



Arlington Public Schools

Procurement Office

2110 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123 • Fax: (703) 841-0681

www.apsva.us

Agreement Between Owner and Contractor

CONTRACT 57FY23 is made and entered into this ___ day of _____, 2022; the date the Agreement is fully executed, between Arlington County School Board, operating as Arlington Public Schools, Virginia (the "Owner" or "APS") and

_____ (the "Contractor"), whose address is _____

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

1. **The Project**

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

Swanson Middle School Kitchen and Entrance Renovation, located at 5800 N. Washington Blvd., Arlington, VA 22205.

2. **The Contract Documents**

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

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

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

In the event of a conflict between any Contract Documents, the order of precedence shall be in the order the Contract Documents are listed above, with the exception that any Addendum or Modification shall

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

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

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

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

3. **Definitions**

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

4. **Contract Period**

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

February 2, 2023:

Anticipated Notice to Proceed (NTP) for Project Administrative Contract Deliverables (except as needed for preparing the Drawings, Kitchen Equipment layout, measurement and things of that sort, no on-site mobilization or other activity is permitted until the Construction NTP is issued)

June 27, 2023:

Anticipated NTP for Project Site Mobilization and Construction for both Phase 2 and Phase (Obtaining all trade permits required for the Work and approval of all Submittals required under Phase 1 is a condition precedent to issuance of the Site Mobilization/Construction NTP)

August 10, 2023:	Substantial Completion - Phase 2 - Main Office and Cafeteria
September 20, 2023:	Substantial Completion - Phase 3 – Kitchen
October 20, 2023:	Final Completion – All Phases

These dates are subject to adjustments as provided in the Contract Documents. In the event of any change to either Substantial Completion Date as provided by the Contract Documents, the Final Completion Date shall be thirty (30) days after the latest revised Substantial Completion Date.

5. **Contract Sum**

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

In Writing: _____ Dollars

In Figures: \$ _____ .00

6. **Liquidated Damages**

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

a. Pay Owner **One Thousand Dollars (\$1,000.00)** for each day that expires after the time specified in Paragraph 4 for each of the **Substantial Completion Dates**, plus any approved time extensions, until Substantial Completion is achieved; and Pay Owner **Five Hundred Dollars (\$500.00)** for each day

that expires after the time specified in Paragraph 4 for the **Final Completion Date**, plus any approved time extensions, until Final Completion is achieved.

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

7. **Payment Procedures**

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

b. Contractor hereby consents to the Owner deducting from amounts otherwise payable to the Contractor and retaining any and all amounts payable to the Owner by the Contractor for any reason stated in the Contract Documents assessed or payable through the date payment is due Contractor from Owner. If the amount payable to the Owner by the Contractor exceeds the amount otherwise payable to Contractor by Owner, Contractor shall make payment thereof to Owner within fourteen (14) days following issuance by Owner of Notice of payment due.

8. **Interest**

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

9. **No Assignments**

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

10. **Governing Law**

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

11. **Binding Agreement**

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

Documents.

Signatures Appear on the Following Page

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

<p>Contractor</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">Dated</p>

<p>Owner</p> <p>By: _____</p> <p style="text-align: center;">David J. Webb, C.P.M.</p> <p>Title: Procurement Agent</p> <p>_____</p> <p style="text-align: center;">Dated</p>
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End of Agreement