

SECTION 00 5200**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT, made and entered into this 28th day of June, 2017; between Arlington Public Schools through its Purchasing Agent, (the "Owner") and Adrian L. Merton, Inc. (the "Contractor"), whose address is 9011 East Hampton Drive, Capitol Height, MD 20743.

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

1. The Project:

The Project consists of the collective improvements, renovations, or repairs to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders on as yet undesignated locations owned or controlled by Arlington Public Schools in Arlington County, Virginia. The work of this Contract will be set forth in the Detailed Scope of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

2. The Contract Documents:

The Contract Documents and the order of precedence thereof are as follows which are listed in order of precedence in the event of any conflict:

1. The Agreement between Owner and Contractor
2. The General Conditions
3. The JOC Supplemental Conditions
4. For the requirements and obligations applicable to any particular Job Order, the Job Order, the Detailed Scope of Work, the Job Order Proposal, any Supplemental Job Orders, and documentation incorporated in each of the foregoing.
5. The Drawings applicable to the particular Job Order. Within the Drawings, stated dimensions shall take precedence over scaled dimensions.
6. The Technical Specifications
7. The Construction Task Catalog (Mechanical)
8. The Notice to Proceed
9. The Bid Documents, with the latest Addendum having precedence.
10. Change Orders shall have precedence over all previous versions of the Contract Document or Contract Documents modified by the Change Order.
11. 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.

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

The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, he shall immediately, in writing, call it to the attention of Owner before proceeding with the Work affected thereby. The Owner 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 Detailed Scope of Work, 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 or is otherwise provided.

4. Design And Management Team:

If required for a Project, the design and management team will be identified in the Job Order.

5. Contract Period:

- A. The Base Term of the Contract is one year.
- B. There are two (2) Option Terms which may be exercised at the sole discretion of the Owner. The duration of each Option Term is one year. The Owner may give notice of exercise of the Option at any time prior to expiration of the Base Term or the then existing Option Term.
- C. No Job Order may exceed \$500,000, including any Supplemental Job Order issued thereunder or any Change Order related thereto. The cumulative Job Order Prices of all Job Orders issued to a Contractor shall not exceed \$5,000,000 within any Contract Term. If the cumulative Job Order Prices of the Job Orders awarded to a Contractor in a Contract Term reaches \$5,000,000, no further Job Orders may be issued to that Contractor until the expiration of that Contract Term. Any additional Job Orders issued to that Contractor would be under an Option Term if such option is exercised by Owner.
- D. No unused amount from the Base Term or any Option Term may be carried forward to any subsequent Contract Term. Provided, however, if the Work under any Job Order is not completed at the end of the Term in which it was issued, the Work under such Job Order may be completed after the expiration of the Contract Term in which it was issued and the Contractor shall be entitled to payment based on the per/Term limits of the Contract Term in which the Job Order was issued.

- E. No Supplemental Job Order may be issued the effect of which would be to exceed the per/Term limits set forth herein had the Supplemental Job Order been issued during the same Term as the Job Order was issued.
- F. All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed and payments may be made after the Contract Term in which the Job Order was issued has expired. All terms and conditions of the Contract apply to each Job Order and remain in effect until all Work under the Job Order is complete.

6. Liquidated Damages:

The Owner and the Contractor recognize that the applicability of Liquidated Damages to any particular Job Order will be addressed at the time the Job Order is issued.

7. Contract Sum:

The Contract is an indefinite-quantity contract for mechanical work and services. The Contract has an initial one year Base Term, with options to be exercised in the sole discretion of the Owner to renew the Contract for no more than two (2) additional one year terms. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is \$25,000 in the Base Term. The Estimated Annual Value is \$2,000,000 per Contract Term, but there is no guarantee of that amount or any other amount in excess of \$25,000 in the Base Term. The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. However, the Contract Sum is limited to cumulative total Job Order Prices of \$5,000,000 in any Contract Term, including all amendments or modifications. No Job Order issued in any Contract Term may exceed \$500,000, including any Supplemental Job Order issued thereunder or any Change Order related thereto. If the cumulative Job Order Prices of the Job Orders issued to the Contractor in a Contract Term reaches \$5,000,000, no further Job Orders may be issued to the Contractor until the expiration of the then existing Contract Term. Any additional Job Orders issued to that Contractor would be under a subsequent Option Term if such option is exercised by Owner. If the provisions of the Virginia Public Procurement Act establishing these limits per Contract Term are amended during the any term of this Contract to increase these limits, the parties may enter into a Change Order to incorporate the new limits per Contract Term, to the extent authorized by the amended statute and at the sole discretion of the Owner. The Contractor is not guaranteed to receive the Estimated Annual Value or the per Contract Term limit of Job Orders. These are merely an estimate and maximum limits. The Owner has no obligation to give the Contractor the opportunity to perform Job Orders in excess of the Minimum Contract Value.

The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® (Mechanical) and the following Adjustment Factors:

Normal Working Hours Adjustment Factor 7:00 am to 4:00 pm Monday to Friday, except for Owner Holidays:

1.0593.

Other Than Normal Working Hours Adjustment Factor 4:01 pm to 6:59 am Monday to Friday, and all day Saturday, Sunday and Owner Holidays:

1.0610.

Non Pre-priced Adjustment Factor:

1.1100.

8. Payment Procedures:

a. The Owner will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Owner may make partial, monthly payments based on a percentage of the Work completed.

b. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.

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

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

9. Interest:

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

10. No Assignments:

No assignment by either party hereto of any rights 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.

11. Governing Law:

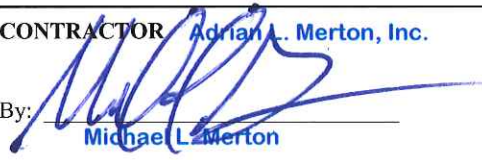
This Agreement and each of the Contract Documents shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of laws principles. This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth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

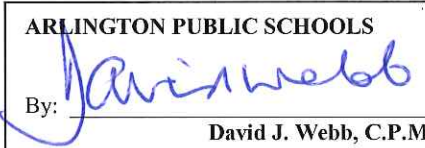
regulations.

12. Binding Agreement:

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

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

CONTRACTOR Adrian L. Merton, Inc.
By: 
Michael L. Merton
Title: President
June 26, 2017
Dated

ARLINGTON PUBLIC SCHOOLS
By: 
David J. Webb, C.P.M.
Title: Director of Purchasing
June 28, 2017
Dated

END OF SECTION

SECTION 007000 - GENERAL CONDITIONS**PART 1 DEFINITIONS**

- 1.1. ACCEPTANCE OF BID:** Owner has determined that the Bid is acceptable and has issued either a notice of intent to award or a notice of award. Contractor should proceed with bond requirements.
- 1.2. ADJUSTMENT FACTOR:** a competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog® (Mechanical).
- 1.3. BASE TERM:** The initial term of the Contract is one year and does not include any Option Terms.
- 1.4. CHANGE ORDER:** A written order to the Contractor, signed by the Owner or the Owner's Representative, which modifies the Contract. A **Unilateral Change Order** is a Change Order signed only by the Owner or the Owner's Representative. A **Mutual Change Order** is a Change Order signed by both the Owner or the Owner's Representative and by the Contractor reflecting agreement on all terms, conditions and requirements set forth therein. A Unilateral Change Order may be converted to a Mutual Change Order upon agreement being reached between the parties. Change Orders shall be initiated and processed as set forth in Article 9 of these General Conditions. The latest edition of the AIA Standard Form G701 shall be utilized and shall be provided by the Owner or the Owner's Representative. A Job Order is not a Change Order. Modifications to a Job Order are made by Supplemental Job Orders.
- 1.5. CONSTRUCTION TASK CATALOG® (MECHANICAL):** A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.6. CONTRACT:** The signed Agreement between Owner and Contractor is the Contract. A Job Order sets forth the scope of work and any additional terms applicable to the particular project identified therein and becomes a part of 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 Construction Task Catalog® (Mechanical) and Technical Specifications,
 - D. All Job Orders and Related Documentation, including, but not limited to the Detailed Scope of Work, Job Order Proposals, and any Supplemental Job Orders,
 - E. Bid Documents and Addenda,
 - F. The Notice to Proceed issued by the Owner to the Contractor,
 - G. Change Orders

- H. In case of a conflict between the Contract Documents, the following shall be the order of precedence, with any Modification having precedence over preceding provisions:
1. The Agreement between Owner and Contractor
 2. The General Conditions
 3. For the requirements and obligations applicable to any particular Job Order, the Job Order, the Detailed Scope of Work, the Job Order Proposal, any Supplemental Job Orders, and documentation incorporated in each of the foregoing.
 4. The Drawings applicable to the particular Job Order. Within the Drawings, stated dimensions shall take precedence over scaled dimensions.
 5. The Technical Specifications
 6. Construction Task Catalog (Mechanical)
 7. The Notice to Proceed
 8. The Bid Documents, with the latest Addendum having precedence.
 9. Change Orders shall have precedence over all previous versions of the Contract Document or Contract Documents modified by the Change Order.
 10. 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.
- 1.8. CONTRACT PERIOD:** The period allotted in a Job Order for Substantial Completion, and thereafter Final Completion, of the Scope of Work set forth in the Job Order, 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**” or “**Job Order Completion Time**” in the Contract Documents. All such terms have the same meaning.
- 1.9. CONTRACT SUM:** The total amount payable to the Contractor for performance of the Work required for the performance of any Job Order. The Contract Sum is stated in the Job Order and shall include any adjustments granted in accordance with the provisions of the Contract Documents. Contract Sum may also be referred to as “**Job Order Price**” in the Contract Documents. Both terms have the same meaning.
- 1.10. CONTRACT TERM:** The initial Contract Term is the one year Base Term. Each Option Term, if exercised, is an additional Contract Term. Each Contract Term is for a period of one year. However, if Job Orders totaling \$5,000,000 have been issued to the Contractor prior to expiration of a Contract Term, there may be no further Job Orders or Supplemental Job Orders which affect price issued to the Contractor in that Contract Term.
- 1.11. CONTRACTOR:** The individual, firm or organization which contracts with the Owner to perform the Work. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.
- 1.12. DATE OF FINAL COMPLETION:** or **FINAL COMPLETION DATE:** The date certified by the Owner or 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 Detailed Scope of Work and Contract Documents, which date shall occur within thirty (30) calendar days after the Date of Substantial Completion of all Work, or a Phase of the Work, unless otherwise specified in the Job Order.
- 1.13. DATE OF SUBSTANTIAL COMPLETION:** or **SUBSTANTIAL COMPLETION DATE:** The date certified by the Owner or by the Owner's Representative as the date upon which Substantial

Completion of the Work, or a Phase of the Work, has been completed pursuant to the requirements of the Contract Documents. See definition of "Substantial Completion."

- 1.14. DAY:** The term "day" or "Day" shall mean "calendar day"; unless otherwise noted. When any provision in the Contract Document 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 business day thereafter.
- 1.15. DETAILED SCOPE OF WORK:** A document setting forth the Work the Contractor is obligated to complete for a particular Job Order.
- 1.16. ESTIMATED ANNUAL VALUE:** An estimate of the total value of Job Orders which might be issued to the Contractor in a Contract Term.
- 1.17. ESTIMATED CONTRACT VALUE:** The estimated value of Job Orders that the Contractor may receive under this Contract; the Estimated Contract Value is not a guarantee of any sort.
- 1.18. FINAL COMPLETION:** "Final Completion" or the state of being "Finally Complete" shall mean total completion of all Work required by or reasonably contemplated by the Contract Documents under a Job Order. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Final Completion is established. More specific requirements for Final Completion as to the Work or a defined portion thereof may be set forth in the Job Order.
- 1.19. GENDER AND PLURAL:** Whenever the Contract so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.
- 1.20. HOLIDAY:** Holidays recognized by the Owner which shall not be considered Normal Working Hours are as follows: New Year's Eve Day, New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the following Friday, Christmas Eve Day, and Christmas Day. Actual dates should be based on the most current Arlington Public Schools calendar.
- 1.21. JOB ORDER:** The document issued by the Owner to the Contractor setting forth the Detailed Scope of Work, the Job Order Completion Time, and the Job Order Price. A Project may include more than one Job Order, and Supplemental Job Orders.
- 1.22. JOB ORDER COMPLETION TIME:** See Contract Period.
- 1.23. JOB ORDER PRICE:** See Contract Sum.
- 1.24. JOB ORDER PRICE PROPOSAL:** A price proposal prepared by the Contractor in response to a Job Order Proposal Request presenting the Contractor's proposed Pre-priced Tasks, Non-Pre-priced Tasks, quantities and applicable Adjustment Factors to complete the Detailed Scope of Work.
- 1.25. JOB ORDER PROPOSAL:** A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors; (d) Construction Schedule; and (d) other information or documents requested by the Job Order Proposal Request.

- 1.26. JOB ORDER PROPOSAL REQUEST:** A written request issued by the Owner to the Contractor to prepare a Job Order Price Proposal for the Detailed Scope of Work referenced in the Job Order Proposal Request.
- 1.27. JOINT SCOPE MEETING:** A meeting between the Owner and the Contractor to discuss the proposed Work before the Detailed Scope of Work is finalized.
- 1.28. MINIMUM CONTRACT VALUE:** The minimum value of the job orders the Contractor is guaranteed the opportunity to perform under this Contract.
- 1.29. MODIFICATION:** Any written change to any provision of the Contract Documents, whether by Work Order, Change Order or other means provided by the Contract Documents.
- 1.30. NON-PRE-PRICED-TASK:** A task that is not set forth in the Construction Task Catalog® (Mechanical).
- 1.31. NORMAL WORKING HOURS:** The hours between 7:00 A.M. and 4:00 P.M., local prevailing time, Monday through Friday, excluding Owner Holidays.
- 1.32. NOTICE:** Notice shall mean written notice. Written Notice shall be deemed to have been duly served if:
- A. Delivered by mail, courier, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Bid; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.
 - B. Delivered by mail, express mail or hand delivered to the office of the Purchasing Agent, Arlington Public Schools, Education Center, 1426 North Quincy Street, Arlington, Virginia 22207, or, when expressly so stated in the Contract Documents, delivered by mail, express mail, email or hand delivery to the Owner or the Owner's Representative.
 - C. Any requirement in the Contract Documents that an action be taken in writing shall require transmission of the writing to the other party in the form required of a Notice, unless otherwise expressly stated.
- 1.33. NOTICE TO PROCEED:** A written Notice from the Owner to the Contractor, which gives consent for commencement of the Detailed Scope of 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 Job Order. Unless otherwise provided herein, Work shall commence on the date specified in the Notice to Proceed and all Work schedules shall be based upon that date. The Owner may, but is not required to, include the Notice to Proceed as a part of the Job Order.
- 1.34. OPTION TERM:** The Contract may be renewed at the sole option of the Owner beyond the Base Term for no more than two Option Terms, each of one year duration.
- 1.35. OTHER THAN NORMAL WORKING HOURS:** Any time between 4:01 P.M. and 6:59 A.M. local prevailing time, a Saturday, a Sunday, or any Owner Holiday.
- 1.36. OWNER:** Arlington Public Schools (APS) and employees authorized to represent APS.

- 1.37. OWNER'S REPRESENTATIVES:** The Owner's Representative or Owner's Representatives, if any, will be only as designated in the Job Work Order or in any subsequent written directive issued by the Purchasing Agent or his authorized designee. Any reference in the Contract Documents to the term "Owner's Representative" shall be deemed to include the phrase "if an Owner's Representative has been designated in the Job Work Order or subsequently appointed in writing by the Arlington Public Schools Purchasing Agent, and if not then to the Owner." In the absence of a designated Owner's Representative, only the Arlington Public Schools Purchasing Agent or any person designated in writing by the Arlington Public Schools Purchasing Agent is authorized to approve or execute any contract, Purchase Order, Job Order, or Modification.
- 1.38. PRE-PRICED TASK:** A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog® (Mechanical).
- 1.39. PROJECT:** The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders; synonymous with the term "Work" as the context may require.
- 1.40. PROJECT SITE:** The location at which the improvements which are the subject of the Work are to be or are being constructed.
- 1.41. PURCHASING AGENT:** The person appointed by the Owner to serve in the position of Arlington Public Schools Purchasing Agent. The Purchasing Agent may designate one or more persons to act in his place. Any such designation shall be in writing, and such designee, including but not limited to the Owner's Representative, shall have only such authority as may be specifically stated in the written designation. Only the Purchasing Agent or his properly appointed designee has authority to act on behalf of and to bind the Owner. It is the responsibility of the Contractor to determine the scope of any designee's authority.
- 1.42. 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.
- 1.43. SUB-SUBCONTRACTOR:** Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor.
- 1.44. SUBSTANTIAL COMPLETION:** "Substantial Completion" or the state of being "Substantially Complete" shall be that degree of completion of the Work which is sufficient to provide the Owner, in its sole discretion, with the full time use of the Project in all manners or modes of operation and for the purpose or purposes for which it was intended. The same requirements shall be satisfied as to a defined portion of the Work for which a separate Date of Substantial Completion is established. More specific requirements for Substantial Completion as to the Work or a defined portion thereof may be set forth in the Job Order.
- 1.45. SUPPLEMENTAL JOB ORDER:** A written directive from the Owner to the Contractor modifying the Detailed Scope of Work, Job Order Price, or Job Order Completion Time under any Job Order. A Supplemental Job Order may be issued unilaterally by the Owner, setting forth the resulting impact on the Job Order Price or the Job Order Completion Time.

- 1.46. 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.
- 1.47. TECHNICAL SPECIFICATIONS:** The written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.48. UNIT PRICE:** The price published in the Construction Task Catalog® (Mechanical) for a specific construction or construction related work task. Unit Prices for tasks not initially included may be established during the course of the Contract and added to the Construction Task Catalog® (Mechanical) by Change Order. Each Unit Price is comprised of labor, equipment, and material costs to accomplish the specified task.
- 1.49. WARRANTY PERIOD:** All warranties and guarantees against any defect in the Work shall apply from the date of Final Completion of the Work and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Owner occupies and commences using in the manner intended any designated portion of the Work prior to Final Completion thereof, the one (1) year Warranty as to such defined portion of the Work shall commence on the date the Owner commences such occupancy and use. Provided further, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.
- 1.50. WORK:** Everything explicitly or implicitly required to be furnished or performed under the Contract Documents.

PART 2 EXECUTION AND INTENT OF THE CONTRACT

- 2.1. CONTRACT SIGNATURE:** Four (4) copies of the Agreement Between the Owner and the Contractor shall be signed by both the Owner and the Contractor.
- 2.2. EXECUTION OF AGREEMENT:** Execution of the Contract by the Contractor is a certification that the Contractor has 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 or will examine all Contract Documents, Drawings, and Specifications, as required by the Contract.
- 2.3. INTENT OF THE CONTRACT DOCUMENTS:** The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that it is 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. Any obligation which by its terms may be implied to survive the completion or termination of this Contract shall so survive whether specifically so stated or not.
- 2.4. THE CONSTRUCTION TASK CATALOG® (MECHANICAL), DRAWINGS, AND TECHNICAL SPECIFICATIONS:**
- A. The subdivision of the Construction Task Catalog® (Mechanical), Drawings and Technical Specifications into divisions, Sections and articles is for the purpose of ease of reference only and shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor shall be responsible for segregating the Work among the various trades.
 - B. The Technical Specifications shall serve to amplify the requirements of materials and assemblies. The mention in any Section of the Technical Specifications of any article or operation requires that the Contractor shall provide all such items indicated on, or reasonably inferred from, the Detailed Scope of Work, 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 Contract Documents to be included in the Detailed Scope of Work.
 - C. In the case of conflict or inconsistency between the Detailed Scope of Work, Drawings and Technical Specifications or within Drawings, the Detailed Scope of Work, or Specifications not clarified by Addendum, the Contractor shall: (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement either or both in accordance with the Owner's Representative's interpretation. The Contractor shall notify the Owner's Representative of discrepancies found before materials are fabricated or Work performed.
 - D. The Contractor shall adhere to dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner's

Representative. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding.

2.5. CONTRACT INTERPRETATIONS:

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

2.6. COPIES AND OWNERSHIP OF CONTRACT DOCUMENTS:

- A. The Contractor **will not** be provided with hard copies of the Contract Documents prepared by the Owner or 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 term of the Contract, the Contractor shall not be entitled to additional compensation.
- B. The Contract Documents 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 will make available to the Contractor, versions of the Contract Documents and Addenda in electronic format (i.e. PDF file formats). The Contract Drawings executed or identified in accordance with Paragraph 1.1. shall prevail in cases of an inconsistency with subsequent versions made through manipulative electronic means involving computers.
- D. The Contractor shall not transfer or reuse Contract Documents in electronic or machine-readable form without prior written consent of the Owner.

- 2.7. SUBSTITUTIONS:** Substitutions are not permitted after the Job Order is issued, except as otherwise approved by the Owner by Supplemental Job Order.

PART 3 OWNER'S REPRESENTATIVE

- 3.1 ADMINISTRATION OF CONTRACT:** The Owner's Representative shall provide administration of the Contract in accordance with the Contract Documents between the Owner and the Owner's Representative. In the absence of an Owner's Representative, the Owner will perform the applicable duties of the Owner's Representative.
- 3.2 OWNER'S REPRESENTATIVE:** The Owner may engage an Architect or a Construction Manager to serve as the Owner's representative during construction, until final payment is due, and with the Owner's concurrence, from time to time during the Warranty Period. In those situations, the Owner's Representative shall advise and cooperate with the Owner and shall act on the Owner's behalf in accordance with the Contract Documents. The Owner shall issue instructions to the Contractor or, at the Owner's option, elect to have the Owner's Representative issue instructions to the Contractor. In the absence of a third party under contract with the Owner to serve as Owner's Representative, the Owner's Representative will be the Owner's employee or job description identified in the Job Order, and in the absence of any such designation shall be the nominated APS Project Manager.
- 3.3 SITE VISITS:** The Owner's Representative shall have access to Work in process at all times to determine the progress and to assess the quality of the Work. Based upon its on-site evaluations, the Owner's Representative will advise the Owner of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work. The Owner's Representative shall not have control over or charge of and shall not be responsible for construction methods, techniques, procedures, sequences or safety measures employed in connection with the Work. The Owner's Representative shall not be responsible for the failure of the Contractor, subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.
- 3.4 CERTIFICATION OF PAYMENTS:** Based upon the Owner's Representative's observations and evaluations of the Contractor's Application for Payment, the Owner's Representative shall review and certify the amounts due the Contractor from the Owner.
- 3.5 INTERPRETATION OF CONTRACT:** The Owner's Representative shall interpret the Contract requirements in accordance with 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 Job Order Price. No responsibility or duty of the Owner's Representative and/or the Owner to the Contractor, Subcontractors, or Sub-subcontractors shall be created by this authority or by good faith decisions rendered in the exercise of this authority. At all times the Contractor is fully responsible for the quality of the Work and full and complete performance of the terms and specifications of the Contract. The Owner then has the right to issue a Unilateral Change Order deducting the cost of correcting the deficiencies, including any charges for special inspections or tests as well as charges by the Architect, plus a markup of ten percent (10%)

to cover administrative costs, from the balance due to the Contractor. If the balance due to the Contractor is not sufficient to cover the deduction established by the Unilateral Change Order, then the Contractor shall pay to the Owner the difference.

- 3.7 ADMINISTRATION OF CONTRACT:** The Owner's Representative shall prepare Change Orders, shall observe the Work to determine the Dates of Substantial and Final Completion, shall review all required documents submitted by the Contractor, and shall issue Certificates of Substantial Completion and Final Completion in accordance with the provisions of Paragraphs 12 and 13.

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.
- 4.2.** 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 Job Order Price. 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 Job Order Price. All discrepancies will be noted on the As-Builts and documented at the Contractor's sole expense and no increase to the Job Order Price.
- 4.3. 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.
- 4.4. 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.
- 4.5. RIGHT TO STOP WORK/RIGHT TO CORRECT DEFICIENCIES:** If the Contractor does not correct non-complying Work, or is consistent in not supplying and/or furnishing labor, material, and equipment necessary to Work performance, then the Owner has the right to order the Contractor to stop the Work until such time as the cause of the order has been corrected. Should the Contractor default, fail to perform the Work, or improperly perform the Work, the Owner has the right, after three (3) days written notice, to correct the deficiencies. The Contractor shall pay to the Owner the Owner's cost of correcting the deficiencies, including any charges for special inspections or tests as well as charges by the Architect, plus a markup of ten percent (10%) to cover administrative costs. The Owner's exercise of the right to correct deficiencies shall in no way prejudice or limit any other remedy that the Owner may have.

PART 5 CONTRACTOR**5.1. GENERAL REVIEW OF CONTRACT DOCUMENTS**

- A. The Contractor shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. The Contractor shall be responsible for the entire Work until Final Completion of all Work has been achieved.
- B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.
- C. Supervisor and Construction Procedures: The Contractor shall supervise and direct the Work and coordinate the Work with that of separate Contractors using Contractor's best skill and attention, with the number and regularity and any required special qualifications of superintendent and other onsite personnel to be set forth in the Job Order. Unless otherwise noted herein, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. Neither the Owner's Representative's approval nor its failure to exercise its right of approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall the Owner's Representative's approval or failure to approve create a cause of action for damages against the Owner's Representative or the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor.
- D. The Contractor shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The Contractor shall be responsible for advising the Owner's Representative and the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered by it.
- E. The Contractor shall be responsible for all costs or delays resulting from the Contractor's or a Subcontractor's failure to obtain and review the Detailed Scope of Work or other Contract Documents.

5.2. CHARACTER AND COMPETENCY:

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

- B. The Owner, upon written notice to the Contractor, and in the Owner's sole discretion, shall have the right to direct the Contractor and its Subcontractors to remove an employee permanently from the Project Site for any reason. Any individual who is removed from the Project Site pursuant to this Section may not return without specific permission of the Owner.
- C. The Contractor will ensure that no Work shall be performed in occupied areas during school hours unless express written approval has been granted by the Owner and proper safety precautions have been exercised to isolate the area of the Work.
- D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any Subcontractor from the Project Site. Sexual harassment, profanity, and inappropriate behavior are not permitted on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any of its Subcontractor.
- E. No Smoking Policy on Arlington Public Schools' property: Contractors, including their employees or agents, performing work on Arlington Public Schools' property shall abide by the no-smoking policies applicable to the property.
- F. Drug-Free Workplace. For the purposes of this Contract drug-free workplace means a site for performance of Work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract. During the performance of this Contract, the Contractor agrees to:
1. Provide a drug-free workplace for the Contractor's employees;
 2. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 3. State in all solicitations or advertisements for employees place by or on behalf of the Contractor that the Contractor maintains a drug-free work place; and
 4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor.
- G. Contractor Certification Regarding Criminal Convictions:
1. As a condition of awarding a contract for the provision of Work that 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 Owner 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 and the employees thereof.

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

5.3. PERMITS, FEES AND NOTICES

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

- 5.4. RESPONSIBILITY TO COMPLY WITH OWNER'S SOFTWARE:** The Contractor shall be responsible as a part of the Work to use such software or software products as may be designated by the Contract Documents or otherwise directed for use by the Owner in performing all obligations, and exercising all rights, under the Contract Documents. Should there be any changes in any such software requirements during any Contract Term such change shall not be the basis of any claim of any sort by Contractor.
- 5.5. RESPONSIBILITY FOR THOSE PERFORMING THE WORK:** The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors or other persons performing any of the Work under a contract with the Contractor or a contract with a Subcontractor. The Contractor shall be responsible for maintaining the cleanliness on the Project Site at all times and shall exercise dust control when required.
- 5.6. DRAWINGS AND SPECIFICATIONS AT THE SITE:** The Contractor shall maintain one full size copy of the Detailed Scope of Work, approved Shop Drawings, Job Order, Supplemental Job Orders and other Modifications at the Project Site. The Contractor will also retain all permits sets in good condition at the Project Site. All of the documents are to be kept in good order and marked to record all changes made during construction. The documents shall be made available to the Owner and Owner's Representative during performance of the Work. Upon completion of the Work, these As-Built drawings together with all changes and revisions made during construction shall be delivered to the Owner's Representative, with one digital copy.
- 5.7. SHOP DRAWINGS:**
- A. The Contractor shall prepare, review, approve and submit to the Owner's Representative Shop Drawings and similar submittals required by the Contract Documents with promptness and in accordance with the Submittal Schedule set forth in the Job Order or, if none, in a timely and complete manner so as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. Contractor's submittals shall be made in such time as to allow for review and approval by the Owner and not affect the procurement and installation of the submitted items or otherwise cause delay. Contractor shall not be entitled to any Modification of the Job Order Price, the Job Order Completion Time, or a Supplemental Job Order for any consequence of failure of the Contractor to comply strictly with any submittal requirement.
 - B. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be performed in accordance with the approved submittals.
 - C. By approving and submitting Shop Drawings and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Detailed Scope of Work and Contract Documents.
 - D. The Contractor shall not be relieved of responsibility for deviations from requirements of the Detailed Scope of Work or 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 Job Order.

5.8. INSPECTION OF WORK: The Contractor shall be responsible for inspection of portions of Work or Phases of Work already performed hereunder to determine that such portions are in proper condition to receive subsequent Work. In calling for inspections, the Contractor certifies that the Work being called for inspection meets the Contract and all code requirements for completeness and quality. Irrespective of any third party inspections, the Contractor remains responsible for any after discovered defects in Work and is fully responsible for any delays and costs associated with such defective, insufficient or non-compliant Work.

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

5.10. USE OF SITE:

- A. The Contractor shall confine the Work to areas of the Project Site permitted by the Job Order and shall comply with all applicable laws, ordinances, permits related to the Project Site.
- B. The Contractor shall establish and maintain security procedures controlling access to the Project Site to ensure safety of the public, protection of the Work, protection of Owner's property, and limitation of access to Owner's property to the extent required to perform the Work. Project specific security measures and limitations on Contractor's access to the Project Site during Other Than Normal Working Hours will be established in the Job Order.
- C. 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 Work site and affected building interior, grounds, parking lots, driveways and sidewalks to assure that construction debris and unnecessary material and equipment do not accumulate, and shall leave the Work site and affected areas in a clean and orderly condition at Final Completion.

The Contractor shall also conduct periodic landscape maintenance of vegetated areas of the site.

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

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 (i) defective or incomplete performance of the Work, or (ii) from injury to person or property resulting from 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: All Bidders and the Contractor shall comply with all applicable laws and regulations regarding conflicts of interest and other prohibited activity in public contracting, including but not limited to the following provisions of the Virginia Code: Ethics in Public Contracting, Article 6, Chapter 43 of Title 2.2 (§2.2-4367 et. seq.); the State and Local Government Conflict of Interests Act, Chapter 6 of Title 2.2 (§ 2.2-3100, et seq.); the Virginia Governmental Frauds Act, Article 1.1, Chapter 12 of Title 18.2 (§ 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.

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. With the Job Order Proposal, the Contractor must submit a written statement to the Owner's Representative and the Owner setting forth the name and address, and telephone number of all proposed Subcontractors and the portion of the Work and materials for which each such Subcontractor is responsible. Should any proposed Subcontractor for a division and/or feature of work, differ from the Subcontractor actually performing the Work, the Contractor must provide justification for the change to the proposed Subcontractor prior to any Work commencing by the Subcontractor. The Contractor also must furnish any other information intended to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, safety records, past experience and financial resources to perform the Work in accordance with the terms and conditions of the Contract Documents.
 - B. If the Owner finds, in its sole and absolute discretion, that the proposed Subcontractor is not qualified, the Contractor will be notified in writing within 5 days of the Owner receiving the request for approval of the Subcontractor. If no such notice is provided, the Owner shall be deemed to have accepted the Subcontractor. The Owner may retract its acceptance of any Subcontractor in the event such Subcontractor evidences an unwillingness or inability to perform its portion of the Work in strict accordance with the Contract Documents. Notice of such retraction will be given in writing to the Contractor. Upon receipt of notification of such rejection or retraction, the Contractor shall, within 5 days, submit a new Subcontractor for the Owner's approval. No rejection of any Subcontractor as provided herein shall be the basis of any claim by the Contractor.
 - C. The Contractor shall not enter into a contract in connection with the Work with any Subcontractor who has been rejected by the Owner and/or the Owner's Representative, and shall promptly terminate any contract with a Subcontractor who subsequently is rejected by Owner as provided herein.
 - D. Upon request, the Contractor promptly shall file with the Owner a copy of any one or more of its subcontracts. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents insofar as applicable to the Work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses due to its exercising of its rights under this paragraph.
 - E. The Owner's review or acceptance of Subcontractors as described herein shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

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

- A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents;
- B. Not contain a provision which purports to adversely affect the rights of the Owner and the Owner's Representative as such rights are defined in the Contract Documents;
- C. Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the Contractor may in turn promptly process such applications or claims in conformance with the Contract Documents;
- D. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance described in Part 17 of this section. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance;
- E. Make specific reference to the conditions of Paragraph 6.3 of this section as a mutually binding provision; and
- F. Contain evidence indicating the Subcontractor's acceptance of the time allotted to perform its portion of the Work shall be submitted by the Contractor to the Owner's Representative within ten (10) days of the Subcontractor award.
- G. Contain a requirement that each Subcontractor shall be bound be and be subject to the Provisions of Paragraph 6.4 in regard to payments made to its Sub-subcontractors.
- H. The Contractor shall include in each subcontract, the same requirements as Paragraph 5.2 G herein and require the completion by each Subcontractor of the Contractor Certification Regarding Criminal Activity.
- I. 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.

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.

3. 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.
 4. 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.
- B. Insurance proceeds received by the Contractor under the insurance policies described in Paragraph 17.1 shall be equitably distributed to the Subcontractors affected by the insured loss.
 - C. Information concerning percentages of completion of work performed by a Subcontractor as shown in Application for Payment may be made available to that Subcontractor upon determination of the Owner.
 - D. 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.
 - E. 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.

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

- A. 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.
- B. 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, 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.
- C. As used in this section:

1. "Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
 - a. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
 - b. "Asian American" means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
 - c. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
 - d. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
2. "Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.
3. "Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.
4. "Service disabled veteran-owned business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.
5. "Small business" means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of \$10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

6. "Women-owned business" means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.
7. "Employment services 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."

PART 7 SEPARATE CONTRACTS**7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS:**

- A. The Owner reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate contract for construction.
- C. At no additional cost to the Owner, the Contractor shall coordinate the Work with the activities of each separate Contractor. When directed to do so by the Owner, the Contractor shall participate with separate Contractors and the Owner in reviewing their separate construction schedules and shall make any revisions to the Contractor's Work schedule to incorporate that activity into the Contractor's Work schedule.
- 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 CLAIMS FOR DAMAGES:

- 8.1. If the Contractor wishes to make a claim, whether for extra compensation, damages or other relief, by reason of any act or omission of the Owner or its agents or representative or other causes beyond the reasonable control of the Contractor, the Contractor shall comply with the requirements set forth below. Strict compliance with all claims submission requirements set forth below or in any other provision of the Contract Documents shall be a condition precedent to the Contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.
- 8.2. 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 and to the Purchasing Agent 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.
- 8.3. If the Owner within five (5) business 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 and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.
- 8.4. The Purchasing Agent or his designee shall make a determination within ninety (90) days after receipt of the submission described in Subparagraph B above, which decision shall be the final determination of the Owner. Failure by the Purchasing Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90th) day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the claim. The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six month limitation.
- 8.5. The Contractor shall comply with all directions and decisions of the Owner's Representative or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
- 8.6. 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.
- 8.7. 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.
- 8.8. 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.

- 8.9. 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.
- 8.10. No claims provision in this Agreement waives the Owner's sovereign immunity or waives the ability of the Owner to invoke sovereign immunity where sovereign immunity may be applicable.

PART 9 CHANGES IN THE WORK**9.1. MINOR CHANGES:**

- A. The Owner reserves the right to make such additions, deletions, or changes to the Work as may be necessary in its sole and absolute discretion to complete the Work; provided, however, that no such additions, deletions or changes shall substantially affect the substance of the Work or the cost or time for performance thereof. This Contract shall in no way be invalidated by any such additions, deletions or changes. If the Contractor deems any such change to entitle it to additional compensation or any extension to the Job Order Completion Time, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's written direction for such addition, deletion or change shall be deemed to be the occurrence.
- B. Construction conditions may require minor changes in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder. The Contractor, when ordered by the Owner's Representative, shall make such adjustments and changes in the locations and Work as may be necessary without additional cost to the Owner, provided such adjustments and changes do not substantially alter the character and quantity of the Work as a whole, and provided further that a Modification to the Detailed Scope of Work showing such adjustments and changes are given to the Contractor by the Owner within fourteen (14) days following the Owner's direction. 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 Job Order Completion Time, such claim shall be subject to the claims submittal procedures set forth in the Contract Documents and the Owner's Representative's written direction for such minor change shall be deemed to be the occurrence.
- C. The Contractor may be entitled to an extension of time for such minor changes only for the number of days which the Owner's Representative may determine to be necessary to complete such changes and only to the extent that such changes actually affect the critical path and delay the completion of the Project, and then only if the Contractor shall have strictly complied with all the claims submittal requirements of the Contract Documents.

9.2. EXTRA WORK:

- A. The Owner may, in its sole and absolute discretion, and without invalidating the Job Order, at any time, and without notice to the Sureties, require the performance of such Extra work as it deems necessary or desirable. The Owner may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order. The Owner may issue supplemental instructions directing minor changes in the Work which do not involve a Modification to the Job Order Price or the Job Order Completion Time. If the Contractor disagrees with the Owner's Modification of the Job Order Price or Job Order Completion Time as set forth in the Supplemental Job Order, or disagrees that the Owner's directive does not impact Job Order Price or Job Order Completion Time, the Contractor shall proceed with the work as directed and any claim for additional compensation or an extension of time shall be governed by the provisions of General Condition 10.2 and General Condition 8.

- B. The Contractor shall not be entitled to any additional compensation or to any increase in the Job Order Completion Time, as defined in 10.2, for any extra work performed by the Contractor without a valid Supplemental Job Order, and the Owner may order the removal or alteration at the Contractor's expense of any extra work performed without a validly issued Supplemental Job Order.
- C. A Supplemental Job 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 Supplemental Job Order as full and final agreement as to all claims for compensation or time for the work described.
- D. The amount of compensation to be paid to the Contractor for any extra work so ordered shall be determined in accordance with procedure for ordering work as outlined in the JOC Supplemental Conditions.
- E. Regardless of the manner in which the adjustment to the Contract Sum on account of extra work is determined, such adjustment shall be deemed to constitute full and mutual accord and satisfaction for all costs related to such change.
- F. Records of extra work performed hereunder, if any, shall be submitted to the Owner's Representative, within 24 hours of the work being complete. Advanced notification must be provided to the Owner and / or Owners Representative prior to the initiation of the work described therein, strict compliance with these requirements shall be a condition precedent to compensation for such work. Duplicate copies of accepted records shall be made and signed by both Contractor or his representative and the Owner's Representative, and one copy retained by each.
- G. The Contractor may be entitled to an extension of time for extra work duly authorized by the Owner or Owner's Representative as defined in Part 10.2 below.

9.3. OMITTED OR DELETED WORK:

- A. The Owner may at any time by a written order and without notice to any Surety require the omission or deletion of such Work as the Owner may find necessary or desirable in its sole and absolute discretion.
- B. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.
- C. 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 and then the Work so ordered must be omitted by the Contractor.
- D. Contractor shall not be entitled to any extension of the Job Order Completion Time as a direct or indirect result of any omission or deletion of Work by Owner.

9.4. AUDIT: 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.

9.5. DISPUTED WORK:

- A. If the Contractor is of the opinion that any work required, necessitated, or ordered by the Owner's Representative or the Owner, or any action required or ordered by the Owner's Representative or the Owner to be taken or not taken is not Work included within the Job Order Price, or disagrees with the impact on Job Order Price or Job Order Completion Time set forth in a Supplemental Job Order, any claim for additional compensation or an extension of the Job Order Completion Time arising therefrom shall be subject to the claims procedures and submission requirements set forth in the Contract Documents.
- B. No payment shall be made to Contractor for any disputed work for which Owner's final determination is that Contractor is not entitled to receive any increase in the Job Order Price 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 Detailed Scope of Work and other Contract Documents, and will complete the work within the Job Order Completion Time. The Contractor shall provide a schedule for the performance and completion of the Job Order Work in such detail as may be set forth in the Job Order. The Contractor shall proceed expeditiously with adequate forces, scheduling and resources to complete the Work within the Job Order Completion Time.
- B. **CONSTRUCTION MOBILIZATION:** The Contractor's mobilization to perform the Detailed Scope of Work shall commence at the issuance of a written Notice to Proceed and shall be completed within the lesser of ten (10) days or the time stated in the Notice to Proceed. As required, the construction mobilization phase shall include the following:
1. Submission of an acceptable detailed Schedule of Values immediately after Notice to Proceed and prior to the submission of the first request for payment, as required by Part 11.4 of this Section;
 2. Submission of Contractor/Subcontractor Certification of Criminal Conviction forms, due within ten (10) days of Notice to Proceed;
 3. Submission of a proposed List of Sub-contractors within ten (10) days of Notice to Proceed as required by Part 6 of these General Conditions;
 4. Submission of such Contractor Quality Control Plan as may be required by the Job Order within ten (10) days of Notice to Proceed;
 5. Submission of such Contractor Work schedule as may be required by the Job Order;
 6. Submission of an acceptable Waste Management Plan.

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

- A. Give notice of delay in writing to the Owner's Representative and to the Purchasing Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. 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 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.

- B. The Contractor shall submit to the Owner's Representative and to the Purchasing Agent a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this Article, within twenty-one (21) days after the delay has ceased.
- C. The Contractor shall comply with all directions and decisions of the Owner's Representative or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
- D. 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.
- E. 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.
- F. 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 is due to causes for which the Contractor has no responsibility or fault. The Contractor shall be entitled to an extension of time only for the number of days of delay which are determined 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.
- G. The Owner's Purchasing Agent or his designee shall issue the Owner's final decision on any claim for delay within ninety (90) Days following receipt of the Contractor's submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to issue a written decision shall be deemed a final decision to deny the claim as of the ninetieth (90) Day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial proceeding for relief on the claim. The Contractor's right to seek a judicial appeal of denial of a claim for extension of time is barred if no suit is filed within six (6) months following the Owner's final decision on the claim. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six (6) month period.

- H. 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 Construction Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.
 - I. 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 false or to have no basis in law or in fact.
 - J. 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.
 - K. The Contractor shall comply with all directions and decisions of the Owner's Representative or the Purchasing Agent and shall proceed diligently with the performance of the Contract and with any disputed work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.
- 10.3. **RECOVERY SCHEDULE:** If at any time during Contractor's performance, in the sole opinion of the Owner, it may reasonably be predicted that the Contractor is going to achieve Substantial more than 14 days later than the Job Order Completion Time, or should the Contractor be required to undertake actions under Paragraph 10.1 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 during the immediate subsequent pay period a reasonable projection of achieving Substantial Completion within the Job Order Completion Time. The Recovery Schedule shall include as many of the following actions as may be necessary, all at no additional cost to the Owner:
- A. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
 - B. Increase the number of working hours per shift; shifts per working day, or days per week; the amount of construction equipment; the forms for concrete work or other trade specific materials or equipment; or any combination of the foregoing to substantially eliminate the backlog of Work;
 - C. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and comply with those revisions.
 - D. If the Contractor shall fail to submit an acceptable Recovery Schedule within the time required, the Owner or the Owner's Representative may direct the level-of-effort in manpower (trades), equipment, and work schedule (overtime, weekend and Holiday work, etc.) to be employed by the Contractor in order to remove or arrest the delay to the critical path in the accepted schedule, and the Contractor shall promptly provide such level-of-effort at no additional cost to the Owner.

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

PART 11 PAYMENTS AND COMPLETION

- 11.1. The Owner will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Owner may make partial, monthly payments based on a percentage of the work completed as based on the approved Schedule of Values if applicable.
- 11.2. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Owner's Representative concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.
- 11.3. 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 Job Order Price, plus the amount required to be paid for Extra Work approved by Supplemental Job Order(s) under Paragraph 9.2 hereof, less credit for any work omitted pursuant to Paragraph 9.3 hereof, and any other credits or offsets, including reimbursements or liquidated damages to which the Owner is entitled under the Contract Documents.
- 11.4. **SUBMISSION OF SCHEDULE OF VALUES:** If required in the Job Order, the Contractor shall organize and provide detail on the Schedule of Values in a manner acceptable to the Owner. The Schedule of Values, once accepted by the Owner's Representative, may be used for verifying the Contractor's applications for partial payments hereunder but shall not be binding upon the Owner for any purpose whatsoever.
- 11.5. APPLICATION FOR PAYMENT:**
- A. The Contractor must submit applications for payment using AIA Document G702 - Application and Certificate for Payment. Affidavits from each Subcontractor verifying receipt of payments of amounts billed in the previous payment request must accompany each application for payment. Failure to submit all affidavits will delay payment.
- B. Upon the request of the Owner's Representative, as a condition precedent to payment pursuant to the terms of this Contract, the Contractor shall give the Owner a statement that no employee of the Owner has received or has been promised, directly or indirectly, any financial benefit, by way of a fee, commission, finder's fee or in any other manner, remuneration arising from or directly or indirectly related to this Contract. All parties agree that the Owner shall have the right, in its sole and absolute discretion, to withhold payment to the extent of any such fee or commission. The Contractor shall not be entitled to interest and shall not have any claim on account of any payments being withheld under this paragraph.
- 11.6. PARTIAL PAYMENTS:**
- A. On or about the first of each month, the Contractor shall make and certify an estimate of the amount and fair value of the Work performed and may apply for partial payment therefore. The Owner's Representative shall revise the estimate to show the value of Work completed in accordance with the Owner's Representative's observation of the Work and knowledge, information and belief. The Contractor agrees to be bound by the Owner's Representative's revisions to the applications for partial payment.

- B. Whenever the monthly estimate, after approval by the Owner's Representative, shows that the value of the work completed during the previous month exceeds \$1,000.00, the Owner's Representative will certify the Contractor's Application and Certificate for Payment for such Work. Such Application and Certificate for Payment as approved by the Owner's Representative will authorize payment by the Owner in an amount equal to the value of the Work completed less any sums retained or deducted by the Owner under the terms of the Contract Documents, and less retainage of five (5) percent of payments approved.
- C. An Application and Certificate for Payment shall not be considered received by the Owner unless accompanied by the following:
1. An affidavit that payrolls, bills for materials and equipment, Subcontractors invoices, and all other indebtedness in connection with amounts paid by the Owner to the Contractor under previous Application and Certificates for Payment have been paid and otherwise satisfied; and
 2. All construction photos as required by the Job Order; and
 3. A revised construction schedule in the format required by the Job Order.
- D. Within forty-five (45) days after receipt of each approved Application and Certificate for Payment, the Owner shall pay the Contractor in accordance with the applicable Certificate and the Contract Documents.
- E. Unless otherwise provided herein, no payment will be made for any materials or equipment supplied hereunder before they are:
1. Incorporated in the work in a permanent manner required by the Detailed Scope of Work and other 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 Detailed Scope of Work and other Contract Documents. 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 Detailed Scope of Work and other Contract Documents.
- G. Before any payment will be made under this Contract, the Contractor and every Subcontractor, if required, shall deliver to the Owner's Representative a written, verified statement, in satisfactory form, showing in detail all amounts then due and unpaid by the Contractor to all laborers, workers, and mechanics, employed under the Contract for the

performance of the Work at the Project Site, for daily or weekly wages, or to other persons for materials, equipment, or for supplies delivered at the Project site during the period covered by the payment request.

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

PART 12 SUBSTANTIAL COMPLETION:

12.1. WRITTEN NOTIFICATION: When the Contractor considers that the Work, or such portion or phase thereof which the Owner agrees in writing to accept separately, is Substantially Complete, the Contractor shall provide the Owner and the Owner's Representatives written notification of such fact accompanied by a complete list of Detailed Scope of Work items remaining to be completed (Contractor's Punch List).

12.2. PUNCH LISTS:

- A. Within fourteen (14) days following receipt of the Contractor's written notification of Substantial Completion (including a Contractor's Punch List, as set forth in Paragraph 12.1), the Owner's Representative shall conduct an inspection of the Work and compile a comprehensive list of deficiencies and incomplete Work (i.e. Owner's Punch List). The Owner's Representative shall then issue a Consolidated Punch List incorporating the Contractor's and the Owner's Punch Lists into a single list in a uniform format ("Consolidated Punch List").
- B. Following issuance of the Consolidated Punch List, the Contractor shall have thirty (30) days to complete the Work contained thereon and to achieve Final Completion, unless otherwise specified in the Contract Documents. If the Work for which Final Completion is requested is not Finally Complete within the required period, it is understood and agreed by all parties that the Contractor shall become liable to the Owner for Liquidated Damages as established by the Job Order, which shall continue in effect until the applicable Final Completion has been achieved.
- C. Except with the consent of the Owner, the Owner's Representative shall perform no more than two Substantial Completion inspections for any designated portion of the Work or for the entirety of the Work. Should more than two Substantial Completion inspections be required, the Contractor shall pay the Owner any amounts paid to the Owner's Representative and other third party consultants for any additional inspections.
- D. Should the Contractor fail to complete or correct any item on the Consolidated Punch List within the required period, the Owner may, at any time thereafter, complete one or more items on the list with its own forces or with such other Contractors as it deems advisable and recover from the Contractor the cost for performing such work plus a markup of ten percent (10%) to cover administrative costs. This right of completion shall be in addition to, and not in lieu of, any remedy otherwise provided by the Contract Documents. All such completed Work shall be subject to the Warranty provisions of the Contract Documents.

12.3. SUBSTANTIAL COMPLETION CERTIFICATION:

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

1. Submit a progress payment request coincident with or following the Substantial Completion date claimed, showing one hundred (100 %) percent completion for the portion of the Work claimed as Substantially Complete.
2. Submit all outstanding changes to the Job Order Price which are not barred by the claims submission procedures of the Contract Documents.
3. Advise Owner of pending insurance changeover requirements.
4. Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, and similar documents.
5. Obtain and submit final releases of liens, which may reserve rights for Work performed after the date of the release, (include with Certificate of Substantial Completion) from all Subcontractors, construction materials suppliers, and services and utilities, enabling the Owner's full and unrestricted use of the Work and access to services and utilities, and including (where required) Occupancy Permits, facility operating certificates, and similar releases from authorities having jurisdiction.
6. Submit two (2) electronic copies and three (3) paper copies (8- 1/2" x 11" page format in 3-ring notebook binders, with a table of contents) of Project record documents, maintenance manuals, final Project photographs, damage or settlement survey, property survey, and similar final Project record information.
7. Submit certifications of compliance for each test and inspection required by the Job Order. The certifications shall be signed by the Contractor and by the parties conducting the test.
8. Deliver tools, spare parts, extra stocks of materials, and similar physical items to Owner.
9. Make final change-over of locks and transmit keys to Owner, and advise Owner's personnel to change over the security provisions.
10. Complete start-up testing of systems, water and air balancing, adjust and calibrate temperature control system, fire alarm system, generator (as required, if included in the design). Clean all HVAC units, ducts if necessary. Remove temporary filters and install new filters in all air-handling units and in all unit ventilators.
11. Complete all commissioning and acceptance tests.
12. Complete instruction for Owner's operating/maintenance personnel for all equipment and machinery installed under the Job Order as specified by the Owner.
13. Discontinue (or change over) and remove from project Site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
14. Complete Final Cleaning and Repair of the Work.

15. Touch up and otherwise repair and restore marred exposed finishes.
 16. Warranties shall become effective, once Owner and Owner's Representative determine that the Contractor has achieved Substantial Completion and execute the Certificate of Substantial Completion.
 17. If the Owner partially occupies the Project Site, this shall not indicate acceptance of Substantial Completion or activation of warranties.
 18. The Contractor shall provide extended warranties. Warranties shall begin upon acceptance and fully executed Certificate of Substantial Completion.
- B. Upon receipt of Contractor's request, the Owner and Owner's Representative will either proceed with inspection or advise the Contractor of pre-requisites not fulfilled. Following inspection, the Owner and Owner's Representative will either prepare the Certificate of Substantial Completion, or advise the Contractor of Work, or additional Work, which must be performed prior to issuance of the Certificate of Substantial Completion. Should the Owner and/or Owner's Representative determine that the Work is not Substantially Complete, notification in writing will be given to the Contractor stating the reasons therefore. Contractor shall remedy the deficiencies in the Work and shall send to the Owner and Owner's Representative a second written notice of Substantial Completion. The Owner and Owner's Representative will then re-inspect the work. If the Certificate of Substantial Completion is not issued following the second inspection, the provisions of General Condition 11.6.C.3 shall be applicable until the Certificate of Substantial Completion is issued.
- C. 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. Unless excluded by the Job Order, notify the Contractor to submit Final As-Built Mylar drawings and one digital copy, which are to be labeled "FINAL AS-BUILTS" and submitted to the Owner's Representative for approval. Approval and acceptance by Owner of Final As-Builts shall be a condition precedent to Contractor requesting Final Completion approval.

PART 13 FINAL COMPLETION:

- 13.1. Upon written notification by the Contractor that the Work is Finally Complete, and upon the Contractor's submission of a final Application and Certificate for Payment, the Owner's Representative will conduct a final inspection of the Work. If the Owner's Representative determines that the Work is not Finally Complete, a Final Completion Punch List will be issued to Contractor. Contractor may request a second inspection when Contractor deems the Final Completion Punch List to have been completed. If the Certificate of Final Completion is not issued following the second inspection, the provisions of General Condition 12.2.C shall be applicable until the Certificate of Final Completion is issued. When the Owner's Representative determines that the Work has been satisfactorily completed and the Contract Documents fully performed, the Owner's Representative shall promptly prepare and issue a Final Certificate for Payment stating that to the best of the Owner's Representative's knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the Contract Documents is due and payable. Final Completion shall occur within thirty (30) calendar days after the Date of Substantial Completion, or as otherwise specified in the Contract Documents.
- 13.2. Except with the consent of the Owner, the Owner's Representative shall perform only one Final Completion inspection for any designated portion of the Work or for the entirety of the Work. Should more than one Final Completion inspection be required, the Contractor shall pay the Owner amounts paid by the Owner to the Owner's Representative for any additional inspections necessary to achieve Final Completion.
- 13.3. 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.

PART 14 CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD:

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

PART 15 FINAL PAYMENT

- 15.1. **EVIDENCE OF PAYMENTS, SATISFACTION OF OBLIGATION, AND INSURANCE COVERAGE:** Neither final payment nor any retainage shall become due until the Contractor submits to the Owner's Representative (i) an affidavit that payrolls, bills for materials and equipment, and all other indebtedness in connection with the Work for which any third party claim against the Owner might be asserted have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force following final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days' prior written notice has been provided to the Owner; (iii) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of the Surety to final payment; 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 fails or refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner, in the Owner's 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, attorneys' fees and customary costs of litigation associated therewith. Provided, however, that nothing herein shall be deemed a waiver by the Owner of its sovereign immunity from mechanic's liens.
- 15.2. **CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT:** The Contractor's acceptance of final payment constitutes a waiver of all claims against the Owner in connection with the Project, except for any claims for additional payment 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.
- 15.3. **RELEASE AND REQUEST FOR FINAL PAYMENT:** Upon completion of the Detailed Scope of 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 at Attachment B.

PART 16 PROTECTION OF PERSONS AND PROPERTY

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

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

PART 17 INSURANCE**17.1. CONTRACTOR'S INSURANCE:**

- A. During the term of this Contract, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Owner, in its sole discretion, the following types of insurance:
1. Commercial General Liability insurance shall be in the amount of \$2 Million. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall include coverage for explosions, collapse and underground utilities. The Contractor shall provide a certificate of insurance that names Arlington Public Schools, Arlington School Board, including elected and appointed officials, agents and employees as additional insureds. Coverage afforded under this policy shall be primary to all other insurance with respect to such additional insureds. If the insurance policy represented by certificate requires endorsement in order to add such additional insureds, then such endorsement must accompany the Certificate.
 2. The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance in amounts satisfactory to the Contractor, naming the Owner as an additional named insured.
 3. Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of his subcontractors shall be not less than \$1 million.
 4. Automobile Liability Insurance, including coverage for non-owned and hired vehicles shall be not less than \$1 million per occurrence.
 5. All risk insurance covering damage, loss or injury to the Work, excluding earthquake damage. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by the Owner as security for the performance by the Contractor of its obligations under this Contract and, upon such performance, amounts not expended to achieve such performance shall be released to the Contractor. Such policy shall be in an amount equal to the ~~Contract Sum~~ Estimated Annual Value.
 6. Proof, to the satisfaction of the Owner, of insurance for each type of coverage listed herein shall be provided within ten (10) Days of the Contractor's receipt of the fully

executed Contract, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on its subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. Copies of subcontractor insurances shall be provided to the Owner prior to subcontractor performing any work. The Contractor certifies by commencement of the Work that its insurance and that of all Subcontractors is in effect and meets the requirements set forth herein.

7. In the event of the exercise by Owner of any right to renew the Contract, Contractor shall comply with all insurance requirements set forth herein within ten (10) Days following receipt of Owner's notice of renewal.
- B. All of the aforesaid insurance policies must be endorsed to provide that the insurance company shall give forty-five (45) Days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide the Owner with a copy of each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.
- C. **PROPERTY INSURANCE:** The Contractor shall purchase Builder's Risk insurance upon the entire Work at the Project Site to the full insurance value of the new improvements thereof. This insurance shall include the interests of the Owner, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except as excluded. This insurance shall include coverage for the following:
1. Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).
 2. Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).
 3. Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).
 4. Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.
 5. Coverage of Contractor's labor, overhead and profit.
 6. Coverage of materials stored or installed on the Project Site, until said materials are accepted by the Owner per Substantial Completion and Acceptance requirements. Payment by Owner for materials stored or installed on the Project Site does not eliminate Contractor's responsibility or liability with regards to theft and vandalism or other damage.
- D. In the event that the Contractor does not purchase and supply proof of Builder's Risk insurance in the required amount, the Owner may purchase Builder's Risk Insurance in an

amount equal to the Estimated Annual Value. The Owner will receive a credit on the contract price for the cost of said Builder's Insurance if the Owner provides the insurance.

PART 18 CONTRACT SECURITY

- 18.1. 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 Estimated Annual Value. The Performance and Labor and Material Payment Bonds shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to the Owner. These bonds shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance and Labor and Material Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract consistent with the requirements of the Virginia Public Procurement Act. The premiums on the Performance and Labor and Material Payment Bonds shall be paid by the Contractor and shall be included in the Adjustment Factors.
- 18.2. If at any time the Owner shall become dissatisfied with any Surety or Sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such bonds shall cease to be adequate security for the Contractor, the Contractor shall within ten (10) Days after notification of such fact, substitute acceptable bonds in such form and sum and signed by such other Sureties as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor and shall be included in the Contract Sum/Job Order Price. 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.
- 18.3. Alternative Forms of Security: Any bid bond, payment bond, or performance bond required under the Contract Documents may be provided in the form of a certified check, cashier's check, or cash escrow in the face amount required for the bond and conditioned as required for a surety bond. Any bid bond, payment bond or performance bond required under the Contract Documents may be in the form of a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bond, but only if approved by the Arlington Public Schools Attorney. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Arlington Public Schools equivalent to a corporate surety's bond.

PART 19 UNCOVERING AND CORRECTION OF WORK**19.1. UNCOVERING OF WORK:**

- A. If a portion of the Work is covered contrary to the Owner's Representatives' request or to the requirements contained in the Contract Documents, the Contractor shall, at its own expense and upon the written request of the Owner's Representative, uncover and replace such Work without an adjustment to the Job Order Completion Time or Job Order Price.
- B. If a portion of the Work has been covered which the Owner's Representative and/or Arlington County Inspector has not specifically requested to observe prior to its being covered and is, under the Contract Documents, allowed to be covered without observation of the Owner's Representative or Owner or applicable law or regulation, the Owner's Representative and/or Arlington County Inspector may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Detailed Scope of Work and other Contract Documents, costs of uncovering and replacement shall, by a Supplemental Job Order, be charged to the Owner. If such Work is not in accordance with the Detailed Scope of Work and other Contract Documents, the Contractor shall pay the costs of uncovering and replacing such Work.

19.2. CORRECTION OF WORK:

- A. The Contractor shall promptly correct any Work which fails to conform to the requirements of the Detailed Scope of Work or other Contract Documents (the "Rejected Work"), whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs associated with the correction of any Rejected Work, including additional testing and inspections and compensation for the Owner's Representative's services and expenses made necessary thereby.
- B. Nothing contained herein shall affect the Owner's right to correct non-conforming Work pursuant to the provisions of the Contract Documents.
- C. **ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK:** The Owner reserves the right to accept any defective or non-conforming Work; provided, however, that in such event the Job Order Price shall be reduced by an appropriate and equitable amount to account for such defect or nonconformity. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall not constitute a waiver of approval of the performance requirements of the Contract Documents.

PART 20 POWERS OF THE PURCHASING AGENT

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

- 20.1. 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.
- 20.2. To issue a Supplemental Job Order or other Modification in accordance with Part 9 of these General Conditions and the JOC Supplemental Conditions so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he deems it in the interest of the Owner to do so.
- 20.3. 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.
- 20.4. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before Substantial Completion or Final Completion thereof, the Purchasing Agent or his designee shall deem it necessary.
- 20.5. The Purchasing Agent may delegate his authority/power to his designee, but only to the extent the Contractor has been given written notice by the Purchasing Agent of such delegation.

PART 21 CONTRACTOR'S DEFAULT AND TERMINATION

21.1. **OWNER'S RIGHT AND NOTICE:** The parties agree that:

- A. If the Contractor fails to begin the Work when required to do so; or
- B. 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
- C. If the force of workmen or the quality or quantity of material furnished is such as to give the Owner reasonable grounds to believe that it is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or
- D. If the Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or
- E. If the Contractor fails in any manner of substance to observe the provisions of this Contract; or
- F. If any of the Work, machinery, or equipment is defective and is not replaced as herein provided;

then the Owner's Representative shall certify such fact or condition to the Owner without prejudice to any other rights or remedies Owner may have hereunder, and the Owner shall have the right to declare the Contractor in default in whole or in part. In the event the Owner elects to declare the Contractor in default, the Owner shall notify the Contractor and its Sureties by written notice describing the nature of the default and providing the Contractor a right to cure such default within three (3) calendar days after the date of the notice, or within such longer period as the Owner, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the Owner, the Owner shall have the right to take any actions necessary to correct or complete the Work, including but not limited to those as set forth in Paragraph 21.3 hereof.

21.2. The parties further agree that:

- A. 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
- B. If the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
- C. 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
- D. If a receiver or trustee is appointed for the Contractor or the Contractor's property; or
- E. If the Contract or any part hereof is sublet without the prior written consent of the Owner; or

- F. 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
- G. If the Work to be done under this Contract is abandoned;

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

- 21.3. **CONTRACTOR'S DUTY UPON DEFAULT:** Immediately, but no later than three (3) days after receipt of Notice that it is in default hereunder, the Contractor shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the Project Site, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.
- 21.4. **COMPLETION OF WORK AFTER DEFAULT:** If the Contractor defaults or neglects to perform the Work in accordance with the Detailed Scope of Work or other Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to the other rights the Owner may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the Owner such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Project Site, and also such Subcontractors as it may deem advisable and may take any or all of the following actions:
 - A. Have the defaulted Work performed by others;
 - B. Supplement the Contractor's work force;
 - C. 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 Detailed Scope of Work or other Contract Documents;
 - D. Replace or repair any defective Work;
 - E. 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;
 - F. Terminate the Contractor's performance of the Contract.
- 21.5. The Contractor and its Sureties shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-procuring, and any and all costs incurred in connection with the Owner's exercise of any right upon default. Any costs incurred in connection with completing or correcting the Work shall be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the Contractor and its Surety shall pay to the Owner the amount of any deficiency.

- 21.6. **PARTIAL DEFAULT:** In the event the Owner declares the Contractor in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work, the Contractor shall discontinue such portion of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract and shall not hinder or interfere with any other contractor or persons whom the Owner may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and its Sureties as provided in the Contract Documents.
- 21.7. **DEATH OR INCOMPETENCE OF CONTRACTOR:** In the event of the death, dissolution or legal incompetence of a Contractor who shall be an individual or surviving member of a sole proprietor contracting firm, such death or adjudication of incompetence shall not terminate the Contract, but shall constitute a default hereunder to the effect provided in Paragraphs 21.1, 21.2, 21.3 and 21.4 hereof, and the estate of the Contractor and his sureties, if any, shall remain liable hereunder to the same extent as though the Contractor remained living. Notice of default, as provided in Paragraph 21.1 hereof, shall not be required to be given in the event of such death or adjudication of incompetence.

PART 22 OWNER'S RIGHT TO TERMINATE FOR CONVENIENCE:

Notwithstanding the rights of the Owner or defaults outlined above, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any or no reason by giving seven (7) days prior written notice of termination for convenience 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 9.4, insofar as they pertain to amounts claimed to be due hereunder. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Paragraph 22.

PART 23 MISCELLANEOUS SPECIAL CONDITIONS

- 23.1. **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 the Detailed Scope of Work, and be responsible for all lines, elevations, measurements of buildings, grading, paving, utilities and other Work executed under the Contract. If benchmarks or other general reference points necessary for layout of the Work supplied by the Owner are impaired or destroyed by the Contractor, the Contractor shall be responsible at its cost to re-establish such bench marks or general reference points. The Contractor shall exercise proper and reasonable care in verifying figures specified on the Detailed Scope of Work or shown on the Drawings, if any, 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 Detailed Scope of Work.
- 23.2. **GOVERNING LAW:** The Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.
- 23.3. **SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who was an unsuccessful bidder, who was deemed not to be qualified, or who was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.
- 23.4. **ENTIRE AGREEMENT:** The Contract Documents constitute the entire agreement among the parties pertaining to the Work and supersede all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.
- 23.5. **ROYALTIES AND PATENTS:** If the Owner is aware of any particular invention, design, process, product or device specified in the Contract Documents for use in performance of the Work which is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, it is set forth in the Contract Documents. The Job Order Price includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. If a Bidder discovers a requirement for any such fee or royalty, the Bidder shall make this requirement known to the Owner in order that an adjustment can be made in the Job Order Price Proposal. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the Owner and Owner's Representative, their officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the

Contract, and shall indemnify the Owner and the Owner's Representative, their officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

- 23.6. **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.
- 23.7. **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.
- 23.8. **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.
- 23.9. **VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT:**
- A. During the performance of this Contract the Contractor agrees as follows:
1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this action.
 4. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order over \$10,000.00, in order that the provisions above will be binding upon each Subcontractor.
- B. Nothing contained in this provision shall be deemed to empower any agency to require any Contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such Contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the state.
- C. Arlington Public Schools does not discriminate against faith-based organizations.

23.10. INSPECTION AND APPROVAL OF SITE IMPROVEMENTS:

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

23.11. 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 17 hereof.

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

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

END OF SECTION 00 7000

Appendix A

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.

ADRIAN L. MERTON, INC.
Name of Firm

9011 East Hampton Drive

Capitol Heights, MD 20743
Address of Firm

(301) 336-7900
Telephone


Signature

Michael L. Merton, President
Name and Title (please type or print)

June 26, 2017
Date

Attachment B

RELEASE AND REQUEST FOR FINAL PAYMENT

PROJECT NAME: _____

CONTRACT NUMBER: _____

CONTRACTOR NAME: _____

PROJECT NUMBER: _____

FINAL PAYMENT AMOUNT: _____

TOTAL PAYMENT AMOUNT: _____

FINAL PROJECT AMOUNT: _____

The Contractor hereby requests final payment in the amount indicated on the above referenced Project. 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 and Project, 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 Project have been paid as required by the Contract.

AUTHORIZED SIGNATURE

DATE

SECTION 007100 – JOC SUPPLEMENTAL CONDITIONS**1. CONTRACTOR SELECTION AND AWARD OF INDIVIDUAL JOB ORDERS**

- 1.1. Job Order Contracting: The Owner may award an individual Job Order to any selected Contractor. It is the intent of the Owner to allocate Work in an approximately equal rotation among all Contractors. Selection of the Contractor and award of the Job Order will, however, be based on the following criteria as applicable to the particular selection and award:
 - 1.1.1. Location of Work and the type of Work being performed.
 - 1.1.2. Evaluation of past and current performance on Job Orders, project size, manpower availability, construction management challenges, schedule performance or capabilities, and design management requirements.
 - 1.1.3. Balancing of Job Order dollar volume and construction backlog among Contractors.
 - 1.1.4. Management of Job Order dollar volume within bonding limitations of the Contractor.
 - 1.1.5. Price, as it relates to the Owner's independent cost estimate or to an offer from any other contractor.
 - 1.1.6. Contractor's responsiveness to the Owner on Job Orders.
 - 1.1.7. Other appropriate criteria as deemed in the best interest of the Owner.

2. INITIATION OF A JOB ORDER

- 2.1. As the need arises, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 2.2. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - 2.2.1. the general scope of the work;
 - 2.2.2. alternatives for performing the work and value engineering;
 - 2.2.3. access to the site and protocol for admission;
 - 2.2.4. hours of operation;
 - 2.2.5. staging area;
 - 2.2.6. requirements for catalog cuts, technical data, samples and shop drawings;
 - 2.2.7. requirements for professional services, sketches, drawings, and specifications;

- 2.2.8. construction duration;
 - 2.2.9. liquidated damages;
 - 2.2.10. the presence of hazardous materials;
 - 2.2.11. date on which the Job Order Proposal is due.
- 2.3. Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any recommended changes or modifications. When the Owner is satisfied with a Detailed Scope of Work, the Owner will issue a Request for Job Order Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

3. PREPARATION OF THE JOB ORDER PROPOSAL

- 3.1. The Contractor's Job Order Proposal shall include, at a minimum:
 - 3.1.1. Job Order Price Proposal;
 - 3.1.2. Required drawings or sketches;
 - 3.1.3. List of anticipated Subcontractors;
 - 3.1.4. Construction schedule;
 - 3.1.5. Other requested documents.
- 3.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 3.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Task (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 3.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:
 - 3.4.1. Pre-priced Task: A task described in, and for which a unit price is set forth in, the Construction Task Catalog®.
 - 3.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®.
 - 3.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
 - 3.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

3.4.3.2. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not reasonable.

3.4.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

For Non Pre-priced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x Non Pre-Priced Task Adjustment Factor

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor

3.4.3.4. After a Non Pre-priced Task cost is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the Owner, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

3.4.3.5. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

3.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs

incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.

- 3.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid with mark-up. The Owner shall pay the Contractor a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees. The cost of expediting services or equipment use fees are not reimbursable.
- 3.7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing. Provided, however, such professional services fees shall not exceed \$25,000 per Job Order, and shall not exceed a cumulative total of \$75,000 for the entire term of this Contract. All Job Order Price Proposals and billings after a Job Order is issued shall include a line item breakdown for engineering and architectural services being charged, showing the cumulative total for the Job Order being billed and for all billings under the Contract Term.
- 3.8. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 3.9. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Job Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- 3.10. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal and all Contract Documents at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.
- 3.11. If the Contractor desires clarifications or additional information regarding the Detailed Scope of Work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

4. REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER

- 4.1. The Owner will evaluate the entire Job Order Proposal and compare it with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 4.2. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
 - 4.2.1. Will constitute or create a hazard to the Work, or to persons or property;
 - 4.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
 - 4.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 4.3. The Owner reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner.
- 4.4. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Proposal prior to delivering it to the Owner.
- 4.5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal. A **signed** copy of the Job Order will be provided to the Contractor.
- 4.6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Job Order Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

5. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS

- 5.1. Economic Price Adjustment: If the Owner notifies the Contractor of the Owner's intent to exercise the Option to renew the Contract at any time before the end of a term, the Contractor may submit to the Owner within fourteen (14) days after the date of the Owner's notice of intent a written request for a revision of the Contractor's Normal Working Hours and Restricted Working Hours Adjustment Factors ("Adjustment Factors Revision Request"). If

the Contractor does not submit an Adjustment Factors Revision Request within the required period with all documentation as provided below, the Adjustment Factors shall remain the same as for the most recently concluded term of the Contract. The Contractor's Adjustment Factors Revision Request shall contain the following information and documentation:

- 5.1.1.1. A Base Year Index calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months immediately prior to the month of the Bid Due Date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
- 5.1.1.2. A Current Year Index calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months beginning with the month of anniversary of the Bid Due dDate (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
- 5.1.1.3. The Economic Price Adjustment calculated by dividing the Current Year Index by the Base Year Index.
- 5.1.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's requested new Adjustment Factors effective for the next twelve (12) months.
- 5.1.1.5. Averages shall be obtained by summing the twelve (12) month indices and dividing by twelve (12).
- 5.1.1.6. All calculations in this article shall be carried to the fifth (5th) decimal place and rounded to the fourth (4th) decimal place. The following rules shall be used for rounding:
- 5.1.1.7. The fourth (4th) decimal place shall be rounded up when the fifth (5th) decimal place is five (5) or greater.
- 5.1.1.8. The fourth (4th) decimal place shall remain unchanged when the fifth (5th) decimal place is less than five (5).
- 5.1.1.9. The Owner shall be under no obligation to agree to any Adjustment Factor increase supported by the foregoing calculation, with any such increase remaining solely within the discretion of the Owner.
- 5.1.1.10. The Owner shall notify the Contractor within twenty-one (21) days following receipt of the Contractor's Adjustment Factors Revision Request whether the request was submitted timely, with the required documentation, and with accurate calculations. Failure by the Owner to respond within twenty-one (2) days shall be deemed a denial of the

request without further action required. Any revision to the Adjustment Factors to which the Owner agrees shall be documented by a Change Order. If a request for revision of the Adjustment Factors is denied, or an adjustment in an amount less than that requested by the Contractor is approved, the Contractor shall continue to meet its obligations under the Contract at the Adjustment Factor rates in effect for the immediately preceding Contract term.

- 5.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 5.3. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 5.4. The Contractor cannot delay submission of the Job Order Proposal past the date for the Owner's response to the Adjustment Factors Revision Request to take advantage of an anticipated revision of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 5.5. *The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.*

6. Job Order Contracting Software

- 6.1. The Owner selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") Solution (Gordian JOC Solution®) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a JOC System License Fee to obtain access to Gordian's JOC Solution. The Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

7. Job Order Contracting System License

- 7.1. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Contract and any renewal hereof or Gordian's Contract with the Owner, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to the Owner under this Contract. The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog, training materials and other Gordian provided proprietary materials. In the event this

Contract expires or terminates as provided herein, or Gordian's Contract with the Owner expires or terminates, or the Contractor fails to pay the JOC System License Fee specified in this Contract, this JOC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

- 7.2. In consideration for a non-exclusive, non-transferable, license to the Gordian JOC Solution, **the Contractor shall pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document ("Purchase Order") issued to the Contractor by the Owner.** The Contractor License Fee shall be included in the Contractor's overhead costs, shall not be included as an additional line item cost in Job Order Price Proposals, and shall be payable to Gordian within ten (10) days of Contractor's receipt of each Purchase Order issued to the Contractor by the Owner. Gordian is hereby declared to be an intended third-party beneficiary of this Agreement. In the event any court action is brought to enforce payment of the Contractor License Fee by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs. The Contractor shall remit the Contractor License Fees as follows:

Payments Made Payable to: The Gordian Group, Inc.

Mail Checks to: P.O. Box 751959
Charlotte, NC 28275-1959

- 7.3. Gordian may terminate this License Agreement in the event of: (1) any breach of a material term of this Agreement by the Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.
- 7.4. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.
- 7.5. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, this JOC System License shall take precedence.

8. Self Performance

This shall be calculated as the percentage of total hours worked by the Contractor's tradespeople as measured through the working foreperson level.

APS is requiring 75% for the Mechanical Services.

JOC System License and Fee Agreement

This Agreement is made this 27th day of June, 2017 by and between Adrian L Merton, In.c, whose address is [Insert Contra ^{9011 East Hampton Drive} ^{Capitol Heights MD} ("Contractor"), and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, SC 29615 ("Gordian").

WHEREAS, **Arlington Public Schools** ("Owner") has awarded Contract No. 41FY17 ("Contract") to the Contractor.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and Owner ("Owner Contract"), Gordian has agreed to provide Contractor with a license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, the parties agree to the terms and conditions of the following JOC System License and Contractor License Fee ("Agreement"):

Gordian hereby grants to Contractor, and Contractor hereby accepts from Gordian for the term of the Contract, or the term of the Owner Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Contractor's responsibilities under the Contract ("Limited Purpose"). Contractor hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's eGordian® JOC information management applications and support documentation, Construction Task Catalog®, training materials, and any other proprietary materials provided to Contractor by Gordian. In the event the Contract expires or terminates, or the Owner Contract expires or terminates, this JOC System License shall terminate and Contractor shall return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

In accordance with the terms of the Contract, Contractor hereby agrees to pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document issued to Contractor by Owner pursuant to the Contract. Contractor further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Contractor's receipt of each Job Order, Purchase Order or other similar purchasing document from the Owner. Contractor shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month. In the event a modification to an issued Job Order results in a reduction of the value of the Job Order, Gordian shall issue a credit to Contractor only when the applicable license fee credit is greater than or equal to \$25.00.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing

by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Contract, the Owner Contract, or any Job Order, Purchase Order or similar purchasing document issued to Contractor by Owner, this Agreement shall take precedence.

[Insert Contractor's Full Legal Name]

The Gordian Group, Inc.

Signature: [Handwritten Signature]
Name: Michael L. Merton
Title: President

Signature: _____
Name: Ammon T. Leshner
Title: Vice President of Legal Affairs

ACKNOWLEDGMENT OF [Contractor]

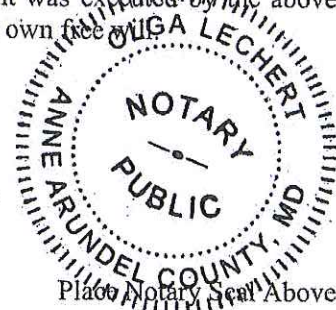
STATE OF MARYLAND
COUNTY OF ANNE ARUNDEL

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 27th day of June 2017 and the document was executed by the above named MICHAEL L. MERTON of his/her own free will.

Witness my hand and seal this 27th day of June, 2017.

[Handwritten Signature]
Signature of Notary Public

My COMMISSION EXPIRES: 12/08/2018



Place Notary Seal Above

END OF SECTION 00 7100