Arlington Public Schools
Procurement Office
2110 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123 • Fax: (703) 841-0681
www.apsva.us

Agreement

Contract Title: Swimming Pool Preventive Maintenance and Repair

This Contract 08FY21 is made and entered into this 26th day of October, 2020, the date the Agreement is fully executed by the Procurement Director/Procurement Agent, by and between Arlington County School Board, operating as Arlington Public Schools ("APS" or "Owner") and Winkler Pool Management, Inc. ("Contractor"), whose address is 4905 Edmonston Road, Hyattsville, MD. 20781.

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

1. Scope of Work:
The Scope of Work for this Contract generally is described as to provide as requested by APS the Goods and Services necessary for Swimming Pool Preventive Maintenance and Repair ("the Work"), as set forth in greater detail in Attachment A, Scope of Work.

2. Contract Price:
The Contract Price shall be as set forth in Attachment B – Pricing Schedule.

APS will not compensate the Contractor for any Goods or Services beyond those included in Attachment B unless those additional Goods or Services are covered by a written Change Order amending this Contract

The Contract Prices set forth in Attachment B include all costs, expenses, including reimbursable expenses, to provide the Goods or Services described in this Contract.

3. Contract Documents:
The documents which form the entire Contract between APS and the Contractor ("Contract Documents") are as defined either in this Contract, in the Instructions to Bidders, or in the Terms and Conditions and are as set forth below.

3.1. In the case of a conflict, the order of precedence shall be as follows:

3.1.1. Agreement and all modifications properly incorporated in the Agreement
3.1.2. Attachment A – Scope of Work
3.1.3. Attachment B – Pricing Schedule
3.1.5. Attachment C – Terms and Conditions
3.1.4. Attachment D – Contractor Certification Regarding Criminal Convictions
3.1.6. Attachment E – Sample Purchase Order
3.1.7. Attachment F – Job Authorization Form
3.1.8. Attachment G – Certificate(s) of Insurance
3.1.9. ITB/Associated Documents

3.2. 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.

3.3. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents 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.

3.4. The Contractor will 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, 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.

4. Definitions:

All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.

5. Contract Term:

5.1. The initial term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on the last day of the twelfth (12^{th}) month following execution of the Contract by the Procurement Director/Procurement Agent ('Initial Contract Term'), unless otherwise stated as provided in the Contract Documents.

5.2. This Contract may be renewed for a term not to exceed one (1) year ('Renewal Contract Term') by written notice given by APS at any time prior to thirty (30) Days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of APS has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions..

5.3. Unless directed otherwise by APS, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued, but must be completed no later than six (6) months following expiration of the Contract term in which the Purchase Order was issued.

6. Contract Price Adjustment:

6.1. The Contractor agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Agent. Upon receipt of the Contractor's request, APS shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.

6.2. The request for an adjustment in the price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the adjustment requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)

6.3. The request must be received at least thirty (30) days prior to the effective date of the expiration of the Initial Contract Term or Renewal Contract Term and shall become effective only upon approval by the Procurement Agent. The adjusted price shall not apply to orders received by the Contractor prior to the effective date of the approved increased price. Orders placed via Purchase Order, shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date issuance. The Procurement Agent may cancel, without liability to either party, any portion of the Contract affected by the requested adjustment and any materials, supplies or Services undelivered at the time of such cancellation.

7. Non-Appropriation:

All funds for payments by APS under any Contract awarded are subject to the availability of an annual appropriation for this purpose by the APS. In the event of non-appropriation of funds by the APS for the Goods or Services provided under the Contract, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Services covered by this Contract is spent, whichever event occurs first. APS will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of APS, and APS shall not order any Goods or Services to be provided after such termination date.

8. Right to Terminate Contract:

APS has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Terms and Conditions.

9. Direction to Proceed:

9.1. For Work to be performed by Contractor under this Contract, the Procurement Director/Procurement Agent will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order Work"). A sample Purchase Order form is attached as Attachment E. Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Director/Procurement Agent, and if it does so APS will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of APS other than the Procurement Director/Procurement Agent or his properly authorized designee has authority to make any purchases or otherwise bind APS contractually. If a Purchase Order is issued by anyone other than the Procurement Director/Procurement Agent, it shall be the responsibility of the Contractor to confirm the authority of that person to bind APS. Provided, however, if the Contractor has received from the Procurement Director/Procurement Agent prior written confirmation of a person's authority to bind APS, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.

9.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, APS through the Procurement Director/Procurement Agent or his authorized designee may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular APS working Day following issuance of such Owner directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to APS of such emergency Work by 5:00 P.M. on the next regular APS Working Day following commencement of such emergency Work.

10. Estimated Quantities; No Guaranteed Minimum:

During the Initial Contract Term or any Renewal Contract Term, the Contractor will furnish all of the Goods or Services described in the Contract Documents of Contractor by APS. The Contractor understands and agrees that there are no guaranteed minimum purchases and that APS has no obligation to the Contractor if no, or fewer, items or Services than any quantities estimated are required or requested by APS. Any quantities which are included in the Contract Documents are the reasonable present expectations of those who are planning for APS for the period

of the Contract. The amount is only an estimate and the Contractor understands and agrees that APS is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that APS may require Goods and/or Services in excess of the estimated annual Contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract

11. Payment Procedures:

Contractor shall submit invoices for its Work, and such invoices will be processed by APS, all in accordance with the provisions of the Terms and Conditions.

12. Assignments:

12.1. This Contract is not assignable by Contractor without the express written consent of APS, and APS shall be under no obligation to grant such consent. Sale, assignment or transfer of a controlling interest in the Contractor shall be deemed an assignment for purposes of this provision and shall be grounds for termination of this Contract if consent of APS is not obtained. It is understood by APS that Contractor may use Subcontractors for performance of parts of the Work. However, it is expected that Contractor will be performing the Work, and subcontracting of all or substantially all of the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

12.2. Contractor acknowledges that, if so stated in the Bid Documents, this Contract is subject to the joint procurement or cooperative procurement provisions of Va. Code Ann. § 2.2-4304.

13. Notices:

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Contractor:
Douglas S. Winkler
President
Winkler Pool Management, Inc.
4905 Edmonston Road
Hyattsville, MD 20781
doug@winklerpool.com

To APS:
Helena Machado
Director of Aquatics
Arlington Public Schools
2770 South Taylor Street
Arlington, Virginia 22206
helena.machado@apsva.us

And
David J. Webb, C.P.M.
Procurement Director / Procurement Agent
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
david.webb@apsva.us

Note: During the closure of APS due to the COVID-19 pandemic, notices shall delivered by email and shall be considered received by a person(s) stated above when the email is in the receiver's mailbox

14. Governing Law:

This Contract, the Bid Documents, and 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. The exclusive jurisdiction, forum and venue for any litigation with respect to this Contract, the Bid Documents, or the Contract Documents shall be in the state courts of Arlington County, Virginia.

15. Binding Agreement:

The Owner and the 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.

Signature Appears on Following Page

Arlington Public Schools

By: David Webb

David J. Webb, C.P.M.
Procurement Director/Procurement Agent

Date: October 26, 2020

Attachments:

Attachment A	Scope of Work
Attachment B	Pricing Schedule
Attachment C	Terms and Conditions
Attachment D	Contractor Certification Regarding Criminal Convictions
Attachment E	Sample Purchase Order
Attachment F	Job Authorization Form
Attachment G	Certificate(s) of Insurance

End of Agreement

Attachment A

Scope of Work

The Contractor shall provide all supervision, labor, tools, equipment, transportation, and permits required for the complete and satisfactory performance of the Work. No "portal-to-portal" charges or fuel surcharges are permitted under the awarded Contract.

1.0 Services:

1.1 Work performed by the Contractor is limited to Swimming Pool Preventive Maintenance and Repair for three (3) APS High Schools. Work not listed in the Specific Service Calls section will be done on a Time and Material basis and require the submission of a detailed, written Not to Exceed Cost Proposal from the Contractor.

1.1.1 Location of APS Swimming Pools

1.1.1.1 Wakefield High School
1325 S. Dinwiddie Street
Arlington, VA 22206

1.1.1.2 Washington-Liberty High School
1301 N. Stafford Street
Arlington, VA 22201

1.1.1.3 Yorktown High School
5200 Yorktown Boulevard
Arlington, VA 22207

1.2 Specific Service Calls

1.2.1 Acid clean pool bottom and walls

1.2.2 Diving board preventive quarterly maintenance (tighten bolts, grease fulcrum, check for proper operation)

1.2.3 Replace CO2 tubing

1.2.4 Replace CL2 tubing

1.2.5 Replace circulation pump bearings and seals

1.2.6 Replace ultraviolet light bulbs

1.2.7 Preventive maintenance of pool circulation pumps (grease bearings, check for proper operaton)

1.2.8 Preventive maintenance of supplemental heaters (check for proper operaton)

1.3 As needed Work to be performed in accordance with Section 2.0 Estimates

1.3.1 Repair and maintenance of pool filter systems

1.3.2 Repair and maintenance of pool sanitation equipment

2.0 Estimates:

All installation work requires the submission of a detailed, written Not to Exceed Cost Proposal (Cost Proposal) from the Contractor.

2.1 The Cost Proposals shall be furnished by the Contractor at no charge and are considered an overhead item to be included in the bid amount using the Job Authorization Form (JAF) in Attachment F.

2.2 The Contractor shall inspect each site upon request within four (4) business days after initial contact from APS, to ascertain the site conditions and work to be performed. Within four (4) business days of visiting the site(s), the Contractor shall be required to provide a Cost Proposal in the form of a detailed JAF for the entire work to be completed in accordance with the Contract requirements and instructions listed in the Contract, Project Manual and/or drawings. The Contractor shall use the JAF to submit its Cost Proposal. The Cost Proposals are to be detailed, outlining the Contract unit prices and materials. All Cost Proposals shall be based on the unit prices provided in the Pricing Schedule. The unit prices will also be used for additions and/or deletions of work identified in the cost proposal. Unit Prices shall include all labor, tools, profit, and, overhead as may be necessary to complete the requested work.

2.3 Unusual Equipment Requirements

If the project assigned requires the use of rental equipment including by way of illustration and not limitation, bobcats, forklifts and backhoes, the estimated costs of the additional equipment and/or Services shall be identified in the Contractor's JAF. If APS accepts the use of rental equipment, the Contractor will be reimbursed for the actual amount of the cost of such equipment with no markup. The Contractor shall make every attempt to obtain the lowest price for rental equipment provided under the Contract. APS reserves the right to have others provide the additional equipment.

2.4 Any Cost Proposal greater than $200,000.00 is not covered by this Contract and will be subject to a separate solicitation.

3.0 Materials:

3.1 All materials furnished under this Contract shall be new and original manufacturer's recommended or authorized replacement parts. Use of manufacturer's rebuilt parts and/or components shall be authorized by the APS Project Officer and shall carry the same warranty as new parts or components. Use of used parts is strictly prohibited unless specifically authorized by the APS project Officer.

3.2 Contractor(s) shall make every attempt to obtain the lowest price for materials provided under the Contract(s).

3.3 The Contractor(s) agree that APS may, at its option and sole discretion, provide materials or fixtures to the Contractor(s) for installation by the Contractor(s) at the Contract unit prices.

3.4 All Warranties shall be in effect for the entirety of the Warranty Period, or the manufacturer's standard warranty, whichever is longer. In the event corrective work is required during the Warranty Period, the Warranty on the repaired Work shall extend for one (1) year from the date of acceptance by APS of the completed repairs. The Warranty shall include all parts, labor, transportation, and any other costs necessary to keep the product in good operating condition, but shall not be applicable to damage caused by Owner's misuse of the item or due to normal wear and tear. If seasonal limitations prevent any required performance testing of the completed Work, the Warranty Period for such Work shall begin after the performance tests have been successfully performed.

3.5 No date other than the date of final acceptance may be established to govern the effective date of the Guaranty, unless that date is agreed upon by APS and the Contractor(s) in a signed Addendum to the Contract.

3.6 Standard tools of the trade and trade consumables shall be available to the Contractor's personnel from their service vehicle. Tools of the trade and other trade consumables are not valid Contract expenses. The cost of consumables (including, by way of illustration and not limitation, solder, caulking, tape, wirenuts,

fasteners, gases and other consumable items) are considered administrative expenses. These shall be included as part of the hourly rates bid.

4.0 Personnel:

4.1 The Contractor's personnel assigned to any resulting Contract shall be an Association of Pool and Spa Professionals (APSP) or a Pool & Hot Tub Alliance (PHTA) Certified Maintenance Specialist (CMS) and equipped with all tools required to perform the job.

4.2 The Contractor shall have sufficient tradesmen available to perform all assigned work under any resulting Contract..

4.3 If any person employed on the work by the Contractor shall appear to the APS Project Officer to be incompetent or to act in a disorderly or improper manner, such person shall be removed immediately on the request of the APS Project Officer, and shall not again be re-employed (on subject project) except on written consent of the APS Project Officer.

4.3.1 Alcoholic beverages and illegal drugs are prohibited on the job site. Possession of any of these items on the job site by a Contractor's employee will result in immediate removal of the individual from the site.

4.3.2 The use of tobacco is prohibited on APS property by anyone at any time.

4.4 APS reserves the right to reject any of Contractor's service personnel who, in APS' judgment, are not adequately qualified to perform the work.

4.5 A Contractor's vehicle parked at an APS site other than in a parking space or at on-street parking will be clearly labeled with the Contractor's name.

4.6 When entering any APS building, the Contractors' employees shall have picture identification. Identification shall include employees photograph and name. The Contractor's employees are required to check-in at each location with the Main Office or the Building Manager when reporting to the work site. Prior to leaving a site, the Contractor's employees will also be required to check-out with the Main Office and/or the APS Project Officer.

End of Scope of Work

Attachment B

Pricing Schedule

Item No.	Description	Unit of Issue	Unit price
1	Acid Clean pool bottom and walls (pool size up to 40,000 gallons)	Each Pool	$1,034.00
2	Acid Clean pool bottom and walls (pool size 180,000 to 389,000 gallons)	Each Pool	$1,034.00
3	Diving board preventive maintenance	Each	$98.00
4	Replace CO2 tubing	Linear Foot	$1.28
5	Replace CL2 Tubing	Linear Foot	$1.28
6	Replace circulation pump bearings and seals	Each	$1,950.00
7	Replace ultraviolet light bulbs	Each	$800.00
8	Preventive maintenance of pool circulaton pumps	Each	$125.00
9	Preventive maintenance of supplemental heaters	Each	$125.00
10	Certified Maintenance Specialist, regular time	Hour	$59.00
11	Certified Maintenance Specialist, over time	Hour	$88.50
12	Certified Maintenance Specialist, weekend and holiday	Hour	$125.00
13	Apprentice, regular time	Hour	$39.00
14	Apprentice, over time	Hour	$58.50
15	Apprentice, weekend and holiday	Hour	$110.00

Attachment C

Terms and Conditions

1. Definitions:

1.1. **Addendum**: A change to the Bid Documents or Contract Documents issued by the Owner prior to Bid Closing.

1.2. **APS**: Arlington Public Schools, the owner of the property upon which the Work is to be performed or the entity for which the Work is to be performed. See also "Owner."

1.3 **Apparent Low Bidder**: The responsible Bidder submitting the lowest responsive Bid.

1.4. **Bid:** The offer of a Bidder to provide specific Goods or Services at specified prices and/or other conditions specified in the solicitation.

1.5. **Bidder:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Procurement Director/Procurement Agent and offering to enter into Contracts with APS. The term "Bidder" will be used throughout the Bid Documents and the Contract Documents and shall be construed to mean "offeror" where appropriate.

1.6. **Bid Closing**: The time and date set by the Invitation for the deadline for receipt of Bids.

1.7. **Bid Opening:** The time and date set by the Invitation for the opening of Bids.

1.8. **Change Order**: A written order to the Contractor, signed by the Owner, which authorizes a change in the Work, and any resulting adjustment to the Contract Price and/or the Contract Time. A **Unilateral Change Order** is a Change Order signed only by the Owner addressing any Modification to the Contract Sum or the Contract Time to which the Owner agrees. A **Mutual Change Order** is a Change Order signed by both the Owner 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 the Changes provisions of these Terms and Conditions. A Unilateral Change Order or a Mutual Change Order may affect the Contract, an individual Purchase Order, or both, depending on its terms.

1.9. **Complete or Completion:** Work for which a Purchase Order has been issued will not be deemed complete until the subject of the Work is functioning as intended, cleanup has been completed, any required or applicable inspections or governmental approvals have been accomplished, and the Work is accepted by the Owner. More specific requirements for Completion may be set forth in the Scope of Work or the Purchase Order.

1.10. **Contract:** The signed Contract between Owner and Contractor is the Contract.

1.11. **Contract Documents**: The Contract Documents and the order of precedence in the event of a conflict therein are as defined in the Contract.

1.12. **Contract Period:** See "Contract Time."

1.13. **Contract Price**: The total amount payable to the Contractor for performance of the Work. The Work under this Contract will involve multiple discrete Projects. The Contract Price is stated in the Purchase Order for the particular Work included in a discrete Project and shall include any adjustments granted in accordance

with the provisions of the Contract Documents. The Contract Price may be determined based on unit prices or rates and quantities as provided in the Contract. May also be referred to as “Contract Sum.”

1.14. Contract Sum: See “Contract Price.”

1.15. Contract Time: The period allotted in the Purchase Order for Completion of the Work directed by that Purchase Order, together with any extension of time granted in accordance with the provisions of the Contract Documents. May also be referred to as “Contract Period.”

1.16. 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.

1.17. Day: The term "day" or “Day” shall mean "calendar day" unless otherwise noted. When any provision in the Contract Documents establishes a time within which an action must be taken or a right must be exercised, if the last Day falls on a Saturday, Sunday, or holiday recognized by Arlington Public Schools, or on a day when Arlington Public Schools administrative offices are closed for any other reason, the deadline thereby established shall be extended to the first Arlington Public Schools Working Day thereafter when the Arlington Public Schools administrative offices are open.

1.18. Drawings: The term “Drawings” or “Plans” shall mean any drawing, plan, sketch, photograph or similar document intended to provide to the Contractor graphic instruction or guidance regarding the Work to be performed.

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. The terms “his” or “hers” or “he” or “she” shall include “its” if the referenced party is an entity rather than a person.

1.20. Goods: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

1.21. 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. In the event any of the days designated as a Holiday fall on a Saturday, the Holiday shall be the preceding Friday; in the event any of the days designated as a Holiday fall on a Sunday, the Holiday shall be the following Monday.

1.22. Informality: A minor defect or variation of a Bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the Goods and Services being procured.

1.23. Invitation to Bid (ITB): A request which is made to prospective Bidders for their Bids on Goods or Services desired by APS. The issuance of an ITB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

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

1.26. Normal Working Hours: Unless otherwise specified in the Purchase Order Normal Working Hours shall be 6:00 A.M. through 2:30 P.M., Monday through Friday, excluding Holidays. See also Working Day.

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

A. Written Notice to Contractor shall be deemed to have been fully served if delivered by United States Postal Service registered or certified return receipt mail, courier, generally recognized private mail or delivery service providing proof of delivery, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.

B. Written Notice to APS shall be deemed to have been fully served if delivered by United States Postal Service registered or certified return receipt mail, courier, generally recognized private mail or delivery service providing proof of delivery, or hand delivered to the office of the Procurement Director/Procurement Agent, Arlington Public Schools, Syphax Education Center, 2110 Washington Blvd, Arlington, Virginia 22204.

C. Notice by registered or certified return receipt mail, courier, generally recognized private mail or delivery service, or by courier, will be deemed received on the date shown on the written delivery receipt. Notice given by email or facsimile transmission will be deemed received at 9:00 A.M. on the first business day after the date of transmission.

D. Attempted Notice given in any manner other than as designated herein shall not satisfy any Notice requirement.

1.28. **Notice of Intent to Award**: A writing issued by the Owner which states the Owner's intent to award the Apparent Low Bidder a Contract to execute the Work. The Notice of Intent to Award will be publicized as provided in the Bid Documents.

1.29. **Notice to Proceed:** See Purchase Order.

1.30. **Owner**: APS and employees authorized to represent APS. Reference to Owner requiring action by Owner or Notice to Owner shall be deemed to mean the Procurement Director/Procurement Agent unless otherwise stated specifically.

1.31. **Pricing Schedule:** The pricing information appearing as Attachment B to the Contract setting the unit prices, rates, or other means of agreed pricing for performance of Work by the Contractor.

1.32 **Procurement Director/Procurement Agent:** The employee of APS authorized to act on behalf of the Owner in this Contract. The Procurement Director/Procurement Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. Contractor shall not rely upon and Owner shall not be bound by any statement or representation made on behalf of APS by any person not designated to the Contractor in writing as authorized to so act on behalf of the Procurement Director/Procurement Agent. It shall be the responsibility of the Bidder, and thereafter the Contractor, to establish the authority to act regarding any communication or action by any person other than the Procurement Director/Procurement Agent. Use of the term Procurement Agent or Procurement Director/Procurement Agent in the Contract Documents shall be deemed to include such properly authorized designee within the scope of that designee's authorization.

1.33 **Project**: The Goods and/or Services provided or performed by the Contractor at any location as directed by Purchase Order, in accordance with the Contract Documents; collectively all of the Goods and Services contemplated by the Contract; synonymous with the term "Work" as the context may require.

1.34. **Project Manager:** The Owner's representative for Contract coordination

1.35. **Project Site or Site**: The location at which any Goods or Services are provided, delivered or performed by Contractor under this Contract.

1.36. **Purchase Order:** A written directive issued by the Procurement Director/Procurement Agent or authorized designee directing the performance of a particular item or items of Work to be performed in accordance with the Pricing Schedule. A Purchase Order shall serve as the Contractor's Notice to Proceed with the specified portion of the Work as specified in the Purchase Order.

1.37. **Responsible Bidder:** A person who has the capability, in all respects, to perform fully the Contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

1.38. **Responsive Bidder:** A person or entity who or which has submitted a Bid that conforms in all material respects to the Invitation to Bid.

1.39. **Services:** means any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

1.40. **Specifications:** Written details provided to the Contractor by the Owner providing performance requirements, data instructions and guidance for performance of the Work.

1.41. **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.

1.42. **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. The Contractor shall be responsible for the performance of the Work by any person or entity below the level of Sub-subcontractor.

1.43. **Warranty Period:** All warranties and guarantees against any defect in the Work shall apply from the date of acceptance by APS of the Completed Work and shall continue for a period of one (1) year thereafter, or the manufacturer's standard warranty, whichever is longer Provided, however, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

1.44. **Work**: Everything explicitly or implicitly required to be furnished or performed to complete performance of any Purchase Order.

1.45. **Work Order**: A written directive to the Contractor issued on or after issuance of the Purchase Order the Effective Date of the Agreement and signed by the Procurement Director/Procurement Agent ordering an addition, deletion, or revision in the Work described in a Purchase Order issued when in the sole discretion of the Owner the terms thereof do not impact the Contract Price or the Contract Time, or when in the sole discretion of the Owner the circumstances do not allow sufficient time for issuance of a Change Order.

1.46. **Working Day**: See Normal Working Hours.

2. **Independent Contractor:**

In the performance of this Contract and for all purposes related to APS, Contractor shall be an independent Contractor and neither the Contractor nor any of its employees will under any circumstances, be considered servants or agents of APS. Under no circumstances shall APS (i) be responsible for any failing or wrongdoing by the

Contractor, its servants or agents; (ii) be under any obligation to withhold from the Contract payments to the Contractor or otherwise any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits of any kind; or (iii) provide any insurance coverage or other benefits, including but not limited to workers' compensation, to any employees or agents of Contractor.

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, whether or not specifically identified in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that the work is within the scope of the Contract. Use of the term "include" or "including" shall be deemed to mean "include without limitation," "including but not limited to," and similar expansive intent.

4. Drawings and Specifications:

Drawings or Specifications as necessary for performance of the Work will be identified in and provided with any Purchase Order issued by the Owner.

Any Specification provided shall serve to amplify the requirements of materials and assemblies. The mention in any Specification of any article or operation requires that the Contractor shall provide all such items indicated on, or reasonably inferred from, any Drawings provided to the Contractor, 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 any explanatory or informational documents provided by the Owner with a Purchase Order.

The Contractor shall exercise reasonable care and due diligence to discover any discrepancies in the Drawings or Specifications, and shall notify the Owner of discrepancies found in the Drawings or Specifications before materials are fabricated or Work performed.

The Contractor shall adhere to written dimensions though differing from scale measurements. In the absence of dimensions or in case of doubt as to the proper measurement, consult the Owner for clarification before proceeding with the Work. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding.

5. Replacement of Personnel and Subcontractors:

APS has the right to reasonably reject staff or Subcontractors whom the Contractor assigns to the Contract. The Contractor must then provide replacement staff or Subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's and its Subcontractor's employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or Subcontractors identified in its Bid, including the project manager, without APS's written approval. The Contractor must submit any request to remove or replace key personnel or Subcontractors to the Owner's Project Manager at least fifteen (15) Days in advance of the proposed action. The request must contain a detailed justification, including the proposed replacement and his or her qualifications.

If the approved project manager resigns or is terminated by the Contractor, the Contractor will replace the project manager with an individual with similar qualifications and experience, subject to APS' written approval.

6. Contract Interpretations:

The Contractor may request Contract interpretations in writing from the Owner. 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 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 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 time requirements for performance of the Work, but Owner shall be under no obligation to expedite its review and analysis of the question raised or to issue a response if the Contractor does not submit the request for interpretation in a timely manner.

7. Copies and Ownership of Contract Documents:

A. The Contractor will be provided with either electronic or hard copies of any Drawings, Specifications, or other documents referenced in a Purchase Order.

B. All Drawings, Specifications, or similar technical data provided to the Contractor by the Owner are the property of the Owner, and the Contractor may not use such information for any purpose not relating to performance of the Work.

8. 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 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. Supervision and Coordination of the Work: The Contractor shall supervise and direct the Work and coordinate the Work with that of separate Contractors using Contractor's best skill and attention. Unless otherwise provided in the Contract Documents, the Contractor shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. No approval or failure to exercise its right of approval by Owner shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, or create a cause of action for damages against 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 giving Notice to the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent Contractor reasonably should have been discovered by it.

E The Contractor shall be responsible for all costs or delays resulting from the Contractor's or a Subcontractor's failure to obtain and review Contract Documents provided or made available by the Owner, or from the failure to discover any errors, inconsistencies or omissions in the Contract Documents which in the exercise of due diligence as a reasonably competent contractor the Contractor reasonably should have discovered.

9. Substitutions:

A. The name of a certain brand, make, or manufacturer in the Contract Documents is to denote the quality standard of the article desired. The reference to a certain brand, make or manufacturer is to convey the general style, type, character and quality of article desired. If the Contractor desires to provide or use any other brand, make of materials, device, or equipment, it may do so only if it submits sufficient information to satisfy the Procurement Director/Procurement Agent that the proposed substitute is the equal of that specified in quality, workmanship, design and economy of operation, and is suitable for the purpose intended, and obtains the written approval from the Procurement Director/Procurement Agent by Change Order.

B. To obtain approval of a substitute as equal, the Contractor shall submit to the Procurement Director/Procurement Agent all substantiating data upon which the Contractor relies to establish the substitute as an equal. If a sample is requested by the Owner, it shall be provided at the Contractor's expense within seven (7) Days of the request and may be subjected to such testing, examination or analysis, including but not limited to destructive testing, as the Owner in its discretion deems necessary. If the Procurement Director/Procurement Agent approves the proposed substitute, a Change Order approving the change will be issued by the Procurement Director/Procurement Agent. Provided, however, the Contractor shall be fully responsible for all costs or other consequences related to or arising from implementation of the use of the substitute, whether foreseen or unforeseen and including but not limited to any adjustments or revisions which might be required to existing improvements, facilities or operations. Contractor shall not proceed with use of the substitute until the Change Order approving its use has been issued by Owner.

C. Notwithstanding the foregoing, if the identification of a certain brand, make or manufacturer is designated as "required" or "no substitutes permitted" or any similarly clear language, there shall be no substitutions permitted.

10. <u>Changes in the Work</u>:

A. Any change to an existing Purchase Order must be approved by written Change Order issued by the Procurement Director/Procurement Agent prior to the changed Work being performed. APS has no obligation to pay for any changed or extra Work not directed by written Change Order issued by the Procurement Director/Procurement Agent.

B. If the Owner issues a Purchase Order which the Contractor deems to be beyond the scope of the Work so as to entitle the Contractor to compensation or to additional time for performance of the Work beyond the terms set forth in the Purchase Order, the Contractor shall so Notify the Owner within seven (7) Days following issuance of the Purchase Order and before beginning the Work directed by the Purchase Order. If no agreement is reached between the Owner and the Contractor regarding such Work within ten (10) Days after the Contractor gives such Notice, or if the Owner directs the Contractor to proceed immediately, the Contractor shall proceed with the Work as directed and pursue such remedies as it deems appropriate within the claims provisions set forth in these Terms and Conditions. The expiration of such ten (10) Day period, or direction by the Owner to proceed, shall be deemed the occurrence date for any claim the Contractor wishes to pursue related to the Work ordered by the Purchase Order. Performance of and payment for the Work directed by the Purchase Order thereafter shall be governed by the Claims for Damages provisions of these Terms and Conditions.

11. <u>Administration of Contract</u>:

The Owner's Project Manager shall provide administration of the Contract in accordance with the Contract, Contract Documents and Work.

The Owner's Project Manager for this Contract is:

Helena Machado, Director
APS Aquatics Department
2770 South Taylor Street
Arlington, VA 22206
Telephone: (703) 228-6264

12. <u>Time of Start and Completion</u>:

A. Time is of the essence for any Purchase Order issued under this Contract. The Contractor shall commence Work within ten (10) days after receipt of the Purchase Order, or such lesser time as may be directed in the Purchase Order under circumstances requiring immediate attention. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of

performance, scheduling and resources as will secure its full Completion in accordance with the requirements of the Contract Documents, and will Complete the Work within the time stated in the Purchase Order.

B. APS may cancel any Purchase Order, or any part thereof, without obligation to Contractor other than to pay for acceptable Work in place, if completion is not achieved at the time specified in the Purchase Order.

13. Site Visits:

The Owner shall have access to Work in process on the Project Site at all times to determine the progress and to assess the quality of the Work. Except as may be required to comply with specific requirements of the Contract Documents, the Owner shall not have control over or charge of and shall not be responsible for means, methods, techniques, procedures, sequences or safety measures employed in connection with the Work, nor for the failure of the Contractor, Subcontractors, or Sub-subcontractors to perform the Work in accordance with the Contract Documents.

14. Use of Site and Site Information:

A. The Contractor shall be responsible for inspection of existing conditions as satisfactory to receive subsequent Work. If existing conditions exist on the Project Site which in the opinion of the Contractor will require Work in excess of that anticipated by the Scope of Work and Price as set forth in the Purchase Order, the Contractor shall give Notice of such conditions and not proceed with the Work until receiving written direction from the Owner. If the Owner agrees that the existing conditions require Work in excess of that anticipated by the Scope of Work and Price as set forth in the Purchase Order, a Change Order to the Purchase Order will be issued stating the impact as agreed by Owner. If the Owner does not agree that the existing conditions require Work in excess of that anticipated by the Scope of Work and Price as set forth in the Purchase Order, the Contractor shall proceed with the Work. If the Contractor disagrees with the Owner's determination, the Contractor may submit a claim as provided in these Terms and Conditions. If the Contractor proceeds with such Work before receiving such written direction from the Owner, such action shall be deemed a failure to comply with this condition precedent for pursuit of any claim and such Work shall be at Contractor's expense.

B. 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 Project Site conditions. The Owner makes no representations whatsoever concerning the quality or contents of any information so provided and the Contractor relies on such information solely at its own risk.

The Contractor shall confirm locations of existing utilities by performing such tests or other measures as may be required, including but not limited to compliance with all Commonwealth of Virginia Miss Utility laws, at the Contractor's sole expense and no increase to the Contract Price. If the Contractor discovers, or in the exercise of reasonable care should have discovered, circumstances at the Project Site which the Contractor contends may cause Work beyond that contemplated by the applicable Purchase Order, the Contractor shall give Notice to the Owner of such circumstances before commencing Work affected thereby and shall await Owner's written instructions, which shall include a statement of whether or not the Owner agrees that such circumstance will cause extra Work and how that extra Work is to be compensated. If the Contractor proceeds with the affected Work prior to receipt of the Owner's written instructions, such action shall be deemed a failure to comply with this condition precedent for pursuit of any claim and such Work shall be at Contractor's expense.

The Contractor shall be responsible for damages to property, whether owned by APS or others, caused by or resulting from performance of the Work. The Contractor shall repair to proper working order or replace, to the satisfaction of APS, any property so damaged.

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

The Contractor shall be responsible for all safety and security procedures required to protect Work in process and the safety of the public until the Work is accepted by Owner.

C. Contractor workers shall not be present in any building owned or controlled by Owner without an Owner employee present. In the event the Contractor desires to perform Work outside Normal Working Hours or on Holidays in a building owned or controlled by Owner, Contractor shall notify the Owner in writing at least two (2) working days prior to the intended Work. Upon approval from the Owner, which Owner may in its sole discretion decline to grant, the Work can be scheduled and the Owner will provide an employee to deactivate the building security system and remain present while Contractor workers are present. The cost for Owner employee support for Contractor Work outside Normal Working Hours or on a Holiday shall be paid by the Contractor to the Owner at a rate of $40 per hour per Owner employee required to remain present while the Contractor's workers are present. The cost of custodial support for Sunday or Holiday work shall be paid by the Contractor to the Owner at a rate of $70 per hour per Owner employee required to remain present while the Contractor workers are present. The Owner shall submit employee time sheets to the Contractor for review and verification.

D. The Contractor shall maintain its Work area in a clean and orderly state and shall exercise dust control when required. If in the Owner's sole discretion, the Project Site requires cleaning or excess material removal, in total or in part, the Owner may direct the Contractor to conduct the necessary cleaning and removal. Should the Contractor fail to accomplish the directed 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.

15. <u>Safety</u>:

The Contractor must ensure that it and its employees and Subcontractors comply with all applicable local, state, and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards. The Contractor shall be responsible for compliance with all safety procedures and programs set forth in its Bid.

16. <u>Warranties</u>:

A. The Contractor warrants to the Owner that all materials and equipment furnished under the Contract will be new unless otherwise specified, free of defects, of the latest model, of the best quality, and in strict compliance with the requirements of the Contract Documents.

B. The Contractor warrants to the Owner that all workmanship will be of the best quality and in strict compliance with the requirements of the Contract Documents.

C. All materials and equipment furnished under the Contract shall be free and clear of all liens or other claims of any type by any third parties.

D. All workmanship, materials or equipment not conforming to the foregoing standards may be deemed defective. APS has no obligation to pay the Contractor for Work, materials or equipment rejected as defective until satisfactory correction has been accomplished by Contractor.

E. All Warranties shall be in effect for the entirety of the Warranty Period, or the manufacturer's standard warranty, whichever is longer. In the event corrective work is required during the Warranty Period, the Warranty on the repaired Work shall extend for one (1) year from the date of acceptance by APS of the

completed repairs. The Warranty shall include all parts, labor, transportation, and any other costs necessary to keep the product in good operating condition, but shall not be applicable to damage caused by Owner's misuse of the item or due to normal wear and tear. If seasonal limitations prevent any required performance testing of the completed Work, the Warranty Period for such Work shall begin after the performance tests have been successfully performed.

17. <u>Correction of Defective Work Before and During Warranty Period</u>:

A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the Contractor shall, within three (3) Days after written notice from the Owner, commence to remove all defective and deteriorated Work and materials and replace it at the Contractor's expense with Work and materials in accordance with the requirements of the Contract Documents and to complete all incomplete Work in accordance with the Contract Documents within a reasonable time period.

B. In the event the Contractor fails to commence the removal, replacement, completion or correction of such Work within three Days after the date of written notice from the Owner and to complete such Work within a reasonable time period thereafter, the Owner will cause such Work to be performed by other Contractors and the Contractor 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.

18. <u>Contractor Requirements</u>:

A. The Contractor and all of its Subcontractors for the duration of the Contract are required to comply with all laws regarding authorization to do business in Virginia, licensing, and other regulatory requirements as applicable; to be financially stable; and to provide for performance of the Work a sufficient work force, all of whom are qualified for and experienced in 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 for any reason. Any individual who is removed from the Project 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 on a Project Site 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 Subcontractors.

E. No Smoking Policy on Arlington Public Schools' property: Contractors and Subcontractors, including their employees or agents, performing work on APS 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 Project Site in connection with a specific Purchase Order. All, the employees, Subcontractors and other representatives of Contractor 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 on any Project Site. 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 placed by or on behalf of the Contractor that the Contractor maintains a drug-free work place; and

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

G. Contractor Certification Regarding Criminal Convictions. By signing this Contract, the Contractor affirms the continuing accuracy of the Contractor Certification Regarding Criminal Convictions submitted as Attachment A to its Bid and that it will remain in force throughout the performance of any Work under the Contract. The Contractor acknowledges that its Contractor Certification Regarding Criminal Convictions is applicable not only to Contractor or its employees, but also to its Subcontractors or their employees and Sub-subcontractors or their employees. Contractor shall upon demand from APS provide to APS all information which allowed for the Contractor's certification and which supports that the certification remains current, and further certifies that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. <u>Permits, Fees and Notices</u>:

A. The Contractor shall comply with all local, state and federal laws, regulations, rules or ordinances applicable to this Contract and the Work to be performed hereunder. The Contractor shall also obtain, at its expense, all permits, inspections, licenses, fees and other authorizations necessary for the prosecution of the Work.

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 of such fact in writing. Any required changes shall be made by suitable approved Modification. If the Contractor performs any Work when it knew or in the exercise of reasonable care should have known it to be in conflict with such laws, ordinances, rules or regulations without satisfying its Notice obligations to Owner, such action shall be deemed a failure of this condition precedent to a claim and the Contractor shall accept all responsibility and bear all cost relating thereto.

20. <u>Risk of Loss</u>:

All Work, materials and equipment provided by Contractor shall remain the property of Contractor until accepted by Owner as in compliance with the requirements of the Contract Documents, and all risk of loss prior to acceptance by Owner shall be borne by Contractor.

21. Tests and Inspections:

A. Unless otherwise provided in the Contract Documents, the Contractor shall be responsible for scheduling, compliance and costs associated with all tests or inspections required by local authorities having jurisdiction over the Project. The Contractor shall give the Owner Notice immediately in the event of failure of any test or inspection. 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 and shall bear all expense arising from any failed inspection, whether incurred by Owner, Contractor, or any third party.

B. 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.

22. Rejection of Work:

The Owner shall have the authority to reject Work that does not conform strictly to the requirements of the Contract Documents. All costs associated with correction of rejected Work shall be borne by the Contractor.

23. Owner's 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 Owner approves the Contractor's written plan to correction of such deficiency. Should the Contractor fail within three (3) working Days following issuance of the stop work order to submit an acceptable corrective plan and thereafter to pursue the corrective plan with due diligence, the Owner has the right, after three (3) days written notice, to correct the deficiencies. In such event the Contractor shall pay to the Owner the Owner's cost of correcting the deficiencies, including any charges for special inspections or tests, 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.

24. Indemnification:

The Contractor covenants to save, defend, hold harmless, and indemnify the Owner, Arlington County 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, and all reasonable and customary costs of litigation), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions in performance or nonperformance of the Work. This indemnification obligation shall survive the termination of this Contract.

25. Payment:

A. Invoices unless otherwise specified in the Contract or in the Purchase Order shall be submitted immediately upon completion of the shipment or Services. If shipment is made by freight or express, the original Bill of Lading properly receipted, must be attached to the invoices. Mail invoices, as applicable, to:

Arlington Public Schools
Department of Facilities and Operations
2770 South Taylor Street
Arlington, VA 22206

B. Upon receipt of an invoice, the Owner shall review the Work to determine if the invoice is consistent with the Work in place. The Contractor shall submit such additional information as may be reasonably requested by the Owner to substantiate the amount billed.

C. Payments will be made within thirty (30) days after the later of receipt of an invoice by APS or receipt of additional documentation as requested by APS of all amounts within the invoice approved for payment. All payments shall be net of any prompt payment discount. In connection with any prompt payment

discount, time shall be computed from the date of the invoice. For the purpose of earning the discount, payment shall be considered to have been made on the date that appears on the payment check or the date on which an electronic funds transfer for the payment was made.

D. APS is exempt from the payment of any federal excise tax or Virginia Sales Tax. The APS Federal Excise Tax Number is 54-6001128. Contractors located outside the Commonwealth of Virginia may charge and collect their local and or state sales tax when the Purchase Order calls for materials to be picked up by APS at the Contractor's place of business outside Virginia.

E. Notwithstanding the foregoing, no less than ninety-five (95%) of the Contract Price stated in the Purchase Order shall be paid until the Owner is satisfied that the Work is Complete.

F. **Price Reduction**. If at any time after the date of Bid Opening the Contractor makes a general price reduction in the comparable price of any Goods or service covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration thereof, including any extensions. Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of a Good or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers generally comparable to Owner which was used as the basis for Contractor's Bid. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract Documents. The Contractor, in addition, will within ten (10) days of any general price reduction, Notify the Procurement Director/Procurement Agent of such reduction by letter. Failure to do so may lead to termination of the Contract. Upon receipt of any such Notice of a general price reduction all ordering offices will be duly notified by the Procurement Director/Procurement Agent. The Contractor, if requested, shall furnish, within ten (10) days after the expiration or termination of the Contract a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the Bid Opening, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Director/Procurement Agent within ten (10) days, and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Director/Procurement Agent was notified of any such reduction.

26. 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 five (5) 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. There shall be no charge to Owner for conducting any such audit.

27. Award of Subcontracts and Other Contracts for Portions of the Work:

A. The Contractor shall not enter into any Subcontract with any Subcontractor who is suspended or debarred from participating in any contracting programs by the Commonwealth of Virginia, by any public body within the Commonwealth of Virginia, by the United States government, or by any other state or public body within any other state.

B. The Contractor shall not enter into any Subcontract with any Subcontractor who or which is not qualified to do business in Virginia in compliance with applicable law or does not have in effect all licenses and trade certifications required by federal, state or local law to perform the Services or to provide the Goods which are the subject of the Subcontract.

C. Upon request, the Contractor promptly shall file with the Owner a copy of any one or more of its Subcontracts. The Owner has the right to reject any Subcontractor it finds not to be qualified to perform the Work.

D. No action by the Owner shall 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.

E. Nothing contained in the Contract Documents or in any Subcontract shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner and any Subcontractor.

28. <u>Subcontractor and Sub-Subcontractor Agreements</u>:

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 as such rights are defined in the Contract Documents.

C. Contain appropriate provisions to give the Contractor the same power to terminate the 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 Section.

D. Contain appropriate provisions which bind the Subcontractor to the terms and conditions of this Contract insofar as they are applicable to the Work of the Subcontractor.

E. Contain a requirement that the Subcontractor shall be bound by and subject to the provisions of the payment requirements of the Contractor to the Subcontractor in regard to payments due by the Subcontractor made to its Sub-Subcontractors.

F. 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.

G. Contain a provision to the effect that the Owner and its authorized representatives will, until five (5) 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.

H. Contain the same Character and Competency requirements as appear in these Terms and Conditions and require the completion by the Subcontractor and its Sub-subcontractors of the Contractor Certification Regarding Criminal Activity and Employee Certification Regarding Criminal Activity.

I. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance required by these Terms and Conditions. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance.

J. Contain a provision imposing upon the Subcontractor the obligations and restrictions of Sections 56 and 61 of these General Conditions.

29. 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 or Sub-subcontractor.

30. Payment 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; 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 as permitted herein shall not accrue interest. Interest on amounts otherwise not paid to the Subcontractor when due under the terms of the Subcontract shall bear interest at the rate of one percent (1%) per month unless the written Subcontract otherwise provides.

B. Information concerning percentages of completion of work performed by a Subcontractor as shown in an Application for Payment may be made available to that Subcontractor at the sole discretion of the Owner.

C. Insurance proceeds received by the Contractor under the insurance policies required by these Terms and Conditions shall be equitably distributed to the Subcontractors affected by the insured loss.

D. 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.

31. Owner's Right to Award Separate Contracts:

A. The Owner has the right to award separate Contracts of the same or a similar nature on the same or similar Project Sites, or for other work on the same Project Sites.

B. When separate Contracts are awarded, 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 with the intent of each Contractor being able to complete its Work in the most time efficient and cost efficient manner under the circumstances.

D. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects, or to discover such defects or discrepancies which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered, shall constitute an acknowledgment that the separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work.

32. Royalties and Patents:

The Contract Price includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the use thereof is understood to have been included in the Contract Price and 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, its 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. This obligation to defend, hold harmless and indemnify shall include but is not limited to attorneys' fees and all customary and reasonable costs of litigation and expert consultation and testimony. If a Purchase Order contains a direction requiring use of any design, device, material or process which is subject to patent, trademark or copyright protection which Contractor contends was not contemplated by and included in the Pricing Schedule, the Contractor shall give Notice thereof to Owner prior to proceeding with the Work and await direction from the Owner. If the Contractor proceeds with the Work without giving such Notice or without receiving direction from the Owner, the Contractor shall be responsible for all royalties and costs as provided in this Section.

33. Claims for Damages:

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

A. The Contractor must at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based deliver to the Procurement Director/Procurement 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.

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

C. The Procurement Director/Procurement Agent shall make a determination within ninety (90) Days after receipt of the submission described in SubSection B above, which decision shall be the final determination of the Owner. Failure by the Procurement Director/Procurement Agent to issue a final decision shall be deemed a final decision to deny the claim as of the ninetieth (90^{th}) Day. A final decision by the Owner shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the claim.

The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the Owner's final decision. No consideration by the Owner of any additional submissions by the Contractor in support of any claim shall extend this six (6) month limitation.

D. The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with the performance of the Contract and with any disputed Work pending final resolution of any claim or dispute. "Final resolution" shall include the exhaustion of all judicial proceedings.

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

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

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

H. If additional compensation is granted as to any claim, either by consent of the Owner or by judicial decision, the Contractor shall not be entitled to recover any interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid within thirty (30) Days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) Days at the legal rate of one percent (1%) per annum simple interest commencing on the date of such final resolution.

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

34. <u>Claims for Extension of Time</u>:

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

1. Give Notice of delay in writing to the Owner's Project Manager, and to the Procurement Agent within two (2) days of the occurrence which gives rise to the alleged delay, or within seven (7) days of the beginning of the delay if the resulting delay was not reasonably foreseeable at its commencement. Delays based on weather occurrences shall be submitted in accordance with, and are subject to the limitations of, Section 37, Weather Delays, of these Terms and Conditions. The Notice of claim for delay shall identify itself as a notice of claim, shall state the circumstances of the occurrence, shall state the justification for the delay and for the extension of time, and shall state the estimated duration of the delay and of the extension requested. In case of a continuing cause of delay, only one Notice shall be required so long as the delay asserted is continuous, but an additional Notice shall be given at least every fourteen (14) days providing a statement of what the Contractor has done to mitigate or overcome the cause of the delay, how long the delay is anticipated to continue, and the justification for such projection. Strict compliance with all of these submission requirements shall be a condition precedent to consideration of any claim for delay related to weather, but compliance of itself shall not establish the validity of any claim.

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

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

4. The Contractor shall make no claim against any officer, agent or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the Contract, and to the extent permitted by applicable law acknowledges and agrees that any and all rights to make any such claim are waived without condition or limitation.

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

B. The Contractor shall not be entitled to any extension of time for delay in completion of the Work unless such delay is caused solely by any act or delay caused by the Owner, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which in the opinion of the Owner, are entirely beyond the expectation and control of the Contractor. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner's Project Manager may determine to be due solely to such causes and only to the extent that such occurrences actually delay achieving the applicable completion date, and then only if the Contractor shall have strictly complied with all applicable claims submission requirements of this Contract. To the extent any delay for which the Contractor seeks an extension of time is due concurrently to causes for which Contractor may be entitled to a delay and to causes within the reasonable control or foreseeability of the Contractor, the Contractor shall not be entitled to any extension of time.

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

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

E. Delays caused by the failure of the Contractor's Subcontractors, suppliers and dealers to furnish approved working drawings, shop drawings, submittals, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors or Sub-Subcontractors to perform their work in conformity with

the Project Schedule or other requirements of the Contract Documents shall not constitute a basis for extension of time.

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

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

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

35. <u>Recovery Schedule</u>:

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

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

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

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

3. Contractor shall confer continuously with the Owner to assess the effectiveness of the Recovery Schedule. As a result of these conferences, the Owner will direct the Contractor as follows: (i) If the Owner determines the Contractor is still behind schedule, the Owner will direct the Contractor to prepare a revised Recovery Schedule and comply with all of the requirements of a Schedule Revision as stated herein and the other requirements of the Contract Documents; provided, however, that nothing herein shall limit in any way the rights and remedies of the Owner as provided elsewhere in the Contract Documents. (ii) If the Owner determines the Contractor has

successfully complied with provisions of the Recovery Schedule, the Owner will direct the Contractor to return to the use of the approved Project Schedule.

36. **Contractor Delays**:

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

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

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

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

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

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

37. Weather Delays:

Unusually severe weather conditions which prevent or inhibit the Contractor's performance of the Work are referred to herein as "Inclement Weather" and are more specifically defined below. The Contract Period may be adjusted to account for Inclement Weather, but only if (i) there has been strict compliance by Contractor with all claims submission requirements and other requirements of the Contract Documents related to time extensions; (ii) the delay asserted is shown by the Contractor to be the sole cause of lengthening the longest critical path indicated on the Project Schedule in effect during the period of such alleged delay, and (iii) the following definition of "Inclement Weather" is satisfied: A. Inclement Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour period that prevents Work shown on the Construction Schedule as planned for performance at that time which is directly affected by such weather conditions or by impact on access to the Site

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

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

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

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

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

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

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

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

F. As a condition precedent to consideration of or entitlement to any Inclement Weather time extension, the Contractor shall:

1. Notify the Owner's Project Manager and the Procurement Agent in writing of the occurrence of Inclement Weather within forty-eight hours after the onset of such Inclement Weather. Such notice shall identify itself as a notice of claim for Inclement Weather delay, shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the activities on the longest critical path on the Project Schedule thereby interfered with or interrupted, and shall estimate the duration of the delay and of the extension requested.

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

3. For purposes of any claim for delay based on Inclement Weather, each Inclement Weather Day claimed shall constitute a separate occurrence and the Contractor shall comply with the foregoing claim submittal requirements for each Day of Inclement Weather claimed.4. Compliance with the foregoing conditions precedent shall not of itself establish entitlement to a time extension for Inclement Weather but failure to comply shall be a bar to any such time extension.

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

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

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

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

38. Uncovering of Work:

A. If a portion of the Work is covered contrary to the Owner's 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, uncover and replace such Work without an adjustment to the Contract Time or Contract Price.

B. If a portion of the Work has been covered which the Owner 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 or applicable law or regulation, the Owner and/or Arlington County Inspector may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be charged to the Owner and paid to the Contractor. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering and replacing such Work.

39. Correction of Work:

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

40. Acceptance of Defective or Non-Conforming Work:

The Owner may accept any defective or non-conforming Work; provided, however, that in such event the Purchase 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.

41. Force Majeure:

A. The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

B. APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner.

C. No such extension of time shall be deemed a waiver by the Owner of its right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

42. Contractor's Insurance:

A. Prior to commencing any Work, and as a condition precedent to any obligation of the Owner to make any payment to the Contractor, the Contractor shall provide a Certificate of Insurance to the Procurement Director/Procurement Agent confirming that the Contractor has in force the coverage required below prior to the start of any Work under the Contract, and shall maintain such insurance until the expiration or termination of the Contract. All required insurance must be provided by insurers authorized to do business in the Commonwealth of Virginia and acceptable to APS. The minimum insurance coverage shall be:

1. Workers Compensation – Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employer's liability at the state statutory limits. For construction Contracts,

if any Subcontractors are involved, the Subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or Offeror further certifies that the Contractor and any Subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the Contract shall be in noncompliance with the Contract. APS will not accept W/C coverage issued by the Injured Workers Insurance Fund of Towson, Maryland.

2. Commercial General Liability - $1,000,000 per occurrence with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

3. Additional Insured – Arlington Public Schools and Arlington County School Board shall be named as additional insureds in the Contractor's Commercial General Liability policy; confirmation of the Additional Insured shall be typed on the certificate.

4. Cancellation – A thirty (30) day notice of cancellation or non-renewal in writing shall be furnished by the Contractor's insurance carrier(s) or insurance agent(s) to Procurement Director/Procurement Agent.

5. Contract Identification – The insurance certificate shall state the Contract number and title.

6. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, Non-owned, and Hired). Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

B. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work, and for all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the Work, until final acceptance of the Work by APS.

C. No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the Contractor from any liability of obligation under the Contract Documents.

D. The Contractor shall be responsible for the Work and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work.

E. The Contractor shall be as fully responsible to APS for the acts and omissions of its Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by Contractor.

43. <u>Default and Termination</u>:

A. Contractor's Default

1. The following shall constitute Event of Default by Contractor:

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 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.

2. Upon the occurrence of an Event of Default by Contractor, the Owner may declare the Contractor in default, in whole or in part, and give to the Contractor three (3) Days written Notice to cure such default. If Contractor fails to cure such default within such three (3) day period, or within such longer time as the Owner, in its sole discretion, may prescribe, the Owner shall have the right to do any one or more of the following in any combination:

   a. Have the defaulted Work performed by others and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

   b. Supplement Contractor's workforce and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

   c. Repair or replace any defective Work and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

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

   e. Terminate the Contractor's performance of the Contract in whole or in part.

3. 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 for default, upon the occurrence of any of the following:

   a. Institution of legal proceedings 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. Adjudication of the Contractor as a bankrupt or an assignment for the benefit of creditors by Contractor, the dissolution of the Contractor, or if a sole proprietorship the death or determination of incompetence of the Contractor; or

   c. Entry of an order in any proceeding instituted by or against the Contractor granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or

d. Appointment of a receiver or trustee for the Contractor or the Contractor's property; or

e. Assignment of the Contract or any part thereof without the prior written consent of the Owner; or

f. Assignment by the Contractor of any rights, moneys, or claims hereunder in whole or in part, otherwise than as herein specified; or

g. Abandonment of the Work to be done under this Contract.

4. 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.

5. 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 but not the Work as a whole, 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, plus an administrative fee of ten percent (10%) to cover overhead and administrative costs, shall be paid by the Contractor to the Owner as provided in the Contract Documents.

6. In the event the Owner terminates the Contract for default and it subsequently is determined by any means that the termination was without sufficient justification, the termination shall be deemed to have been a termination for convenience and the Contractor's damages shall be limited to the provisions of Section 37.C. Termination for Convenience.

B. Termination for Failure of Funding: All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by the Arlington County School Board. In the event of non-appropriation of funds for the Goods or Services provided under this Contract, APS will terminate this Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the current year for the Services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor. APS will exert reasonable effort to give thirty (30) Days prior written notice, but failure to give such Notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination.

C. Termination for Convenience: Notwithstanding any other rights of the Owner to terminate this Contract, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%. 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 Section. 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 Section.

44. Hazardous Substances:

A. No materials or equipment containing asbestos or any other hazardous material recognized and identified by the State 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.

B. In the event the Contractor encounters unforeseen hazardous substances in the performance of the Work, such as but not limited to asbestos or lead paint, the Contractor shall immediately suspend Work with the exception of such actions as may be necessary to secure the Site for purposes of public safety, immediately Notify the Owner, and take no further action until receiving written direction from the Owner.

45. Conflict of Interest:

This Contract incorporates by reference Article 9 of the Arlington Public Schools Procurement Resolution as well as all state and federal laws relating to ethics, conflict of interest, or bribery, including but not limited to Va. Code Ann. § 2.2-4367 through § 2.2-4377, Ethics in Public Contracting; the State and Local Government Conflict of Interests Act (§ 2.23100, et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438, et seq.), and 3 (§ 18.2-446, et seq.) of Chapter 10 of Title 18.2.

46. 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.

47. Employment Discrimination by Contractor Prohibited:

During the performance of this Contract the Contractor agrees as follows

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, sexual orientation or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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

C. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

D. The Contractor will include the provisions of the foregoing Sections A, B, and C in every Subcontract of over $10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.

E. Nothing contained in this provision shall be deemed to require the Contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex, age, sexual orientation 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, age, sexual orientation or national origin employed by such Contractor in comparison with the total number or percentage of persons of such race, color, religion, sex age or sexual orientation or national origin in any community or in the state.

48. 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.

49. <u>Small, Minority, Women Owned and Service Disabled Veterans Business Enterprises and Employment Services Organizations</u>:

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 as follows:

1. 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.

2. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses.

4. Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation of such businesses.

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. "Employment Service Organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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

4. "Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

5. "Service disabled veteran-owned business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

6. "Small business" means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of $10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

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

50. HIPAA Compliance:

Contractor shall be responsible for determining the applicability of, and shall comply with as applicable, all legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

51. 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, 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.

52. 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 or as otherwise provided in the

Contract Documents. 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.

53. Non-Endorsement Clause for Contracts & Agreements:

Arlington Public Schools may be identified as a "Participant" in the Goods or Services with the following statement added, "This shall not constitute an endorsement of any products or Services". For further information, please contact the Arlington Public Schools School and Community Relations office.

54. Advertising and Use of Proprietary Marks or Logos:

Contractor shall not use the name of Arlington Public Schools (APS) or refer to APS, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS. In no event may Contractor use a proprietary mark of APS without receiving the prior written consent of APS.

55. Student Data Usage and Privacy Agreement: Intentionally Deleted

56. Confidential Information:

The Contractor, and its employees, agents, and Subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and Subcontractors are informed of, and abide by, this requirement.

57. APS Employees:

No employee of APS shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

58. Survival of Terms:

Any provision of this Contract which by its terms or as necessary to carry out its purpose or intent is intended to survive the expiration or termination of this Contract shall so survive. The specific statement of survival in any provision shall not affect the survivable nature of any other provision.

59. Arbitration:

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

60. ADA Compliance:

Compliance with the Americans with Disabilities Act of 1990 ("ADA") shall be the sole responsibility of the Contractor. The Contractor shall defend and hold APS harmless from any expense or liability arising from the Contractor's non-compliance therewith. The Contractor's responsibilities related to ADA compliance shall include, but not be limited to, the following:

A. Access to Programs, Services and/or Facilities: The Contractor shall ensure its programs; Services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent Services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to Services.

B. Effective Communication: The Contractor, upon request, shall provide appropriate aids and Services leading to effective communication for qualified persons with disabilities so they can participate equally in

the Contractor's programs, Services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.

C. Modifications to Policies and Procedures: The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, Services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor's offices or facilities, even where pets are generally prohibited.

D. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/Services or reasonable modifications of policy.

E. Employment: The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.

F. Responding to inquiries from the U.S. Department of Labor.

61. Intellectual Property Indemnification:*

A. The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the Services provided hereunder.

B. The Contractor further covenants for itself, its employees, and Subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees 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, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this Section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

62. Antitrust:

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the Goods or Services purchased or acquired by APS under this Contract.

63. Report Standards:

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;

All submittals must be in the required tabular format in a binder.

Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);

The use of plastic covers or dividers should be avoided; and

Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

64. Arlington Public Schools Procurement Resolution and Policies:*

The Procurement Agent has no power to change or waive any provision or requirement of the Procurement Resolution, any policies or regulations of the Arlington County School Board, or any applicable provisions of Arlington County ordinances or regulations, all of which are incorporated herein.

65. No Waiver of Sovereign Immunity:*

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

66. Headings:

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading refers.

67. Accessibility of Web Site:*

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: http://www.ada.gov/websites2.htm.

68. Entire Agreement:

The Contract Documents constitute the entire agreement between the parties pertaining to the Work and supersedes all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.

End of Terms and Conditions

Attachment D

Contractor Certification

Regarding Criminal Convictions

The completed form from the Bidder 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 the Contractor, its employees, its sub-contractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. Rape, forcible sodomy or object sexual penetration, where the offender was more than three years older than the victim, as set forth in Va. Code Ann. § 18.2-370.4, and
3. A sexually violent offense, as set forth in Va. Code Ann. § 18.2-370.5.

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 the Contract with Arlington Public Schools and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

Winkler Pool Management, Inc.	
Name of Bidder	Signature
4905 Edmonston Rd., Hyattsville, MD 20781	Douglas S. Winkler, President
Address of Bidder	Name and Title (please type or print)
301/864-4900	9/8/2020
Telephone	Date

End of Attachment D

Sample Purchase Order

Attachment E

Sample Purchase Order
Arlington Public Schools

PROCUREMENT OFFICE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6123

ACCOUNTS PAYABLE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6121
Email: aps.payables@apsva.us

Please note that our billing address has changed.

Unless otherwise instructed, please send invoices to the address above, Attn: Accounts Payable.

Purchase Order	2102130
Purchase Order Date	16-OCT-2020
Change Order Number	0
Change Order Date	
Procurement Specialist/Phone	Kenneth Lawson 703-228-6193
Requisitioner/Dept/Email	
FEIN	54-6001128

Website: https://www.apsva.us/procurement-office/

This PURCHASE ORDER NUMBER shown above must appear on all invoices, packing slips & related correspondence. For questions regarding the order, contact the REQUISITIONER shown above.

SUPPLIER: WINKLER POOL MANAGEMENT
4905 EDMONSTON ROAD
HYATTSVILLE MD 20781

Ship To: SEE LINE DETAILS

Payment Terms	Freight Terms	FOB
NET 30	Prepaid	Destination

Line	Vendor Part	Item Description	Due Date	Quantity	UOM	Unit Price	Amount
1	ITEM 1 08FY21	ACID CLEAN POOL BOTTOM AND WALLS, POOL SIZE UP TO 40,000 GALLONS, APS CONTRACT 08FY21			Each	$1,034.00	$0.00
2	ITEM 2 08FY21	ACID CLEAN POOL BOTTOM AND WALLS, POOL SIZE 180,000 TO 389,000 GALLONS, APS CONTRACT 08FY21			Each	$1,034.00	$0.00
3	ITEM 3 08FY21	DIVING BOARD PREVENTIVE MAINTENANCE, APS CONTRACT 08FY21			Each	$98.00	$0.00
4	ITEM 4 08FY21	REPLACE CO2 TUBING, APS CONTRACT 08FY21			Linear Foot	$1.28	$0.00
5	ITEM 5 08FY21	REPLACE CL2 TUBING, APS CONTRACT 08FY21			Linear Foot	$1.28	$0.00
6	ITEM 6 08FY21	REPLACE CIRCULATION PUMP BEARINGS AND SEALS, APS CONTRACT 08FY21			Each	$1,950.00	$0.00
7	ITEM 7 08FY21	REPLACE ULTRAVIOLET LIGHT BULBS, APS CONTRACT 08FY21			Each	$800.00	$0.00
8	ITEM 8 08FY21	PREVENTIVE MAINTENANCE OF POOL CIRCULATION PUMPS, APS CONTRACT 08FY21			Each	$125.00	$0.00
9	ITEM 9 08FY21	PREVENTIVE MAINTENANCE OF SUPPLEMENTAL HEATERS, APS CONTRACT 08FY21			Each	$125.00	$0.00
10	ITEM 10 08FY21	CERTIFIED MAINTENANCE SPECIALIST, REGULAR TIME, APS CONTRACT 08FY21			Hour	$59.00	$0.00
11	ITEM 11 08FY21	CERTIFIED MAINTENANCE SPECIALIST, OVER TIME, APS CONTRACT 08FY21			Hour	$88.50	$0.00

Sample Purchase Order

Attachment E

Sample Purchase Order
Arlington Public Schools

PROCUREMENT OFFICE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6123

ACCOUNTS PAYABLE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6121
Email: aps.payables@apsva.us

Please note that our billing address has changed.

Unless otherwise instructed, please send invoices to the address above, Attn: Accounts Payable.

Purchase Order	2102130
Purchase Order Date	16-OCT-2020
Change Order Number	0
Change Order Date	
Procurement Specialist/Phone	Kenneth Lawson 703-228-6193
Requisitioner/Ph#/Email	
FEIN	54-6001128

Website: https://www.apsva.us/procurement-office/

This PURCHASE ORDER NUMBER shown above must appear on all invoices, packing slips & related correspondence. For questions regarding the order, contact the REQUISITIONER shown above.

SUPPLIER: WINKLER POOL MANAGEMENT
4905 EDMONSTON ROAD
HYATTSVILLE MD 20781

Ship To: SEE LINE DETAILS

Payment Terms	Freight Terms	FOB
NET 30	Prepaid	Destination

Line	Vendor Part	Item Description	Due Date	Quantity	UOM	Unit Price	Amount
12	ITEM 12 08FY21	CERTIFIED MAINTENANCE SPECIALIST, WEEKEND AND HOLIDAY, APS CONTRACT 08FY21			Hour	$125.00	$0.00
13	ITEM 13 08FY21	APPRENTICE, REGULAR TIME, APS CONTRACT 08FY21			Hour	$39.00	$0.00
14	ITEM 14 08FY21	APPRENTICE, OVER TIME, APS CONTRACT 08FY21			Hour	$58.50	$0.00
15	ITEM 15 08FY21	APPRENTICE, WEEKEND AND HOLIDAY, APS CONTRACT 08FY21			Hour	$110.00	$0.00
16	ITEM 16 08FY21	WINKLER POOL MANAGEMENT MATERIALS COST FOR APS CONTRACT 08FY21			Each	$1.00	$0.00

The Purchase Order Terms and Conditions found on the Arlington Public Schools Procurement Office Website, at the link provided below, are incorporated in, and become part of, this contract. It is the responsibility of the Vendor to carefully read and understand the Purchase Order Terms and Conditions.

The Purchase Order Terms and Conditions have been amended effective July 1, 2020.

https://www.apsva.us/wp-content/uploads/2020/07/2020-07-01-Purchase-Order-TsCs.pdf

IMPORTANT: There have been incidents of scammers pretending to be school representatives and ordering thousands of dollars of goods. Purchases by APS are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Vendors providing goods or services without a signed APS Purchase Order, do so at their own risk.

Authorized by:

David J. Webb, C.P.M.
Director of Procurement

Purchase Order Total: $

Attachment F

Job Authorization Form

All Work to be Performed in Accordance with the Terms and Conditions of:

Contract No.: 08FY21 **Contractor: Winkler Pool Management, Inc.**

Contract Administrator: Helena Machado **Total Cost Not to Exceed: $_____**

Task: _____

Description of Work_____

Contract Administrator's Designee: _____ **Phone Number: _____**

Job No.: _____ **Date of Issuance to the Contractor: _____**

Location: _____

Requirements: _____

_____

Description	Regular Rate	Labor Hours	Overtime Rate	OT Hours	Holiday/Weekend Rate	Hours	Total Labor Cost
Certified Maintenance Specialist	$59.00/hr		$88.50/hr		$125.00/hr		$
Apprentice Helper	$39.00/hr		$58.00/hr		$110.00/hr		$
					Project Total Labor Cost		$

Estimated Equipment Cost $_____

Estimated Material Cost $_____

Completion in Days after receipt of Purchase Order: _____

Special Problems or Potential Delays:_____

Actual Cost (Labor) $_____ Actual Cost (Material & Equip) $_____

Attach Documentation

_____ _____ _____ _____

APS Contract Administrator's Signature **Date** **Contractor's Signature** **Date**

End of Attachment F

Attachment G

Certificates of Insurance

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/23/2020

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

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

PRODUCER HMS Insurance Associates, Inc. 20 Wight Ave Suite 300 Hunt Valley MD 21030	CONTACT NAME: Karen Bearsch PHONE (A/C, No, Ext): 410-785-1613 FAX (A/C, No): 443-632-3499 E-MAIL ADDRESS: kbearsch@hmsia.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
INSURED Winkler Pool Management, Inc. 4905 Edmonston Road Hyattsville MD 20781	INSURER A: Wesco Insurance — 29011 INSURER B: Admiral Insurance Company — 24856 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES — CERTIFICATE NUMBER: 1168194907 — REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			CAG0003763-01	1/1/2020	1/1/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ $ 1,000,000 $ 2,000,000 $ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
B	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 0			CX0000035690I	1/1/2020	1/1/2021	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WWC3494382	1/1/2020	1/1/2021	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 500,000 $ 500,000 $ 500,000

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

Arlington Public Schools and Arlington County School Board are included as additional insured with respects to the general liability policy if required by written contract. Third party notice of cancellation (30 days), except 10 days for non-payment of Premium is provided to the certificate holder on the General Liability Policy if required by written contract. AJS Contract 089Y21

CERTIFICATE HOLDER	CANCELLATION
Arlington Public Schools 2110 Washington Blvd. Arlington VA 22204	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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Attachment G

Certificates of Insurance

Client#: 1899235 140WINKLPOO

ACORD. **CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY) 9/23/2020

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

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

PRODUCER	CONTACT NAME: Kimberly Sparrow
McGriff Insurance Services 5850 Waterloo Road, Suite 240 Columbia, MD 21045 410 480-4400	PHONE (A/C, No, Ext): 410 480-4400 FAX (A/C, No): 866-548-4197 E-MAIL ADDRESS: kimberly.sparrow@mcgriffinsurance.com
	INSURER(S) AFFORDING COVERAGE / NAIC #
	INSURER A: Selective Insurance Co of America 12572
INSURED Winkler Pool Management Inc 4905 Edmonston Road Hyattsville, MD 20781	INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY			52427901 52427902 (VA)	01/01/2020 01/01/2020	01/01/2021 01/01/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
	UMBRELLA LIAB EXCESS LIAB DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $

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

Complete Named Insured: Winkler Pool Management, Inc., Winkler Aquatics, Inc. DBA Swimkare, Lanze Pool Service, Inc., DBA Chesapeake Pools

RE: Insurance Verification
APS Contract 08FY21

CERTIFICATE HOLDER	CANCELLATION
Arlington County Public Schools 2110 Washington Blvd. Arlington VA. 22204	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Julie A Connor

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