor to allow the Owner’s Representative to issue the interpretation or clarification so as not to delay the Work. Contractor shall be responsible for any delay resulting from failure to submit a RFI in a timely manner. Written RFI responses 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 may request in writing interpretations or clarifications of any provision of the Contract or the section of the Specifications titled GENERAL CONDITIONS from the Procurement Agent. Such requests shall be identified as a Contract Clarification Request (“CCR”). CCRs must be submitted sufficiently in advance of the date upon which the interpretation or clarification is actually required by the Contractor to allow the Procurement Agent to issue the interpretation or clarification so as not to delay the Work. Contractor shall be responsible for any delay resulting from failure to submit a request for interpretation or clarification in a timely manner. Written CCR responses shall be issued by the Procurement Agent or his designee 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.
- C. 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 RFI, 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 following but not limited to, the Drawings, Project Manual, Work Orders, RFI’s or any 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 Bids are received except as provided by the Specifications.

## PART 3      OWNER'S REPRESENTATIVE

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

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

#### PART 4 OWNER

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

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

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

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

- 4.4 **RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES:** If the Contractor does not correct non-complying Work, or is consistent in not supplying and/or furnishing labor, material, and equipment necessary to Work performance, 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 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.

- A. Step 01: Per Part 4.4 above, Owner issues a 3-Day Notice, if Contractor does not comply the Owner may exercise their right to Part 17,
- B. Step 02: Part 17.1 Owner issues a 3-Day cure and Notice of intent to declare in whole or in part, the Contractor's Surety is copied on the Notice, if Contractor does not comply,
- C. Step 03: Part 17.1 Owner issues a Notice of Partial Default

- D. See Part 17 of the General Conditions for all requirements as outlined in Step 02 and 03 above.

## **PART 5 CONTRACTOR**

### **5.1 GENERAL REVIEW OF CONTRACT DOCUMENTS:**

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 maybe 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.

- A. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.
- B. Supervisor and Construction Procedures: The Contractor shall supervise and direct the Work and coordinate the Work with that of Separate Contractors using Contractor's best skill and attention, with at least the use of an onsite full-time superintendent, onsite full-time project engineer and full-time project manager. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. Neither the Owner's Representative's approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner's Representative's approval or failure to approve create a cause of action for damages against the Owner's Representative or the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor.
- C. 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.
- D. 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.
- E. 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 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 agrees to provide construction services of highquality. 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.
- E. No Smoking Policy on Arlington Public Schools' property: Contractors, 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 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 Arlington School Board requires the Contractor to provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors, Sub-Subcontractors and the employees thereof.
  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 the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

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

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

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

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

NOTE: This has been signed separately.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name and Title (please type or print)

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

### 5.3 PERMITS, FEES AND NOTICES:

- A. The Contractor shall comply with all local, state and federal laws, rules or regulations or Arlington County ordinances applicable to this Contract and the Work to be performed hereunder. The Contractor shall also obtain, at its expense, all licenses of any type, permits, inspections, licenses, and other authorizations necessary for the prosecution of the Work, and shall pay all fees associated therewith, except that the Owner shall obtain, at its expense, the one building permit for the Work and any easement agreements necessary and indispensable to the completion of the Project. Any other building permits or other permits required by Arlington County for portions of the Work shall be obtained at the Contractor's expense.
- 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. 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.
- D. It is the Contractor's sole responsibility to understand the Arlington County codes and inspection requirements and process. Any meetings, additional permit or inspection fees the County deems for successful completion of the Work are not the cost of the Owner. If the Owner is charged for additional fees from Arlington County as a result of the Contractor's failure to be informed of this process, re-inspection fees, overtime fees from Arlington County etc., the Owner then has the right to issue a Change Order deducting the costs of the from the balance due to the Contractor. If the balance due to the Contractor is not sufficient to cover the costs, then the Contractor shall pay to the Owner the difference in cost within twenty-eight (28) Days following receipt of billing from Owner.
- E. Any and all violations or fines assessed against the Owner or Contractor, due to Contractor's negligence, will be paid by the Contractor within three (3) days. Should the Contractor fail to pay these costs, the Owner has the right to issue a Change Order deducting the costs from the balance due to the Contractor. If the balance due to the Contractor is not sufficient to cover the costs, then the Contractor shall pay to the Owner the difference in cost within twenty-eight (28) Days following receipt of billing from Owner.

- 5.4 **RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE:** The Contractor shall be responsible as a part of the Work to use such software(s) 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. The Contractor shall be responsible for maintaining the cleanliness on the Project Site at all times and shall exercise dust control when required.
- 5.6 **DRAWINGS AND SPECIFICATIONS AT THE SITE:** The Contractor shall maintain one full size copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications at the Project Site. The Contractor will also retain all permits sets in good condition at the Project Site. All of the documents are to be kept in good order and marked to record all changes made during construction. The documents shall be made available to the Owner and Owner's Representative during performance of the Work. Upon completion of the Work, these As-Built drawings together with all changes and revisions made during construction shall be scanned electronically and e-mailed to the Owner and Owner's Representative.
- 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 Project Schedule so as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. Shop Drawing submittals are to be prepared and submitted as set forth in the Specifications to allow for review and approval by the Owner's Representative and not affect the procurement and installation of the submitted items. Contractor shall not be entitled to any Modification of the Contract Sum or of the Contract Period for any consequence of failure of the Contractor to comply strictly with any submittal requirement.
  - B. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be performed in accordance with the approved submittals. 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.

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:**

- A. 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 and as required in the Contract Documents. The Contractor must provide the Owner and the Owner's Representative forty-eight (48) hours Normal Working Day's Notice of the date and time of all required and scheduled tests and inspections, including third party inspections under the purview of the Owner.
- B. Contractor must provide the Owner and Owner's representatives twenty-four (24) hours Normal Working Day's Notice, prior to the scheduled inspection, of the cancellation of any inspections either by the local authorities or third-party inspections
- C. Contractor must assist and coordinate with third party inspections, including but not limited to:
  - 1. All inspection requests are to include, location(s), quantity of material being tested or inspected when applicable, start times and end times.
  - 2. Provide parking of inspector's vehicle at the Project Site and safe access to testing and inspection locations, including providing the use of ladders, lifts or scaffolding if testing and inspection location requires such safe access.
  - 3. Provide a cure box in size to accommodate the testing and inspection needs on the Project Site at a location approved by the Owner's Representative.
  - 4. Provide access to Drawings, Specifications, Shop Drawings and submittals.
  - 5. Provide concrete wash out box and access to water for testing and inspection needs and for tire washing when exiting Project Site if required by Arlington County.
- D. Contractor shall be responsible for any associated added costs incurred due to late cancellation of inspections, late schedule requests for third party inspections under the purview of the Owner, and 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 or testing.

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 Project 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, contain 3 digit sequential numbers with a minimum of two inches (2") in height 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. Contractor to provide a minimum of twenty (20) hardhat stickers for the use of the Owner and Owner's Representatives.

- 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 per person.
- 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 within of the Project 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 request the Contractor to conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the requested cleaning within three (3) 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 Project Site and maintain a security perimeter around the construction Project 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.

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

5.12 **CONFLICT OF INTEREST:**

- A. The provisions of Va. Code Title 2.2, Chapter 43, Article 6, Ethics in Public Contracting, §§ 2.2-4367 through 4377 are incorporated herein. These incorporated provisions supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100, et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438, et seq.), and 3 (§ 18.2-446, et seq.) of Chapter 10 of Title 18.2.
- B. The incorporated provisions shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

5.13 **EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED:**

During the performance of this Contract the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 as amended in 2008, and as may be amended thereafter, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- D. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- E. The Contractor will include the provisions of the foregoing paragraphs A, B, and C in every

subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.

- F. Arlington Public Schools does not discriminate against faith-based organizations.
- G. Nothing contained in this subsection shall be deemed to empower APS to require the Contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by the Contractor, in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth of Virginia.

## **PART 6 SUBCONTRACTORS**

- 6.1 **ABSENCE OF CONTRACTUAL RELATIONSHIP:** Nothing contained in the Contract Documents shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner or the Owner's Representative and any Subcontractor.
- 6.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:**
  - A. Unless otherwise specified in the Contract Documents, within fourteen (14) Days after the Notice to Proceed, the Contractor must submit a written statement to the Owner's Representative and the Owner setting forth the name, address, and telephone number of all proposed Subcontractors and the portion of the Work and materials for which each such Subcontractor is responsible. Should any proposed Subcontractor for a division and/or feature of work outlined in the Bid Form, Section 16, differ from the Subcontractor actually performing the Work, the Contractor must provide justification for the change to the proposed Subcontractor prior to any Work commencing by the Subcontractor. The Contractor also must furnish any other information intended to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, safety records, past experience and financial resources to perform the Work in accordance with the Contract Documents.
  - B. If the Owner finds, in its sole and absolute discretion, that any proposed Subcontractor is not qualified or rejected, Notice of such determination will be given to the Contractor. 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 of its Subcontractors' officers, authorized representatives and employees, and any other persons or entities performing any portion of the Work.

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

- A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;
- B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;
- C. Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the Contractor may in turn promptly process such applications or claims in conformance with the Contract Documents;
- D. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in Part 13 of these General Conditions. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
- E. Contain all provisions required by any of the Contract Documents to be included in a subcontract;
- F. Make specific reference to the conditions of Paragraph 6.3 of this section as a mutually binding provision; and
- G. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work shall be submitted by the Contractor to the Owner's Representative within ten (10) days of the Subcontractor award.
- H. The Contractor shall include in each subcontract the same requirements as Parts 5.2 H 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. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the Contractor's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld pursuant to Paragraph 6.4.A.2 shall not accrue interest.
  - D. Insurance proceeds received by the Contractor under the insurance policies described in Paragraph 13.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 request and at the sole discretion and determination of the Owner.
  - F. The Contractor shall include in each subcontract a requirement that each Subcontractor shall be bound by and subject to the provisions of Paragraph 6.4 in regard to payments made to its Sub-Subcontractors.
  - G. The Contractor's obligations with respect to payments to its Subcontractors as outlined in Paragraph 6.4 above shall not operate to create any obligation or contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.
  - H. The Contractor's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.
  - I. All provisions herein required to be included in a subcontract are intended for the benefit of Subcontractors.

## **PART 7        SEPARATE CONTRACTS**

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

- A. The Owner reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Separate Contractor" in the Contract Documents in each case shall mean the person or entity who executes each separate contract for construction.
- C. At no additional cost to the Owner, the Contractor shall coordinate the Work with the

activities of each Separate Contractor. When directed to do so by the Owner, the Contractor shall participate with Separate Contractors and the Owner in reviewing their separate construction schedules and shall make any revisions to incorporate that activity into the Project Schedule necessitated thereby.

- D. The Contractor shall afford the Owner and any Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- E. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a Separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects shall constitute an acknowledgment that the Separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

## **PART 8 MISCELLANEOUS PROVISIONS**

- 8.1 **GOVERNING LAW:** The Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.
- 8.2 **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who or which was an unsuccessful Bidder, who or which was deemed not to be qualified, or who or which was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.
- 8.3 **ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.
- 8.4 **ROYALTIES AND PATENTS:** The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner and Owner's Representative, their officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner and the Owner's Representative, their officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

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

- A. The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based deliver to the Owner's Representative, to the 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 (90<sup>th</sup>) 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.

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

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

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

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

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

A. In seeking subcontractors, suppliers and vendors necessary to perform the Work, the Contractor shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses, and service-disabled veteran-owned businesses and employment services organizations. At a minimum, for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

B. As used in this section:

- 1. "Employment Service Organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved

Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

2. “Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
  - a. “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such 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 who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of \$10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.
7. “Women-owned business” means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

#### 8.10. 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 Articles 1 and 3 of Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the right to work. The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.

### PART 9 CHANGES IN THE WORK, 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 in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall materially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to be not within the reasonably foreseeable scope of the Project and a material change to the scope of the Project for which the Contractor is entitled to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner’s written direction for such addition, deletion or change shall be deemed to be the occurrence.
- B. Construction conditions may require minor changes in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder. The Contractor, when ordered by 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 shall be allowed. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Contract Period, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's Representative's written direction for such minor change shall be deemed to be the occurrence.

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

## 9.2 WORK DIRECTED BY WORK ORDER OR CHANGE ORDER:

- A. The Owner may, in its sole and absolute discretion, at any time by a Work Order or Change Order, and without notice to the Sureties, require the performance of such work as it deems necessary or desirable. Procedures and authorization for Work directed by a Work Order or Change Order shall be as set forth in Specification 01 2600 or as otherwise provided by the Contract Documents.
- B. The Contractor shall not be entitled to any additional compensation or to any increase in the Contract Period, as defined in General Conditions 10.3, for any work asserted by the Contractor to be extra work performed by the Contractor without a valid Work Order or Change Order, and the Owner may order the removal or alteration at the Contractor's expense of any asserted extra work performed without a validly issued Work Order or Change Order. In the event the Owner elects not to have such work removed or altered, such unauthorized work shall not be the basis for any claim for additional compensation nor for any change to the Contract Time. Notwithstanding the foregoing, in the event of an emergency situation as a result of which the Contractor is required to proceed with mitigating or corrective action before giving Notice to the Owner to prevent or mitigate damage to person or property, the Contractor shall do so. In such event, the onset of the emergency shall be deemed the date of the occurrence and any claim for additional compensation or for an extension of the Contract Period shall be submitted in compliance with the claims procedures set forth in the Contract Documents.
- C. A Change Order covering extra work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to initiation of such work. When signed by the Contractor, Contractor acknowledges and accepts the terms and conditions of the Change Order as full and final agreement as to all claims for compensation or time arising from or related to the work, condition or occurrence described in the Change Order.
- D. A Work Order shall be valid only if issued by Notice by the Owner and/or the Owner's Representative prior to the initiation of the work described therein. A Work Order directs the Work to be performed and will state the basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. A Work Order shall be used (i) in the absence of total agreement on the terms of a Change Order; (ii) when, in the opinion of the Owner, the time needed to process a Change Order would adversely affect progress on the job; or (iii) when the Contractor disputes that the Work which is the subject of the Work Order is included as



a part of the Work. Upon receipt of a Work Order the Contractor shall promptly proceed with 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 any proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not give Notice to the Owner of any disagreement with the method provided in the Work Order for determining the proposed adjustment in the Contract Sum or Contract Time within five (5) Days following issuance of the Work Order, the Contractor shall be deemed conclusively to have agreed with the terms of the Work Order and any claim for additional compensation or for an extension of the Contract Time shall be barred. Such Notice, if given, shall include the Contractor's proposed alternative method and the justification therefor. Even if the Contractor disagrees with the terms of the Work Order, the Contractor must proceed with the changes as directed.

- E. The amount of compensation to be paid to the Contractor for any Work which is the subject of a Work Order shall be determined in accordance with Section 01 2600 of the Specifications. No additional compensation shall be paid to the Contractor until a Change Order specifying the change in the scope of Work, the increase in the Contract Sum, and any impact on the Contract Period has been signed by both the Contractor and the Owner, and a purchase order for the agreed additional compensation has been issued by Owner. If there is no agreement on these terms, the Owner may in its sole discretion issue a Unilateral Change Order approving any change in scope of Work, Contract Sum and/or Contract Period to which it agrees and issue a purchase order for such approved amount.
- F. Regardless of the manner in which the adjustment to the Contract Sum on account of a Work Order or a Change Order is determined, such adjustment shall be deemed to include all known amounts, as outlined in Section 01 2600, and all impacts on Contract Period. The adjustment in the Contract Sum, if any, and the Contract Period, if any, shall constitute full and mutual accord and satisfaction for all costs and time impacts related to such change.
- G. Records of Work performed under a Work Order or a Change Order, if any, shall be submitted to the Owner's Representative, within 24 hours of the completion of the Work on each day where work is ongoing and which is the subject of the Work Order or Change Order. A minimum 24 hours advanced notification must be provided to the Owner and/or Owner's Representative prior to the initiation of the work described therein. Strict compliance with these requirements shall be a condition precedent to compensation for such Work, but strict compliance shall not of itself establish any entitlement to additional compensation or extension of time. Duplicate copies of accepted records shall be made and signed by both Contractor or its representative and the Owner's Representative, and one copy retained by each.

### 9.3. HAZARDOUS MATERIALS:

- A. "Hazardous Materials" shall mean any substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "toxic pollutants" or words of similar import under any federal law or law of the Commonwealth of Virginia or 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, 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 Site.
- 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, fees, fines, violations, and 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. Contractor shall continue performance on Work not requiring remedial action of the unforeseen Hazardous Materials. Any claim by the Contractor for the unexpected presence of Hazardous Materials shall be subject to the claims submission procedures of the Contract Documents, with the date of discovery of the Hazardous Materials being the date of the occurrence.

#### 9.4 OMITTED OR DELETED WORK:

- A. The Owner may at any time by a written order and without notice to any Surety require the omission or deletion of such Work as the Owner may find necessary or desirable in its sole and absolute discretion.
- B. An order for omission or deletion of Work shall be valid only if issued by Notice by the Owner and/or the Owner's Representative. In such event the Work so ordered must be omitted by the Contractor. The amount by which the Contract Sum shall be reduced shall be determined in accordance with Specification Section 01 2600.
- C. Contractor shall not be entitled to any extension of the Contract Period as a direct or indirect result of any omission or deletion of Work by Owner except to the extent Contractor can establish that, despite prompt, reasonable and diligent efforts to do so, it was not able to modify the Project Schedule in a manner which would avoid delay to the critical path resulting solely from such omission or deletion of Work by Owner. All claims for any such delay shall be governed by the

claims procedures set forth in the Contract Documents, and the date of Owner's Notice for omission or deletion of Work shall be the occurrence date.

#### 9.5 AUDIT:

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

#### 9.6 DISPUTED WORK:

- A. If the Contractor is of the opinion that any work required, necessitated, or ordered by the Owner's Representative or the Owner, or any action required or ordered by the Owner's Representative or the Owner to be taken or not taken is not Work included within the Contract Sum, any claim for additional compensation or an extension of the Contract Period arising therefrom shall be subject to the claims procedures and submission requirements set forth in the Contract Documents with the occurrence date being the date the Notice directing the work was issued.
- B. No payment shall be made to Contractor for any disputed work for which Owner's final determination is that Contractor is not entitled to receive any increase in the Contract Sum for such Work. Payment for Work not in dispute shall continue to be made to the Contractor in accordance with the Contract Documents.

### PART 10 TIME

#### 10.1 TIME OF START AND COMPLETION:

- A. The Contractor shall commence Work within ten (10) days after receipt of the Notice to Proceed. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion in accordance with the requirements of the Contract Documents, and will complete the work within the Contract Period. The Contractor shall provide a Project Schedule as prescribed in Specification 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 its Surety hereby agree that the stated sum per day for each such day of delay shall be deducted and retained out of the moneys which may become due hereunder and if not so deductible, the Contractor and its Surety shall promptly make payment to Owner of the amount due upon receipt of demand therefore.

- 10.2 **CONSTRUCTION MOBILIZATION:** The Contractor's mobilization to perform the Contract Work shall commence at the issuance of a written Notice to Proceed. At a minimum, the construction mobilization phase shall include the submissions set forth below. If the Contractor fails to provide or perform the minimum requirements within the number of Days required from NTP, the Owner may exercise their rights under Part 17 CONTRACTOR'S DEFAULT AND TERMINATION.

<b>Required Due Dates from Notice to Proceed (NTP)</b>		
<b>Item</b>	<b>Contract Requirement</b>	<b># of Days</b>
A.	Schedule of Values as required by Specification 00 7000	7
B.	Certification of Criminal Conviction as required by Specification 00 7000	7
C.	Quality Control Plan as required by Specification 01 4000	14
D.	List of Subcontractors/Final as required by Specification 00 7000	14
E.	Submittal Schedule / Register as required by Specification 01 3300	14
F.	Prescheduling Conference as required by Specification 01 3200	14
G.	Approved Project Schedule as required by Specification 01 3200	28
H.	Waste Management Plan as required by Specification 01 7419	28
I.	Site Logistics Plan as required by Specification 01 4000	21
J.	Egress Plan as required by Specification 01 4000	21
K.	Phasing Plan as required by Specification 01 4000	21

10.2.1. **SUBMISSION OF PROJECT SCHEDULE:**

- A. Submission of a Project Schedule in compliance with the requirements of General Condition 10.2.F and 10.2.G shall be a condition precedent to any entitlement of Contractor to payment of any portion of the Contract Sum, regardless of what Work may be performed.
- B. In the event the Contractor fails to submit a Project Schedule in compliance with the requirements of the Contract Documents, including but not limited to Specification Section 01 3200 and within the time required by Specification Section 01 3200, the Owner or any agent, employee or person or entity under contract with the Owner may at Owner's direction prepare a Project Schedule in compliance with the requirements of Specification Section 01 3200 ("Owner Prepared Project Schedule"). If Owner elects to prepare a Project Schedule as provided herein:
  - 1. The Owner Prepared Project Schedule shall be provided to Contractor as a preliminary baseline for the Contractor's use for resubmission to the Owner's Representative for review and approval within thirty

(30) Days following the date the Contractor's Project Schedule submittal was due.

1. Contractor must within seven (7) Days following issuance of the Owner Prepared Project Schedule submit to the Owner's Representatives any requested changes to the Owner Prepared Project Schedule and/or use the preliminary baseline outline to submit their changes for review and approval. Any changes to the Owner Prepared Project Schedule based upon such input from the Contractor shall be at the sole discretion of the Owner and the Owner's Representatives. If the Contractor does not timely submit any requested changes, the Owner Prepared Schedule shall be deemed accepted by the Contractor as originally issued. If the Contractor timely submits any requested changes, after consultation with the Contractor the Owner's Representatives shall issue the updated Owner Prepared Project Schedule within seven (7) Working Days following the earlier of expiration of the period provided for Contractor comment or receipt of the Contractor comments.
2. The Owner Prepared Project Schedule, inclusive of approved Contractor changes, if any, shall become the Project Schedule for all purposes upon its second issuance and all requirements of the Contract Documents related to the Project Schedule through Final Completion, including but not limited to Project Schedule Updates and Recovery Schedules, shall remain applicable as if the Project Schedule had been prepared by the Contractor. All Project Schedule Updates, time extension requests or delay analyses shall be based upon this Project Schedule as from time to time thereafter modified, and all Contractor Project Schedule Updates shall be to this Project Schedule.
3. Upon approval of this Project Schedule as set forth above, the condition precedent of a Project Schedule for any payment to Contractor shall be deemed satisfied.
4. In the event the Contractor fails to submit a Project Schedule Update in compliance with the requirements of the Contract Documents, including but not limited to Specification Section 01 3200, the Owner or any agent, employee or person or entity under contract with the Owner may at Owner's direction prepare a Project Schedule Update in compliance with the requirements of Specification Section 01 3200 ("Owner Prepared Project Schedule Update"). If Owner elects to prepare a Project Schedule Update as provided herein, the provisions and requirements of this General Condition 10.2.1.B for preparation of an Owner Prepared Project Schedule shall be applicable to an Owner Prepared Project Schedule Update.
5. The decision by the Owner to issue an Owner Prepared Project Schedule or an Owner Prepared Project Schedule Update is at the sole discretion of the Owner. If Owner elects not to issue either an Owner Prepared Project Schedule or an Owner Prepared Project Schedule Update, or both, at any time it has the right to do so as set forth above Contractor acknowledges and agrees that such decision by the Owner shall not be the basis of any claim by Contractor for additional compensation, delay, or any extension of the Contract Time, for any cause of action of any sort against the Owner's Representatives, and shall not in any way relieve Contractor of

- any of its obligations under the Contract Documents.
6. The Contractor shall be responsible to the Owner for all fees and costs incurred by the Owner in the preparation of the Owner Prepared Project Schedule or any Owner Prepared Project Schedule Update. Owner may withhold such amounts from payment otherwise due Contractor, and if such amounts otherwise due Contractor are not sufficient to satisfy this obligation Contractor shall make payment to Owner within thirty (30) days following demand by Owner.
  7. The provisions of this Part 10.2.1 become applicable only in the event the Contractor fails to satisfy its obligation to provide an approvable Project Schedule or a Project Schedule Update. Contractor therefore acknowledges and agrees that issuance of an Owner Prepared Project Schedule or of an Owner Prepared Project Schedule Update by Owner therefore shall not be the basis of any claim by Contractor for additional compensation, delay, or any extension of the Contract Time, for any cause of action of any sort against the Owner's Representatives, and shall not in any way relieve Contractor of any of its obligations under the Contract Documents.

### 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 in the form of a Change Order, 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, Part 10.7, Weather Delays, of these General Conditions. The Notice of claim for delay shall identify itself as a notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection.
  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 seven (7) Days delay from the date of Notice to Proceed to the date of Project Substantial Completion. These seven (7) 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.
- I. The Contractor is referred to Specification Section 01 2600 for additional requirements applicable to a request for extension of the Contract Period or other relief related to asserted delay.

#### 10.4 RECOVERY SCHEDULE:

- A. Should the approved Project Schedule show at any time during Contractor's performance, in the sole opinion of the Owner, that the Contractor is 14 days or more behind schedule for any specific critical path milestone date, or should the Contractor be required to undertake actions under Paragraph 10.7 of this section, the Contractor shall submit a Recovery Schedule to the Owner within five (5) days after receiving a written request from the Owner. The Recovery Schedule shall explain and display how the Contractor intends to reschedule its Work at no additional cost to the Owner, in order to regain compliance with the Project Schedule during the immediate subsequent pay period.
- B. If the Contractor believes that all of the time can be recovered during the subsequent pay period, the Contractor will be permitted to prepare a Recovery Schedule as set forth below. However, if the Contractor believes it will take more than thirty (30) days to recover all of the lost time, it shall prepare and submit a request for revision of the Project Schedule and comply with all of the requirements for a Schedule Revision.
  - 1. The Contractor shall prepare and submit to the Owner a one-month maximum duration Recovery Schedule, incorporating best available information from Subcontractors and others which will permit return to the approved Project Schedule at the earliest possible time. The Contractor shall prepare a Recovery Schedule to the same level of detail as the Project Schedule for a maximum duration of one month. This Recovery Schedule shall be prepared in coordination with other separate Contractors on the Project.



2. Within two (2) days after submission of Recovery Schedule to the Owner, the Contractor shall participate in a conference with the Owner to review and evaluate the Recovery Schedule. Within two (2) days of that conference, the Contractor shall submit the revisions necessitated by the review for the Owner's review and approval. The Contractor shall use the approved Recovery Schedule as his plan for returning to the Project Schedule.
3. Contractor shall confer continuously with the Owner to assess the effectiveness of the Recovery Schedule. As a result of these conferences, the Owner will direct the Contractor as follows: (i) If the Owner determines the Contractor is still behind schedule, the Owner will direct the Contractor to prepare a revised Recovery Schedule and comply with all of the requirements of a Schedule Revision as stated herein and the other requirements of the Contract Documents; provided, however, that nothing herein shall limit in any way the rights and remedies of the Owner as provided elsewhere in the Contract Documents. (ii) If the Owner determines the Contractor has successfully complied with provisions of the Recovery Schedule, the Owner will direct the Contractor to return to the use of the approved Project Schedule.

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

10.6 **CONTRACTOR DELAYS:** The Contractor agrees that 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;
- 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 Part 10.7 as "Inclement Weather" and are more specifically defined below. The Contract Period may be adjusted to account for Inclement Weather, but only if (i) there has been strict compliance by Contractor with all claims submission requirements and other requirements of the Contract Documents related to time extensions; (ii) the delay asserted is shown by the Contractor to be the sole cause of lengthening the longest critical path indicated on the Project Schedule in effect during the period of such alleged delay, and (iii) the following definition of "Inclement Weather" is satisfied:

- A. Inclement Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour period that prevents Work shown on the Construction Schedule as planned for performance at that time which is directly affected by such weather conditions or by impact on access to the Site:
  - 1. Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure.
  - 2. Temperatures that do not rise above that required for the Day's planned Work, if such temperature requirement is specified or accepted as standard industry practice.
  - 3. Sustained wind in excess of twenty-five (25) m.p.h.
- B. Inclement Weather may include, if appropriate, "dry-out" or "mud" days:
  - 1. Resulting from precipitation Days that occur beyond the Monthly Assumed Inclement Weather Days;
  - 2. Only if there is a hindrance to planned Work and the Contractor has taken all reasonable accommodations to avoid such hindrance; and,
  - 3. At a rate no greater than one (1) Day for each Day that has precipitation in the amount of 1.0 inch or more, liquid measure, but if there is precipitation on consecutive Days which totals 1.0 inch or more, liquid measure, only one (1) Day may be included for those consecutive Days.
- C. Monthly Assumed Inclement Weather Days also are herein referred to as the Standard Baseline. The Standard Baseline for purposes of factoring the Monthly Assumed Inclement Weather Days into the Project Schedule is four calendar days per month. Standard Baseline Inclement Weather is included in the Work, is to be included in the Project Schedule, and shall not form any basis for an extension of Contract Time. The Standard Baseline is not

cumulative. Any portion of the Standard Baseline not applied to an Inclement Weather delay approved by APS in any month shall not be carried forward to any subsequent month.

- D. In accordance with Paragraph 10.3 above, as a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:
1. Notify the Owner's Representative, the Owner's Project Manager, and the 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 initial Contract Sum, which may be adjusted from time to time for Extra Work approved under Paragraph 9.2 hereof, the aggregate of which is the adjusted Contract Sum, less credit for any work omitted pursuant to Paragraph 9.3 hereof, and less any other credits or offsets, including reimbursements or liquidated damages to which the Owner is entitled.
- B.     The amount awarded as a unit price for any unit price Contract item shall represent payment in full, including overhead and profit, for all material, equipment and labor necessary to complete, in conformity with the Contract Documents, each unit or item of work shown, specified, or required under the said unit price Contract item.
- C.     No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract item or a unit price Contract item unless specific provision is made therefore in the Contract Documents.

**11.2    SUBMISSION OF SCHEDULE OF VALUES:** Contractor shall organize and provide detail on the Schedule of Values in a manner acceptable to the Owner and as set forth in the Division 01 Specifications. The Schedule of Values, once accepted by the Owner's Representative, may be used for verifying the Contractor's applications for partial payments hereunder but no payment approval shall be any confirmation that the Schedule of Values accurately reflects the progress of the Work nor acceptance of the Work, and shall not be binding upon the Owner for any other purpose whatsoever.

### **11.3    APPLICATION FOR PAYMENT:**

- A.     The Contractor must submit applications for payment using AIA Document G702 - Application and Certificate for Payment and AIA Document G703 Continuation Sheets. Affidavits from each Subcontractor verifying receipt of payments of amounts billed in the previous payment request must accompany each application for payment. Failure to submit all affidavits will delay payment.
- B.     Upon the request of the Owner's Representative, as a condition precedent to payment pursuant to the terms of this Contract, the Contractor shall give the Owner a statement that no employee of the Owner has received or has been promised, directly or indirectly, any financial benefit, by way of a fee, commission, finder's fee or in any other manner, remuneration arising from or directly or indirectly related to this Contract. All parties agree that the Owner shall have the right, in its sole and absolute discretion, to withhold payment to the extent of any such fee or commission. The Contractor shall not be entitled to interest and shall not have any claim on account of any payments being withheld under this paragraph.

### **11.4    PARTIAL PAYMENTS:**

- A.     On or about the first of each month, the Contractor shall make and certify an estimate of the amount and fair value of the Work performed 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 (Architect), shows that the value of the Work approved for payment during the previous month exceeds \$1,000.00, the Owner's Representative (Architect) will certify the Contractor's Application and Certificate for Payment for such Work. Such Application and Certificate for Payment as approved by the Owner's Representative will authorize payment by the Owner in an amount equal to the value of the Work 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 the Specifications and the Use Permit; and
  - 3. A revised Project Schedule as required by Contract Specification 01 3200.
- D. Within thirty (30) days after receipt of each approved Application and Certificate for Payment, the Owner shall pay the Contractor in accordance with the applicable Certificate and the Contract Documents.
- E. Unless otherwise provided herein, no payment will be made for any materials or equipment supplied hereunder before they are:
  - 1. Incorporated in the Work in a permanent manner required by the Contract Documents,
  - 2. Properly stored at the site of the Project, or
  - 3. Properly insured and stored in a bonded warehouse to the satisfaction of the Owner.
- F. The cost of equipment and non-perishables delivered and stored only at the Project Site and tested for adequacy may be included in the Contractor's Application and Certificate for Payment; provided, however, that the Contractor shall furnish written evidence satisfactory to the Owner that the Contractor has clear title to such materials or equipment at the time of payment therefore by the Owner and that such equipment is being stored and maintained in accordance with the Contract Documents and the Drawing's recommendations. The amount to be paid by the Owner for such equipment and non-perishables will be 100 percent (100%) of the invoice cost to the Contractor as supported by receipted bills, less the specified retainage. Such payment shall not relieve the Contractor of full responsibility for completion

of the Work and for protection of materials and equipment until incorporated in the Work in a permanent manner as required by the Contract Documents.

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 properly withheld in accordance with this Contract. If Contractor does order Work stopped, or if the Work is stopped in whole or in

part as a result thereof, the Contractor shall be wholly liable for any damages from delay, or otherwise, which may arise because of such stoppage.

#### 11.6 SUBSTANTIAL COMPLETION:

A. **WRITTEN NOTIFICATION:** When the Contractor considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor shall provide the Owner and the Owner's Representatives Notice of such fact accompanied by a complete list of Contract Work items remaining to be corrected or completed (Contractor's Punch List) and as set forth in Section 01 7700.

#### B. PUNCH LISTS:

1. Within fourteen (14) Days following receipt of the Contractor's Notice of Substantial Completion (including the required Contractor's Punch List, as set forth in Paragraph 11.6.A), the Owner's Representative (Architect) shall conduct an inspection of the Work. If the Owner's Representative (Architect) determines that the Work has not progressed sufficiently to be ready for Substantial Completion inspection, the Owner's Representative (Architect) will provide to Contractor the Contractor's Punch List identifying Work listed thereon either incorrectly designated for Final Completion, or general descriptions of Work not included in the Contractor's Punch List which is not Substantially Complete (Annotated Contractor's Punch List). The Annotated Contractor's Punch List shall be provided to Contractor within fourteen (14) Days following receipt of Contractor's Notice of Substantial Completion and the required Contractor's Punch List. This process shall be repeated as many times as necessary to progress the Work to the stage of issuance of the Consolidated Punch List as described below, but for each additional inspection and Annotated Contractor's Punch List the Contractor shall pay the Owner all fees and costs incurred by Owner to the Owner's Representatives (Architect and Construction Manager) and other third-party consultants for any additional inspections and for preparing and for issuing such Annotated Contractor's Punch List.
2. At such time as the Work has in the opinion of the Owner's Representative (Architect) progressed to a stage to be ready for Substantial Completion inspection, the Owner's Representative (Architect) shall compile a comprehensive list of deficiencies and incomplete Work (Architect's Punch List). The Owner's Representative (Architect) shall then issue a Consolidated Punch List incorporating the Contractor's and the Architect's Punch Lists into a single list in a uniform format identifying all Work required to be corrected or completed for Substantial Completion and thereafter for Final Completion ("Consolidated Punch List"). Work required for Substantial Completion and Work required for Final Completion shall be itemized and so designated
3. Except with the consent of the Owner, the Owner's Representatives (Architect and Construction Manager) shall perform no more than two Substantial Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Substantial Completion inspections be required, the Contractor

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

4. Owner Occupancy:

- a. The Owner may take occupancy or commence use of any aspect of the Work prior to the date required for Substantial Completion of that portion of the Work. Such occupancy or use shall not be deemed to mean Substantial Completion. Substantial Completion does not occur until all requirements for Substantial Completion set forth in the Contract Documents are satisfied. In the event the Owner takes such occupancy or commences such use, the Contractor shall notify the Owner in a timely manner when access to such occupied or in use space or facilities is required, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof by the Owner. Until the date required for Substantial Completion of any portion of the Work occupied or used by Owner, any impact upon the Contract Period or the Contract Sum arising from such occupancy or use shall be governed by the claims submittal procedures and requirements of the Contract Documents.
- b. If the Work is not complete by the date required for Substantial Completion, the Owner may take or continue occupancy or commence or continue use of any aspect of the Work. Such occupancy or use shall not be deemed to mean Substantial Completion. Substantial Completion does not occur until all requirements for Substantial Completion set forth in the Contract Documents are satisfied. In the event the Owner takes or continues such occupancy or takes or continues such use, if the Contractor requires access to the occupied or in use space or facility while such occupancy or use continues prior to achieving Substantial Completion, the Contractor shall notify the Owner in a timely manner, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof by the Owner. The Contractor (i) shall be responsible at its own cost and effort for the temporary removal or relocation of furniture or other items and furnishings put in place by the Owner; (ii) shall at its own cost and effort, protect any and all furniture or other items that will not be moved and (iii) shall timely reinstall all Owners furnishings and furniture or other items within the affected spaces to their original location and condition. Contractor shall be responsible for any damage done to the Work in place, to the furniture or to other items in such event, and shall not be entitled to any claim for additional cost or additional Contract Time for such removal, protection, reinstallation or repair.
- c. If the Owner takes or continues occupancy or commences or continues use of any aspect of the Work after the date the Owner issues the Certificate of Substantial Completion, and the Contractor requires access to the occupied or in use space or facility while such occupancy or use continues prior to achieving Final Completion, the Contractor shall notify the Owner in a timely manner, obtain Owner's approval to, and coordinate access to, the spaces or facilities without disrupting the use thereof by the Owner. The Contractor shall be responsible at its own cost and effort for the temporary removal or relocation of furniture or other items and furnishings put in place by the Owner, the Contractor shall its own cost and effort, protect any and all furniture or other items that will not be moved and timely reinstall all Owners furnishings and furniture or other items within the affected spaces to their original



location and condition. Contractor shall be responsible for any damage done to the Work in place, to the furniture or to other items in such event, and shall not be entitled to any claim for additional cost or additional Contract Time for such removal, protection, reinstallation or repair.

- d. If the Contractor fails for any reason to move or reinstall the furniture or other items in compliance with any Owner approval and coordination terms permitting such Contractor access or fails to correct any damage done to the Work or to the furniture or other items and the Owner self-performs any movement, reinstallation or repair, all associated costs for time, material and labor plus an administrative fee of 10% shall be paid to Owner by Contractor.

C. **SUBSTANTIAL COMPLETION CERTIFICATION:** When the Contractor considers that the Work, or such portion or Phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor shall submit to the Owner and the Owner's Representative (Architect) a written request for an inspection of the Work, the Contractor's Punch List, and a Certificate of Substantial Completion. Sufficient notice shall be given to allow the Owner and Owner's Representatives to schedule the inspection. Prior to requesting Owner's and Owner's Representatives' inspection for Certification of Substantial Completion, 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 changes to the Contract Sum which are not barred by the claims submission procedures of the Contract Documents.
- c. Advise Owner of pending insurance changeover requirements pursuant to Section 17 of these General Conditions.
- 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 all Sections of the Project Manual. The certifications shall be signed by the Contractor and by the parties conducting the test.

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

- h. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.
  - i. 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.
  - j. Complete all commissioning and acceptance tests.
  - k. Complete instruction for Owner's operating/maintenance personnel for all equipment and machinery installed under the Contract Work as specified by the Owner.
  - l. Discontinue (or change over) and remove from Project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
  - m. Complete Final Cleaning and Repair of the Work as specified in Specifications Division 1 Section, "Closeout Procedures".
  - o. Touch up and otherwise repair and restore marred exposed finishes.
  - p. Warranties shall become effective, once Owner and Owner's Representative determine that the Contractor has achieved Substantial Completion and execute the Certificate of Substantial Completion.
  - q. If the Owner partially occupies the Project Site, this shall not indicate acceptance of Substantial Completion or activation of warranties.
  - r. The Contractor shall provide extended warranties with all Warranties beginning upon acceptance and fully executed Certificate of Substantial Completion.
- D. Upon receipt of Contractor's request, the Owner and Owner's Representative will either proceed with inspection or advise the Contractor of pre-requisites not fulfilled as provided in Sections 11.6.A and 11.6.B of these General Conditions. Following inspection, the Owner and Owner's Representative will either prepare the Certificate of Substantial Completion, or advise the Contractor of Work, or additional Work, which must be performed prior to issuance of the Certificate of Substantial Completion. Should the Owner and/or Owner's Representative determine that the Work is not Substantially Complete, notification in writing will be given to the Contractor stating the reasons therefore. Contractor shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative (Architect) a second written notice of Substantial Completion. The Owner and Owner's Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the 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 Substantial Completion is issued.

- E. When the Owner and Owner's Representative concur that the Work is Substantially Complete, the Owner's Representative shall:
1. Prepare a Certificate of Substantial Completion on AIA Form G704 accompanied by Contractor's list of items to be completed or corrected to achieve Final Completion, as verified and amended by the Owner's Representative
  2. Submit the Certificate of Substantial Completion to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in the Certificate.
  3. Notify the Contractor to submit Final As-Built 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.

#### 11.7 FINAL COMPLETION:

- A. Following issuance of the Consolidated Punch List and to achieve Final Completion, unless otherwise specified in the Contract Documents the Contractor shall complete all Work items required for Final Completion as designated on the Consolidated Punch List within forty-two (42) Days from the date the Owner signs the Certificate of Substantial Completion. If the Work for which Final Completion is requested is not Finally Complete within the required period, it is understood and agreed by all parties that the Contractor shall become liable to the Owner for Liquidated Damages as established by the Contract, which shall continue in effect until the applicable Final Completion has been achieved.
- 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, a Final Completion Punch List will be issued to Contractor. Contractor may request a second inspection when Contractor deems the Final Completion Punch List to have been completed. If the Certificate of Final Completion is not issued following the second inspection, the 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 forty-five (45) 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 two 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 thirty (30) days after receipt of the approved Final Application and Certificate for Payment, pay the Contractor the amount stated therein.
- E. Should the Contractor fail to complete or correct any item on the Consolidated Punch List by the required Final 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. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents. Any action taken by the Owner to complete or correct any item the Contractor has failed to complete or correct as above shall have no impact on the Contractor's Warranty obligations.

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

- A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the Contractor shall, within three (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 Condition 15.3.
- 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.

#### 11.9 EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE

**COVERAGE:** Neither final payment nor any retainage shall become due until the Contractor

submits to the Owner's Representative (i) an affidavit that payrolls, bills for materials and equipment, and all other indebtedness in connection with the Work for which any third party claim against the Owner might be asserted have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force following final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days' prior written notice has been provided to the Owner; (iii) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of the Surety to final payment; and (v) all fully executed and effectual warranties and guaranties associated with the Work, (vi) if required by the Owner, other data establishing the payment or satisfaction of obligations (such receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract) and such guaranties and indemnities all in such form and detail as may be required by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner, in its sole and absolute discretion, sufficient to indemnify the Owner against any claim or lien. If any such claim or lien remains unsatisfied after payments are made, the Contractor shall pay to the Owner all money that the Owner may be compelled to pay in discharging such claim or lien, including all costs associated therewith, including reasonable attorneys' fees. Provided, however, that nothing herein shall be deemed a waiver by the Owner of its sovereign immunity from mechanic's liens.

- 11.10 **CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT:** The Contractor's acceptance of final payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment 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.
- 11.11 **RELEASE AND REQUEST FOR FINAL PAYMENT:** Upon completion of the Work and before final payment, the Contractor will submit to the Arlington Public Schools a signed copy of the Arlington Public School Release and Request for Final Payment form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

PROJECT NAME: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

FINAL PAYMENT AMOUNT: \_\_\_\_\_

TOTAL PAYMENT AMOUNT: \_\_\_\_\_

FINAL CONTRACT AMOUNT: \_\_\_\_\_

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

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

\_\_\_\_\_

AUTHORIZED SIGNATURE

\_\_\_\_\_

DATE

## PART 12 PROTECTION OF PERSONS AND PROPERTY

- 12.1 **CONTRACTOR'S RESPONSIBILITY FOR SAFETY PROCEDURES:** The Contractor shall select one or more on-site personnel who shall be responsible for instituting, maintaining and supervising prudent safety procedures, as well as for complying with all safety laws, regulations, ordinances and other directives of school or jurisdictional authorities in order to prevent injury, damage or loss to:
- A. All persons involved in performance of the Work.
  - B. All APS students, teachers, administrative personnel and employees, the public, and other persons in proximity to, or otherwise affected by the Work.
  - C. The Work, materials and equipment to be incorporated therein, whether in storage on or off the Site.
  - D. Property at the Project Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.
- 12.2 **SAFETY BARRIERS AND HAZARD WARNINGS:** The Contractor shall be responsible for erecting and maintaining barricades, construction fences, cordons, or other physical safeguards necessary for protection of persons and property, as well as for posting danger signs and other warnings against hazards and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for promulgating, instituting and maintaining the safety standards outlined in the Specifications.
- 12.3 **USE OF EXPLOSIVES:** The Contractor's use of explosives on the Owner's property shall be limited to that necessary for the performance of the Work, and will be permitted only after submission of a written request by the Contractor to the Owner, and receipt of written approval from the Owner. The Owner may in its sole discretion deny such request if the use of explosives is not called for by the Specifications. The Owner may in its sole discretion as a condition of granting any approval for the use of explosives set specific times when the explosives may be used, including outside normal working hours and the Contractor shall comply with such time restrictions without additional cost to the Owner. The use of all explosives by the Contractor shall be carried out by qualified personnel in accordance with applicable safety laws and regulations.
- 12.4 **PROTECTION OF PROPERTY AND PROPERTY DAMAGE:** During performance of the Work and until Final Completion thereof, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The Contractor shall take proper precautions to protect the finished Work from loss or damage, pending completion and Final Completion of all Work included in the Contract. Such precautions shall not relieve the Contractor from all liability and responsibility for loss or damage to the Work occurring before Final Completion. Such loss or damage shall be at the risk of and borne by the Contractor, whether arising from acts or omissions of the Contractor or others and whether or not covered by the Contractor's builder's risk insurance. In the event of any such loss or damage, the Contractor shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise specified in the Contract Documents. The Contractor shall take special precautions throughout all its operations to guard against fire and shall limit the amount of inflammable materials stored at the Project Site to the minimum amount necessary to perform the Work and consistent with the proper handling and storing of such materials.

- 12.5 **ACCIDENT PREVENTION SUPERVISOR:** The Contractor shall select one or more on-site personnel whose duty shall be site safety and accident prevention. One such person shall be the Contractor's Superintendent, or another key personnel member of its on-site project management team unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.
- 12.6 **OVERLOADING OF STRUCTURES:** The Contractor shall not load or permit any part of the Project Site, whether or not a part of the Work, to be loaded so as to endanger its safety or structural integrity.

## PART 13 INSURANCE

### 13. 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 School Board, including elected and appointed officials, agents, and employees as additional insureds by endorsement for all insurance policies except Workers Compensation and Professional 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 School Board, including elected and appointed officials, agents, and employees as additional insureds for all contracts of insurance except Workers Compensation and Professional Liability coverage.
- 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 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.

<b>Type of Insurance</b>	<b>Limit Per Occurrence</b>	<b>Aggregate Limit</b>
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.

<b>Type of Insurance</b>	<b>Limit Per Occurrence</b>	<b>Aggregate Limit</b>
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 required 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.

<b>Type of Insurance</b>	<b>Limit Per Occurrence</b>	<b>Aggregate Limit</b>
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.

<b>Type of Insurance</b>	<b>Limit Per Occurrence</b>	<b>Aggregate Limit</b>
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.**

<b>Type of Insurance</b>	<b>Limit Per Occurrence</b>	<b>Aggregate Limit</b>
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 14 CONTRACT SECURITY

### 14.1 CONTRACT SECURITY:

- A. The Contractor shall execute and deliver to the Owner Performance and Labor and Material Payment Bonds on the forms provided in the Contract Documents, each in an amount equal to the Contract Sum. The Performance and Labor and Material Payment Bonds shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. These bonds shall be issued and countersigned by a local authorized representative of such surety company who maintains a regular 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 Bonds shall provide that the penal sum automatically increases with any increase in the Contract Sum.
- B. If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such bonds shall cease to be adequate security for the Contractor's performance secured thereby, the Contractor shall within ten (10) days after 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 Contractor shall not be entitled to any additional compensation for the costs associated with any such replacement Bonds. No further partial payments shall be deemed due nor shall be made until the new Bonds are in effect and provided to and approved by Owner.
- C. Alternative Forms of Security: Any Bid Bond, Payment Bond, or Performance Bond required under the Contract Documents may be provided in the form of a certified check, cashier's check, or cash escrow in the face amount required for the Bond and conditioned as required for a surety bond. Any Bid Bond, Payment Bond or Performance Bond required under the Contract Documents may be in the form of a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bond, but only if approved by the Arlington Public Schools Attorney. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Arlington Public Schools equivalent to a corporate surety's bond. The determination of the Arlington Public Schools Attorney shall not be subject to challenge.

## PART 15 UNCOVERING AND CORRECTION OF WORK

### 15.1 UNCOVERING OF WORK:

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

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

#### 15.2 CORRECTION OF WORK:

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

#### 15.3 ACCEPTANCE OF DEFECTIVEWORK:

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 of approval of the performance requirements of the Contract Documents.

### PART 16 POWERS OF THE PROCUREMENT AGENT

#### 16.1 **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 modify or change this Contract in accordance with the Contract Documents so as to require the performance of Extra Work, or the omission of Contract Work or both, or to modify the time required for performance of the Work, 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 Project Manager, 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, the Owner's Project Manager, for those matters at Part 15.1.A through 15.1.D, but only to the extent the Contractor has been given written notice by the Procurement Agent of such delegation.

## **PART 17 CONTRACTOR'S DEFAULT AND TERMINATION**

### **17.1 OWNER'S RIGHT AND NOTICE:**

#### **A. The parties agree that:**

1. If the Contractor fails to begin the Work when required to do so; or
2. If, at any time during the progress of the Work, the Owner determines that the Contractor is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or
3. If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or
4. If the Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or
5. If the Contractor fails in any manner of substance to observe the provisions of this Contract; or
6. If any of the Work, machinery, or equipment is defective and is not replaced as herein provided;

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

#### **B. The parties further agree that:**

1. If legal proceedings have been instituted by others than the Owner in such manner as to interfere with the progress of the Work and to potentially subject the Owner to the peril of litigation or outside claims; or
2. If the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or

3. If in any proceeding instituted by or against the Contractor, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or
4. If a receiver or trustee is appointed for the Contractor or the Contractor's property; or
5. If the Contract or any part hereof is sublet without the prior written consent of the Owner; or
6. If the Contract or any rights, moneys, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or
7. If the Work to be done under this Contract is abandoned;

then such fact or condition shall be certified by the Owner's Representative (Architect) to the Owner and thereupon, without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written notice to the Contractor or, in the Owner's sole discretion, exercise any other rights available to it.

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

17.3 **COMPLETION OF WORK AFTER DEFAULT:**

- A. If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of Notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:
  1. Have the defaulted Work performed by others;
  2. Supplement the Contractor's work force;
  3. Withhold payments due the Contractor and use such payments to satisfy any claims for moneys owed by the Contractor in connection with the Project, in accordance with any provisions of the Contract Documents;
  4. Replace or repair any Defective Work;
  5. Notify the Surety of such default and make demand upon the Surety as may be applicable under the circumstances of the default, but Owner shall be under no obligation to notify the Surety;
  6. Terminate the Contractor's performance of the Contract.



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

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

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

17.6 **OWNER'S RIGHT TO TERMINATE:** Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%; or (2) the pro rata percentage of completion based upon the approved Schedule of Values, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the Contractor and the Owner. The Contractor shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Paragraph. The Owner shall have the right of audit (and Contractor shall have the obligations) stated in Paragraph 9.5, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Paragraph 17.6.

## 18 MISCELLANEOUS SPECIAL CONDITIONS

18.1 **LAYING OUT WORK:** The Contractor shall, upon entering the Project Site for the purpose of commencing the Work, locate all general reference points and take all such action as is necessary to prevent their destruction; lay out the Work, except where otherwise required by Contract Documents,

and be responsible for all lines, elevations, measurements of buildings, grading, paving, utilities and other Work executed under the Contract. If benchmarks or other general reference points necessary for layout of the Work supplied by the Owner are impaired or destroyed by the Contractor, the Contractor shall be responsible at its cost to re-establish such 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.

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

- A. On-site and off-site improvements shall conform to Arlington County Design and Construction Standards.
- B. The Contractor shall notify the Owner's Representative three (3) days prior to the beginning of all street or storm sewer Work.
- C. All Work shall be staked out by a certified surveyor and cut sheets shall be submitted to the Arlington County Department of Environmental Services with a copy to the Owner's Representative before commencing such Work.
- D. The Contractor shall perform the Work in such a manner as to control surface flow of water to minimize its impact upon the Work or adjacent properties, in accordance with all State of Virginia and Arlington County regulations and to prevent the washing of any soil, silt or debris onto adjacent properties. The Contractor shall be held responsible for any damage resulting from its failure to control surface flow or to prevent the washing of such materials upon adjacent properties for a period of one year after Final Completion of the completed Work.

**18.3 PARTIAL USE OR OCCUPANCY:**

- A. The Contractor shall permit the Owner to use and occupy any defined portion or unit of the Project prior to Substantial Completion of the portion of the Project of which it is a part.
- B. The Owner's use and occupancy shall not constitute Substantial Completion or Final Completion of the Work and shall in no event relieve the Contractor of its obligation to maintain the insurance coverage described in Paragraph 13.D hereof.

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

**End of Terms and Conditions**